William Paul Wright, Esq.

From: CAMEO, Inc. <info=cameo-nv.com@mail125.us2.mcsv.net> on behalf of CAMEO, Inc. <info@cameo-nv.com>
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CAMEO CONNECTION
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Happy New Year CAMEO Members!

CAMEO News…

Welcome and congratulations to our new CAMEO Officers for 2013

President: Norman Rosensteel

Vice Presidents of Legislation: Kevin Wallace and Alisa Vyenielo

Vice President of Regulations: Tony Ledvina

Vice President of Programs: Ken Williams

Attorney-Client Privilege Under Attack

Wright Law Firm Ltd

Attorney-client privilege protects certain communications between client and attorney as confidential. The United States Supreme Court, in *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981), explained *"The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. . . . Its purpose is to encourage full and frank communication between attorneys and their clients, and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client."*

When an attorney represents a Common-Interest Community, the client is the association; not individual board members, or the Unit Owners. Phil Pattee, Esq., Assistant Bar Counsel, State Bar of Nevada, in his article *"HOAs can be a headache, especially if you represent one"* [April 2008 edition, *Nevada Lawyer*], when explaining the application of Nevada Rules of Professional Conduct (the ethical rules that govern Nevada attorneys), Rule 1.13 (Organization as Client), wrote: *"This rule states that an attorney, when retained or employed by an organization, represents the organization as an entity, not its individual directors or shareholders."* "Shareholders," in the context of a CIC, are the Unit Owners, or "Members" (term as used in NRS Chapter 82, and CIC governing documents).

The Lawyer and Client Privilege exists in NRS 49.035 to 49.115. NRS 49.055 states that *"A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those*

reasonably necessary for the transmission of the communication." Therefore, any communication, whether oral or written, between a client and its attorney is privileged and confidential if it is the client's intent is to keep the communication confidential to further the rendition of legal services. It is the client who holds the Privilege, and it is the client, and only the client, who may decide to breach the Privilege. As the client is the association, and the board acts on behalf of the association, no individual director may legally breach the Privilege and disclose confidential communications; only the board may make that decision.

However, the Nevada Legislature may amend NRS Chapter 49, or other statutes which affect the Privilege. Prior to the 2009 Nevada Legislative Session, attorney contracts were explicitly protected from disclosure to Unit Owners under NRS 116.31175. Senate Bill 182, introduced by Senator Schneider, removed that protection during that Session. Thereafter, the Nevada Real Estate Division, Office of the Ombudsman, took the position that disclosure of attorney contracts only applied to contracts entered into after the October 1, 2009 effective date of SB 182.

In that same Session, Assemblymen Munford introduced Assembly Bill 350, which would have required *"legal opinions or correspondence,"* be disclosed under NRS 116.31175. However, that language was eliminated before the bill became law, creating the legal presumption that the Legislature intended those communications to remain confidential. Jonathan Friedrich testified during that Session: *"I have worked closely with Assemblyman Munford on this bill.* [AB 350]*"* In written testimony, Mr. Friedrich stated that the language *"Made crystal clear that all record including any draft documents, legal opinions, and correspondence be made available to a unit owner. . . The removal of the "draft documents, legal opinions, and correspondence" will cause a lack of needed transparency."* Recently appointed Commissioner Friedrich explained at the last Commission meeting that he plans to be very active in the 2013 Legislative Session.

Preservation of the Privilege is essential. Without it, the opposition in legal disputes will have access to the strategy and advice of association counsel, boards will be unwilling or unable to disclose sensitive information to their attorneys which is necessary for proper representation, and the integrity of the attorney-client relationship will be effectively destroyed. We must make every effort to protect the Privilege during the 2013 Nevada Legislative Session.

William Paul Wright, Esq. is the Managing Member of Wright Law Firm Ltd. He is also Corporate Counsel to CAMEO. His contact information is: WPW@WrightLawFirmLtd.com; 702.776.7257.