

FREE LEGAL SEMINAR

ON

***Recent Changes
To Nevada***

***Homeowners Association
Law***

May 2010

***A Washoe County Law Library Community
Service Program***

**Speakers: Sara Barry, CM, CMCA, PCAM
Gayle Kern, Esq.**

Date: Thursday, May 27, 2010

**Location: Washoe County Law Library
75 Court St., Old Courthouse**

Time: 5:00 – 7:00 PM

***Due to limited space please sign up ahead of time by
contacting the Washoe County Law Library at***

328-3250

2009 Legislative Update
The Dust Has Settled in the
Common Interest
Community Industry

Presented by:

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Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

TO OBTAIN COPIES OF TODAY'S
HANDOUTS:

IF YOU WERE UNABLE TO BE AT THIS
SEMINAR, WE CAN SEND YOU E-COPIES
IF YOU E-MAIL SARA BARRY AT:

seblv@aol.com

WE ONLY HAVE TWO HOURS
TODAY AND WOULD LIKE TO
HOLD QUESTIONS UNTIL THE
END. THEY WILL BE
ANSWERED AS TIME
PERMITS. THANKS FOR
YOUR COOPERATION.

ARCHITECTURAL ISSUES

(Pages 1 – 3)

- Landscaping – Artificial Turf
- Political Signs
- Rolling shutters
- Wind & Solar Issues
- Architectural Plans are confidential – Are Architectural Control meetings closed now?
- Must the Architectural Committee members sign a confidentiality agreement?
- Other

MANAGEMENT ISSUES

(Pages 4 – 15)

- Interest Rates on Assessments (60 days) – Twice a year review of Prime rates.
- Defines where funds may be maintained
- Books and Records within 60 Miles of Community
- Resale and Disclosure Packets – Collection Fees Must Be Included.
- Management Contracts and Provisions

- Can't take retaliatory actions.
- Punitive Damages
- Licensing Provisions
- Separate Accounts for each owner – Homeowners ledgers for fines. 10-1-2011
- Signature requirements on Operating Accounts (must be two signatures and one must be a Director) – Payroll and other electronic required issues.

- Super Priority Liens extended to include 9 months vs. 6 months.
- Cost of maintaining foreclosed units are eligible for inclusion in above 9 months Super Priority Lien.
- Clarifies that unit owner must pay for resale disclosure package and packages must contain certain statement of all transfer, transaction or other fees associated with the resale of the unit.

- DECLARANT (Developer) ISSUES**
(Page 16 – 18)
- Public Offering Statements must now include all of the possible fees, fines, late fees, etc. that an owner may be facing if they purchase the unit.
 - Ancillary audit – responsibility of Developer to pay.
 - Financing to Association – Board member can not do.

- Deposits made by purchasers to by a unit from the Developer now have certain requirements as to accounts, etc. and types of institutions that these funds can be placed into.
- Owners can sue Association or Developer for failure or refusal to comply with NRS 116 or the governing documents. Punitive damages are possible for "willful and material" failure to comply with NRS 116.

FINANCIAL MATTERS

(Page 19 – 23)

- Association must adopt a collection policy and distribute it annually to owners and must include any possible costs of fees that may be incurred in that process.
- No interest may be charged on past due fines.

- Commission to establish limits on collection fees. Cost of collecting and obligation defined.

(Obligation is defined as assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.)

- Allowable interest rates again. January 1 and July 1 an analysis must be made and plus 2% is the interest rate that can be charged for assessments.

- Investments and banks – Board members must sign checks for operating account expenses except for reserve transfers and *auto pay for utilities*. - Problem with the \$10,000 fees to Ombudsman's office which must be done electronically, payroll (IRS) and other auto debit payments.

- Board must adopt an investment policy. (Should have been adopted and sent with last year's budget)

- Defines again where funds may be deposited/invested. – Problem with "consented to be subject to the jurisdiction...."

RESERVES – (Page 22)

- Membership approval is not required to levy assessments to fund reserves. NAC 116.425 Defines Adequate.
.....2. As used in this section, "adequately funded reserve" means the funds sufficient to maintain the common elements:
 - (a) At the level described in the governing documents and in a reserve study; and
 - (b) Without using the funds from the operating budget or without special assessments, except for occurrences that are a result of unforeseen catastrophic events. (Added to NAC by Comm'n for Common-Interest Communities by R129-04, eff. 4-14-2005)

RESERVES

The Commission for Common Interest Communities and Condo Hotels has already defined in NAC 116.425, Section 2 "Adequate" reserves.

2....."adequately funded reserve means..."

- (a) At the level described in the governing documents and in a reserve study; and
- (b) Without using the funds from the operating budget or without special assessments, except for occurrences that are a result of unforeseen catastrophic events.

- Clarifies that association may reserve for property it does not own, but is obligated to maintain – think privacy walls.

(Never use, **Security** in your CIC.)

- Association may not interrupt utility services except for non-payment; notice required.

GOVERNANCE ISSUES

(Page 24 – 30)

- Fixing an Association election is punishable as a category D Felony.
- Board members or manager who ask for “kickbacks” regarding voting/actions are guilty of a category D Felony.
- Anyone who tries to bribe a board member or manager for vote/action is guilty of a category d felony.

- No punitive damages against association or board members acting within scope of authority.
- Owner can bring lawsuit for compensatory damages and attorney’s fees for retaliatory actions.
- Owners can sue Association or Developer for failure or refusal to comply with NRS 116 or governing documents.
- Cannot sue Association, board members or officers for punitive damages so long as board members and officers are acting within the scope of their authority.

- Board members required to disclose and abstain from voting on conflicts of interest involving personal profit or compensation.
- Requires board members with financial conflicts to disclose and abstain from voting.
- Requires bids to be opened during open session portion of a board meeting. – May not be opened in executive/closed session board meetings.

- Resident comment period is now required at both the beginning and end of the meetings. Comments must be limited to items on the agenda at the beginning and anything else at the end.
- Open meetings must be audio recorded . Determine Format and responding to request!
- Association must provide copies of minutes for board and annual member’s meetings at no charge if sent in an electronic format. Copy costs for printed materials are limited. \$.25 for first page and \$.10 per page thereafter.

- Board meetings must now be held at least once every quarter and not less than once every 100 days.
- Attorney contract cannot be discussed in closed session. They can still meet in executive session to *consult with the attorney on matters relating to proposed or pending litigation.*
- If an owner provides a written request asking for it, an allegation that the board has violated NRS 116 or the governing documents item must be placed on the next agenda.

- After transition from Developer to the owners, members of the board must be owners; officers do not have to be an owner, however, unless documents state otherwise.
- Board may fill vacancies for unexpired terms unless documents say otherwise.
- More provisions about prohibitions from board providing financing to the association.

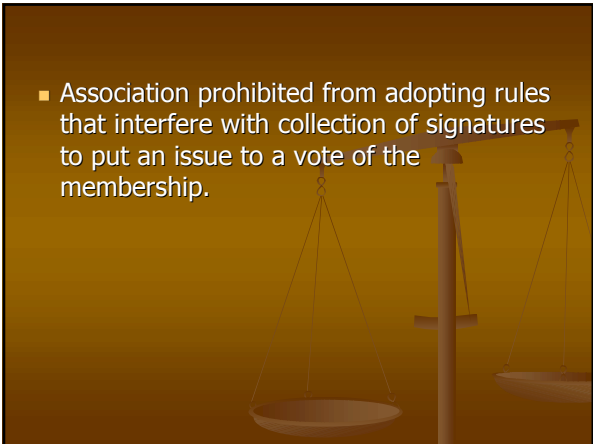
ELECTIONS, RECALL ELECTIONS, MEMBER VOTING

(Page 30)

- Length of a board term increased from 2 to 3 years. This do not automatically change your documents to 3 year terms nor extend current terms to three years.
- Association is to distribute candidate disclosures except if disclosure contains defamatory, libelous or profane information. (Single Typed Page)

- Establishes rules for campaigning for board elections: Mailing candidate statement at Association expense, not interfering with campaign. Sets limits on length of candidate statements and immunizes association from liability for following these "rules".
- Association does not have to mail ballots if number of candidates is equal to or less than number of vacancies to be filled. Cautions here as another mailing must be sent. (Page 31) Issues with this section!!!

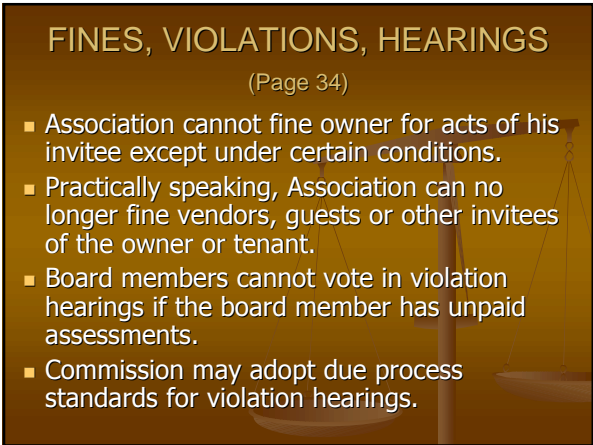
- Association must provide equal space for opposing viewpoints on matter of "official interest" in association publications.
- Clarification of percentage of votes needed to hold a recall election and to pass a recall provision.
- Delegate Voting Changed – Not a big issue in the North. Only permitted in certain circumstances.



- Association prohibited from adopting rules that interfere with collection of signatures to put an issue to a vote of the membership.

FINES, VIOLATIONS, HEARINGS

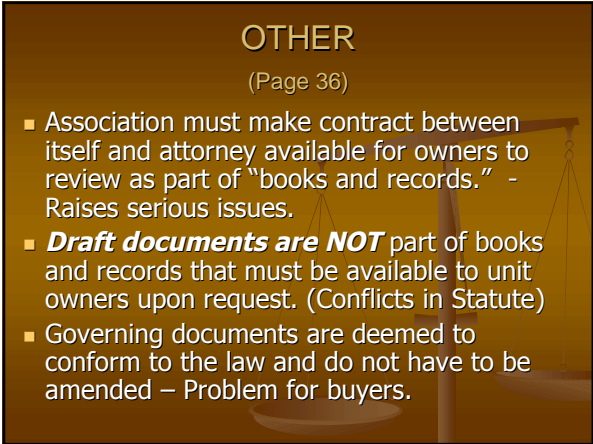
(Page 34)



- Association cannot fine owner for acts of his invitee except under certain conditions.
- Practically speaking, Association can no longer fine vendors, guests or other invitees of the owner or tenant.
- Board members cannot vote in violation hearings if the board member has unpaid assessments.
- Commission may adopt due process standards for violation hearings.

OTHER

(Page 36)



- Association must make contract between itself and attorney available for owners to review as part of "books and records." - Raises serious issues.
- **Draft documents are NOT** part of books and records that must be available to unit owners upon request. (Conflicts in Statute)
- Governing documents are deemed to conform to the law and do not have to be amended – Problem for buyers.

- Association cannot charge an entry fee to visitors or vendors to enter the Association to provide services.
- Association contracts may not contain first right of refusals.
- Association and unit owners' obligation to maintain changed to more active *duty* to do so.

- MISCELLANEOUS ISSUES**
(Page 38)
- Foreclosures – Foreclosure sales must be recorded within 30 days.
 - Foreclosing entity must provide contact information within 30 days.
 - Association may enter property to maintain and not be considered to trespass if notice and hearing is conducted.
 - Purchaser of property at foreclosure sale must maintain property to minimum standard. Allows for enforcement if they don't by the applicable governmental entity - nuisance abatement programs.

- Establishes a notice period for tenants living in a foreclosed property.
- Association has right to record a request for a copy of deed upon sale of a unit.

PARKING

(Page 42)

- Association must permit parting of certain utility service, law enforcement and emergency service vehicles in the community. Serious issue on what can be restricted!!!!
- Municipality may adopt ordinances to allow golf carts to travel on planned community streets.

PERIMETER WALLS

(Page 43)

- Association is responsible for maintain perimeter walls unless documents are specify as to maintenance responsibilities otherwise.
- Association has until 1-1-2013 to put the money aside if they were created before 10-1-09 and documents are not clear that the owner or another entity has clear responsibility.
(City of Henderson requested bill)

POOLS

(Page 44)

- Association pools – Exceptions for Public vs. Private.
- Southern Nevada Health District does not agree has asked for an opinion from their attorney on the Public vs. Private issue.

RECYCLING

- Recycling must be made available for condos. Space may be the ultimate issue in complying with this provision.
- A program must be established by the Board of County Commissioners in counties of 100,000 or more for use in that County for separation of recyclable materials . Condos will be required to set aside space for these areas to sort and recycle the trash.

RENTAL RESTRICTIONS

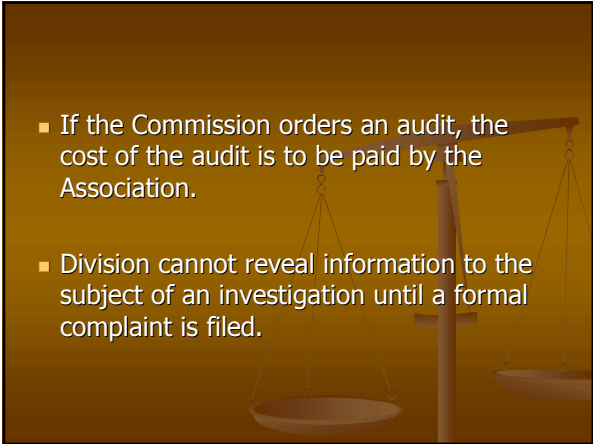
(Page 45)

- SB 253 - Prohibits Association from imposing rental restrictions.
- Unless, at the time a unit's owner purchased his unit, the declaration prohibited the unit's owner from renting or leasing his unit, the association may not prohibit the unit's owner from renting or leasing his unit.

OTHER

(Page 45)

- Quick response to petitions filed with Division is required.
- Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to applicability or interpretation of NRS 116, NRS 116A or NRS 116B



- If the Commission orders an audit, the cost of the audit is to be paid by the Association.
- Division cannot reveal information to the subject of an investigation until a formal complaint is filed.



WHAT OTHER ISSUES ARE THE TWO SPEAKERS SEEING NOW AS A RESULT OF THE LEGISLATION?



QUESTIONS?
