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Who is a “Unit’s Owner”?

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Who is a “Unit’s Owner” can often be determined through review of the County Recorder’s Records which list the owner of record title. Usually the Record Owner has obtained title by deed, and has recorded that deed to provide notice to the public in order to protect themselves against others who obtain a deed to the same property should a dispute over ownership arise. The ownership itself is transferred through the deed, not the recording, and deeds are not required to be recorded to transfer title. Therefore, the Record Owner is not always the Unit’s Owner; the issue is who holds title.

On August 25, 2013, I wrote the Commission requesting an official opinion regarding unit ownership in a variety of circumstances. In response to my letter, and input from CAI National’s Government and Public Affairs attorneys, as submitted by former Commissioner Marilyn Brainard, NRED issued a draft advisory opinion. The Commission approved the NRED draft on December 4, 2013, and NRED officially issued Advisory Opinion No. 14-01-116 on December 12, 2013.

I would strongly encourage everyone to visit the “Library” section of my website, <http://www.wrightlawfirmlltd.com/Library.html>, where I have posted a PDF file you can download which contains my letter to the Commission, CAI’s attorney’s comments, NRED’s Advisory Opinion, and a transcript of the discussion between the Commissioners and Michele Briggs, Esq., Senior Assistant Attorney General and NRED Counsel, regarding NRED’s opinion. You may also E-mail me for a copy. Those materials offer far greater depth and understanding of this subject, and the Commission and Division’s opinions on the matter, than I have space for in this article. I will continue with some real property law basics, and a suggestion for the next Legislative Session.

Unless you are a declarant, or a lessee of a unit in a leasehold common-interest community, NRS 116.095 defines a “Unit’s Owner” as a *“person who owns a unit.”* Black’s Law Dictionary, Ninth Edition (2009)(“Black’s Law”), defines the term “own” as: *“To rightfully have or possess as property; to have legal title to.”* and an “Owner” as: *“One who has the right to possess, use, and convey something; a person in whom one or more interests are vested.”*

NRS 111.205(1) states: *“No estate or interest in lands . . . shall be created, granted, assigned, surrendered or declared . . . unless by act or operation of law, or by deed or conveyance, in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same. . .”* Black’s Law defines an “act of law” as: *“The creation, extinction, or transfer of a right by the operation of law itself, without any consent on the part of the persons concerned.”* Typically, property transfers are intentional, consensual transactions and conveyance by “act or operation of law” does not apply.

NRS 111.010 defines a “Conveyance” as: *“every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by*

which any estate or interest in lands is created, aliened, assigned or surrendered,” and “Estate and interest in lands” as: “*every estate and interest, present and future, vested and contingent, in lands*” Essentially, for someone to have an estate or interest in lands in Nevada, obtained through deed or other written conveyance, which makes them a Unit’s Owner, there must be a deed or written conveyance creating, aliening, assigning or surrendering a present or future interest in such lands.

In summary, this means that the Record Owner listed on the Recorder’s website may not actually be the Unit’s Owner if there exists a subsequent unrecorded deed validly transferring ownership of the Unit, or some other lawful conveyance. Of course, it would be much easier for everyone in our industry if we could just rely on the Recorder’s website information. Therefore, I suggest we convince the Nevada Legislature to revise the language of NRS 116.095 during its 2015 Session and change “*person who owns a unit*” to “*record owner of a unit.*”

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