



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION

788 Fairview Drive, Suite 200 \* Carson City, NV 89701-5453 \* (775) 687-4280  
2501 East Sahara Avenue, Suite 102 \* Las Vegas, NV 89104-4137 \* (702) 486-4033  
e-mail: realest@red.state.nv.us http://www.red.state.nv.us

**OMBUDSMAN INTERVENTION AFFIDAVIT  
INSTRUCTION PAGE**

Please read the following information regarding your request for Ombudsman intervention. The ability of the Ombudsman's office to intervene in this matter, if appropriate, will depend largely upon your provision of a complete and detailed **notarized** Affidavit. **ATTACH COPIES OF ALL PERTINENT PAPERS AND/OR DOCUMENTS TO THE AFFIDAVIT.** Keep originals for your file. **BEFORE SUBMITTING THIS AFFIDAVIT PLEASE READ THE FOLLOWING:**

Senate Bill (SB) 325, Section 81 amends Nevada Revised Statutes 116.760 to state:

1. A person who is aggrieved by an alleged violation may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file with the Division a written Affidavit that sets forth the facts constituting the alleged violation.
2. The Affidavit cannot be submitted unless the aggrieved person has provided the respondent by certified mail, return receipt requested, with written notice of the alleged violation set forth in the Affidavit. The notice must:
  - a. Be mailed to the respondent's last known address.
  - b. Specify, in reasonable detail, the alleged violation, any actual damages suffered by the aggrieved person as a result of the alleged violation, and any corrective action proposed by the aggrieved person.
3. A written Affidavit submitted to the Division must be:
  - a. On a form prescribed by the Division.
  - b. Be accompanied by evidence that:
    1. The respondent has been given a reasonable opportunity after receiving the written notice to correct the alleged violation; and
    2. Reasonable efforts to resolve the alleged violation have failed.
4. The Commission for Common Interest Communities or a hearing panel may impose an administrative fine of not more than \$1,000 against any person who knowingly files a false or fraudulent Affidavit with the Division.

**CONSIDER THE FOLLOWING CAREFULLY**

- ❖ This Affidavit is created to assist in the resolution process for your grievance. However, the Real Estate Division, which includes the Office of the Ombudsman, is not empowered to compel anyone to accede to demands of any kind. As examples, the Division cannot compel alteration of any contractual agreement or guarantee any monetary settlement. You may want to seek private legal counsel to protect your interests with respect to such matters. **The Office of the Ombudsman is not authorized to give legal advice.**
- ❖ If appropriate, the Ombudsman's office will intervene in the matter to determine whether the available evidence warrants administrative action against any party. You will be advised of any such conclusions. If it is determined that administrative action is warranted, it may be necessary for you to appear and testify.
- ❖ Several months may be required to complete the intervention process and any possible subsequent action before the Commission. Therefore, do not delay any alternative dispute resolution or civil action you might be considering in this matter.
- ❖ If the issue involves a possible violation of state statutes, the Affidavit and file may be referred to the Division for review. If violations of chapter 116 of NRS and/or NAC are substantiated the Division may file a formal Complaint for disciplinary action, which may result in a hearing before the Commission or any other applicable disciplinary body. If the issue involves conflicts or possible violations of the association's governing documents, those matters may be addressed via the Alternative Dispute Resolution Program.
- ❖ You may attach additional pages to the affidavit if necessary.
- ❖ The Division highly recommends submitting your Affidavit by certified mail, return receipt requested, as we can not be held responsible for lost or misdirected mail.

**NOTE: Please Mail documentation to:**

VICTORIA BROADBENT  
NEVADA REAL ESTATE DIVISION, OFFICE OF THE OMBUDSMAN  
2501 E. SAHARA AVE. SUITE 202  
LAS VEGAS, NV 89104



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION

788 Fairview Drive, Suite 200 \* Carson City, NV 89701-5453 \* (775) 687-4280  
2501 East Sahara Avenue, Suite 102 \* Las Vegas, NV 89104-4137 \* (702) 486-4033  
e-mail: realest@red.state.nv.us http://www.red.state.nv.us

OMBUDSMAN INTERVENTION AFFIDAVIT

STATE OF NEVADA

COUNTY OF Clark

Date: September 14, 2006

I, Scott Ellestad and Douglas Bruneau, after being first duly sworn, state under penalty of perjury and based upon personal knowledge:

1. I have been aggrieved by an alleged violation of Chapter 116 of the Nevada Revised Statutes or Nevada Administrative Code by the following respondent(s): Board of Directors, Sunset Greens HOA
2. The Homeowners Association involved in this intervention request is:  
Name of the Homeowners Association: Sunset Greens  
Name of President or contact for the Homeowners Association: Patti Adams  
Address for the Homeowners Association: 1426 Pinehurst Drive, Mesquite, Nevada, 89027  
Phone number for the Homeowners Association (President or other contact): 702-346-0693
3. I have provided the respondent, via certified mail, return receipt requested, with written notice of the alleged violation(s) set forth in paragraph 7.
4. The notice referred to in paragraph 3 was mailed to respondent's last known address.
5. The notice specified, in reasonable detail, the alleged violation, any actual damages I suffered as a result of the alleged violation, and the corrective action I proposed, if any.
6. **Attached to this Affidavit as Exhibit "1" is a copy of the certified letter sent to respondent AND the return receipt. This may constitute evidence that the respondent has been given a reasonable opportunity, after receipt of the written notice, to correct the alleged violation.**

7. Provide a concise statement of the facts constituting the alleged violation. You may include additional pages. However the phrase "See Attachment" is not acceptable and does not satisfy your obligation to provide the Division with a concise statement of the facts. Affidavits received with "see attachments" will be returned.

We allege that our Board of Directors (BOD) misspent between \$60,000 and \$80,000 of the Sunset Greens HOA reserve fund on private backyards of attached villa homes in violation of NRS 116 and our CC&Rs. In support thereof, we allege the backyards are not major components of common elements as stated in NRS 116 and ruled upon by the State of Nevada Legislative Counsel Bureau. The BOD knew as early as July 2005 that owners were responsible for pest control and damage as stated in our CC&Rs, para 3.17. The BOD explained this requirement to the HOA membership several times before the first alleged instance of misspending funds along with the fact that approximately 60% of the sod damage and required replacement was due to pest damage. The bulk of the payments were made in November & December 2005. The BOD has also used reserve funds for xeriscaping/rock scaping and decorative rock rejuvenation in private backyards of selected attached villas which we allege violates NRS 116 and our CC&Rs.

Rather than the BOD taking proper action against the homeowners who violated our CC&Rs, the monies were drawn from our reserve funds. We began questioning the BOD's actions in February 2006. Documents are attached to substantiate our allegations.

If in fact our HOA is required to replace sod in the backyards of attached villas as part of the routine maintenance, as our HOA's legal counsel contends in his August 3, 2006 letter, then the BOD's action in January 2006 to delete this service does indeed violate the law and our CC&Rs as the Board cannot change the CC&Rs without two-thirds approval of the HOA membership.

We wish to have these incidents ruled upon by the CIC Ombudsman and determine if NRS 116 and our CC&Rs were violated or, in the alternative, if the BOD actions were legal.

If these incidences violated NRS 116 and our CC&Rs we wish to have any reserve funds determined to have been misspent replaced by the Board of Directors without penalty or additional cost to the HOA membership.

8. I have read the foregoing Affidavit consisting of \_\_\_\_\_ pages (including all additional attached pages), and it is true and correct to the best of my knowledge and belief.

(Signature) \_\_\_\_\_  
Name \_\_\_\_\_  
Street Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Area Code \_\_\_\_\_ Phone \_\_\_\_\_

Subscribed and sworn to before me  
This \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

## Synopsis and timeline of documentation regarding allegations about misspending reserve funds by the Sunset Greens HOA Board of Directors

We allege that the Board of Directors for Sunset Greens HOA misspent reserve fund monies replacing sod and other improvements in private backyards of attached villa homes in violation of NRS 116 and our association CC&Rs.

1. Sunset Greens HOA CC&Rs, paragraph 1.8, describing "Common Area" or "Common Elements." Attachment 1.
2. Sunset Greens HOA CC&Rs, paragraph 3.17 state: "The owner of each Lot, whether a single-family attached or a Single Family Detached Residence is located on such Lot, shall be responsible for pest control at such Owner's sole cost and expense." Attachment 2.
3. Sunset Greens Newsletter, July 2005, approved by the Board of Directors and published by Taylor Management Services, property manager, reminds homeowners of CC&R paragraph 3.17. Attachment 3.
4. Letter from Norman Vielmette [ employee of Taylor Management, SSG property manager] to BOD, Aug 26, 2005, identified that some dead spots in lawns resulted from bug infestation. "Homeowners that did not treat their lawns (pest control is Homeowner responsibility) lost portions of grass to these critters." Attachment 4.
5. Minutes of SSG BOD meeting, November 16, 2005: "**2006 Sod Replacement:** Mr. Swartzendruber announced that sod replacement could cost up to \$90,000. The Association has spent \$200,000 in the last few years replacing the sod. He reported that the CC&Rs require the homeowners to be responsible for pest control and it is pests that are causing the problems with the sod. He suggested that an option would be to increase the monthly reserve contribution to \$11 per homeowner, or ask for a special assessment. **Plant and Sod Replacement.** Ms. Adams made a motion to ratify the contract for sod replacement. Ms. Schaffer seconded the motion. Mr. Swartzendruber asked for a roll call vote. Ms. Schaffer – yes; Ms. Adams – yes; Mr. O'Connell – yes; Mr. Swartzendruber – yes; Mr. Black – no." Attachment 5.
6. General Ledger Trial Balance, Reserve Fund expenditures, Jan 1, 2005 – Dec 31, 2005: Shows expenditures of \$30, 764, Nov 15, 2006, and \$46, 100.19, Dec 29, 2005 to Kokopelli Landscaping for removal and replacement of sod. Attachment 6.
7. Request for bid to provide landscape services to Sunset Greens HOA for 2006 written by Mr. Arlis Swartzendruber, Board of Directors, does not identify sod replacement in backyards of attached villas as a part of the routine maintenance. Attachment 7.
8. Minutes of SSG BOD meeting, January 18, 2006: "**2005 Sod Replacement:** Sod replacment costs for the fall of 2005 were \$81,292, including rebates for desert scapes. **2006 Sod Replacement Considerations:** Mr. Swartzendruber announced that the Landscape Committee unanimously approved the letter regarding sod replacement, stating that \$200,000 has been spent in the last 3 years to replace sod. He also reported that 60% of the sod replacement was due to

pests and damage by pets. As such, the Board agrees that the homeowners should share in this responsibility because the association cannot continue to fund sod replacement. Mr. Swartzendruber announced that homeowners should be responsible for their own sod in 2006 or the association will have to charge each homeowner an extra \$11 per door per month for sod maintenance and replacement. The change would require a 2/3 vote of approval from all homeowners to change the CC&Rs." Attachment 8.

9. Letter approved by BOD and sent to homeowners, January 2006, re-stating that pest control is the homeowner's responsibility and that the Landscape Committee and the Board of Directors have chosen to discontinue sod replacement of rear lawns. Attachment 9.

10. Email, 8 Feb 2006, Mr. Scott Ellestad began questioning Mrs. Adams, President, BOD, about the legality of spending reserve funds for sod replacement in backyards of single family attached homes by asking if the attached villas were considered common elements. Mrs. Adams replied, "I don't think so but I will double check." Attachment 10.

11. Email, 20 March 2006 between Mr. Ellestad and Mrs. Adams discusses why the sod replacement was paid out of reserve funds. Attachment 11.

12. Email exchange, March 2006, between Mr. Ellestad and Taylor Management questioned when homeowners were notified that they violated the CC&R requirement to treat pest infestations in their own backyards. Mrs. Taylor, property manager stated "The notification to owners of their responsibilities for pest control was essentially done when they received their copy of the CC&Rs when they closed escrow." Mrs. Taylor stated "\$88,061 was spent in 2005 and funds from the Reserve account were used. Norm reported that over 60% of the properties that required resodding were infected with pests." Attachment 12.

13. Minutes of SSG BOD meeting, March 15, 2006: "**2005 Sod Replacement Costs:** Mr. Swartzendruber reported that the cost to install sod in the fall of 2005 was \$81,292.00. The cost for the entire 2005 year was \$88,061.00. He also reported that the association is hiring an agronomist to find out how to get the best results for the least amount of money and how to protect and enhance the turf. He informed the homeowners that the costs of replacing the sod will be taken out of the reserve account per the advice of the accountant. **2006 Sod Replacement Considerations:** Mr. Swartzendruber reiterated that the Landscape Committee and Board approved (with the exception of Mr. Black, who voted no) the letter regarding sod replacement, stating that \$200,000 has been spent in the last 3 years to replace sod. He also reported that 60% of the sod replacement in 2005 was due to pests and damage by pets. As such, the Board agrees that the homeowners should share in this responsibility because the association cannot continue to fund sod replacement. Mr. Swartzendruber stated that homeowners will be responsible for their own sod in 2006. Attachment 13.

14. Email, Mar 31, 2006, between Mr. Leo Black, BOD member and Mrs. Adams re-stated Mrs. Taylor's opinion about using reserve funds to pay for resodding: "I believe the funds used from the Reserve to pay for the re-sodding was completely justified. It states the Reserve Study a line item for "Landscape Renovation, " major and minor, and it can certainly be argued that this project falls into either category." Attachment 14.

15. Email, Mar 31, 2006, from Mrs. Adams to Mr. Ellestad states: "A meeting has been tentative (sic) scheduled with John Leach (SSG HOA legal counsel) for the middle of April to discuss these items and other subjects." Attachment 15.

16. Email exchange, May 2006, between Mrs. Adams and Mr. Ellestad describes a meeting that took place between all five board members, Mr. John Leach and Mrs. Taylor on April 19, 2006: "I would be happy to talk with you about the meeting with John Leach regarding the sod issue." "We did not get a written opinion from him as all of the Board and Pat and Laurie were in attendance." Attachment 16.

17. Email, May 18, 2006, given [not sent] to Senator Warren Hardy asking for help in clarifying information given to Mr. Ellestad by Mr. Swartzendruber, Mrs. Adams, and Mr. Black regarding meeting of April 19, 2006, between the BOD, Mr. Leach, and Mrs. Taylor. Based on information Mr. Ellestad received from the three Board members he asked four questions: 1) Was NRS 116 a "flawed" law; 2) Do our CC&Rs outweigh the NRS; 3) if this issue had been arbitrated before, was it possible to get copies of the arbitration opinions; 4) Was it legal for our BOD to spend reserve funds to re-sod backyards of homes in our HOA. Attachment 17.

18. Letter from Mr. Ellestad and Mr. Bruneau (homeowner) to Mrs. Adams, July 14, 2006, requesting a written opinion from Mr. Leach, based on information from the April 19, 2006 meeting, regarding use of reserve funds to replace sod in backyards of homeowners. Attachment 18.

19. Letter from Mrs. Taylor to Mr. Ellestad, July 21, 2006, informing him his July 14, 2006 letter was being forwarded to Mr. Leach for his review and response. Attachment 19.

20. Opinion from Mr. Leach, Aug 3, 2006, regarding "Use of Reserve Funds for Replacement of Sod." "Accordingly, one may reasonably conclude that the sodded areas within the Association are a major component of the common elements with respect to the replacement of the sodded areas due to grub infestation. As a result, it is this office's opinion that, in the absence of further legislation or court decisions to the contrary, the Board of Directors may utilize reserve funds to replace the sod in the back yards of the Single Family Attached Residences." Attachment 20.

21. Opinion from the State of Nevada Legislative Counsel Bureau to Senator Warren Hardy, August 14, 2006: "Based on the information provided to this office, we understand that the governing documents of the common-interest community at issue specifically provide that the back yards are not owned by the association and are not common elements." "For this reason, it is the opinion of this office that an association may not use its reserves to replace sod in the back yards of certain homeowners." "For this reason, it is the opinion of this office that a provision contained in the governing documents of a common-interest community which conflicts with a provision contained in the Nevada Revised Statutes does not supersede the conflicting statutory provision." "...the decision of the arbitrator concerning the interpretation of a statutory provision does not constitute binding precedent with respect to any subsequent judicial or administrative proceeding." Attachment 21.

22. Email exchange between Mrs. Adams and Mr. Ellestad, Sep 6, 2006, with Mr. Ellestad requesting to meet with Mrs. Adams to discuss the two different legal opinions: Mrs Adams states: "I don't feel that I am in a position to discuss these legal opinions with you. I am not an attorney nor do I know that LCB was provided with the same information that John Leach had when he rendered his opinion." Attachment 22.

23. Email exchange between Mrs. Adams and Mr. Black, Sep 5, 2006, with Mr. Black requesting an emergency meeting of the BOD to discuss the LCB opinion. Mrs. Adams stated, "I'm uncertain why a meeting regarding this issue is necessary at this point." Attachment 23.

24. Email from Mrs. Adams to all BOD members, Sep 5, 2006: "I know this is short notice but I have spoken with Kelby Hughes [landscaping contractor] and we are going to meet tomorrow afternoon (Wednesday) at 4 p.m. at my home. Hopefully you can join us." Attachment 24.