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————— LTD —————

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August 25, 2013

SENT VIA ELECTRONIC MAIL ONLY
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Members of the Commission for Common-Interest Communities and Condominium Hotels
c/o Teralyn Thompson

RE: Definition of "Unit's Owner"

Dear Commissioners:

This office respectfully requests that the Commission for Common-Interest Communities and Condominium Hotels ("Commission") revisit the issue of who constitutes a "Unit's Owner." Certain practices that have become popular with respect to defining a Unit's Owner, and a recent position taken by one of the law firms in Common-Interest Community practice, have created a situation wherein it may be effectively impossible to determine who is a Unit's Owner.

As the title of "Unit's Owner" affords an individual or entity numerous rights under Nevada Revised Statutes ("NRS") Chapter 116, including, but not limited to, the right to be elected to the executive board; the right to review the books, records and other papers of an association; the right to attend and speak at meetings of an association; and the right to vote on association matters, this is an issue of great importance. This office suggests that it is time that the Commission request an opinion from the Legislative Counsel Bureau ("LCB"), and, perhaps, craft appropriate regulation such that Nevada associations may determine, in no uncertain terms, who is a Unit's Owner.

NRS 116.095 defines a "unit's owner" as:

NRS 116.095 "Unit's owner" defined. "Unit's owner" means a declarant or other person who *owns* a unit, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

(Added to NRS by 1991, 539; A 2011, 2417, effective January 1, 2012)—(Substituted in revision for NRS 116.110393)[*Emphasis added*].

Black's Law Dictionary, Ninth Edition (2009), defines the term "own" as: "*To rightfully have or possess as property; to have legal title to.*" "Owner" is defined as: "*One who has the right to possess, use, and convey something; a person in whom one or more interests are vested*" *Id.*

Therefore, it would appear that to own a Unit, or be the owner of a Unit, and thus a Unit's Owner, under basic black law, someone would need to have legal interest, title to, and the right to possess, use and convey the Unit. The general law regarding ownership of real property in Nevada is contained within

Title 10 *Property Rights and Transactions*, NRS Chapter 111 *Estates in Property; Conveyancing and Recording*.

NRS 111.205 determines estates or interest of real property in Nevada:

NRS 111.205 No estate created in land unless by operation of law or written conveyance; leases for terms not exceeding 1 year.

1. *No estate or interest in lands*, other than for leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, **shall be created, granted, assigned, surrendered or declared** after December 2, 1861, **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**, or by the party's lawful agent thereunto authorized in writing.

2. Subsection 1 shall not be construed to affect in any manner the power of a testator in the disposition of the testator's real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

[55:9:1861; B § 283; BH § 2624; C § 2694; RL § 1069; NCL § 1527] + [56:9:1861; B § 284; BH § 2625; C § 2695; RL § 1070; NCL § 1528][*Emphasis added*].

Black's Law Dictionary, Ninth Edition (2009), defines an "act of law" [Rf. "act of the 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.*", and "operation of law" as: "*The means by which a right or a liability is created for a party regardless of the party's actual intent.*"

On March 12, 2012 then RMI Management, LLC ("RMI") wrote to the Commission requesting an Advisory Opinion on the issue of the effect of Community Property law on the definition of "Unit's Owner." As some property is held individually by a spouse, but NRS 123.225(1) states that "[t]he respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests . . ." questions had arisen as to whether property acquired during a marriage granted Unit's Owner status upon the spouse not listed on the deed, by act or operation of law. Although included as an agenda item by the Commission, apparently the issue was never definitively addressed.

Other than ownership interest by act or operation of law, the remainder of the relevant NRS 111.205(1) language is: "*No estate or interest in lands shall be created, granted, assigned, surrendered or declared unless by deed or conveyance, in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same.*"

NRS 111.010 contains the definitions specific to that Chapter:

NRS 111.010 Definitions. As used in this chapter:

1. "*Conveyance*" shall be construed to embrace 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.

2. "*Estate and interest in lands*" shall be construed and embrace every estate and interest, present and future, vested and contingent, in lands as defined in subsection 3.

3. "Lands" shall be construed as coextensive in meaning with lands, tenements and hereditaments, and shall include in its meaning all possessory right to the soil for mining and other purposes.

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[74:9:1861; B § 302; BH § 2643; C § 2713; RL § 1088; NCL § 1545] + [75:9:1861; B § 303; BH § 2644; C § 2714; RL § 1089; NCL § 1546] [*Emphasis added*].

Therefore, in Nevada, it appears that for someone to have an estate or interest in lands, obtained through deed or other written conveyance, making 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.

Recently, Angius & Terry LLP, through Associate Aaron Yen, Esq., appears to have adopted the position that an individual ("Individual") who is not listed on a deed, may give an association "*reasonable assurance*" that they are a Unit's Owner through a series of facts and circumstances which may be specific to the Individual on a case-by-case basis. I have informed Mr. Yen that this issue will be addressed at the Commission meeting, and hopefully he can provide further clarity for the Commission as to Angius & Terry LLP's position, in case it is inadvertently misstated herein.

Mr. Yen explained to this office that important factors for consideration as to an Individual's Unit's Owner status, when the Individual is not on a deed, include, but are not limited to, whether the Individual is related to the Record Owner (other than by marriage), the Individual has resided in the Unit since purchase, the Individual has made all the mortgage and related payments for the Unit, the Unit was purchased with the intent that it be jointly owned by the Record Owner and the Individual, and the utilities and home warranty insurance are in the Individual's name, but also explained that it is the totality of the circumstances in a specific case that is determinative. Therefore, this office was unable to obtain from Mr. Yen an objective, definitive list of factors and circumstances that could be relied upon by an association to determine whether an Individual is a Unit's Owner when the Individual does not appear on a deed, recorded or otherwise.

Even when an individual is listed on a deed, there are other issues. Due to the economic conditions in Nevada, the purchase of numerous Units by businesses with the intent to rent their Units, and the inclusion of rental restrictions in some Governing Documents, creative instruments have been devised by some Unit's Owners to include tenants under the definition of "Unit's Owner." For example, it has become common practice for some Unit's Owners to convey a 1% - 5% interest in a Unit, by recorded deed, to their tenants in order to bring their tenants within the definition of "Unit's Owner," thus avoiding the application of the rental restrictions.

This office is aware of one property manager that was brazen enough to send written communication to an association informing them that the Unit's Owner intended to have tenants in their Unit, that the occupants would be, in fact, tenants, and that the Unit's Owner would be deeding a percentage of ownership to their tenants to resolve the issue of the application of rental restrictions. While those tenants may technically fit the definition of "Unit's Owner," such an arrangement appears to be a fraudulent transfer to avoid application of the Governing Documents. Additionally, such an arrangement certainly violates this office's understanding of the spirit and intent of who is a Unit's Owner. However, such arrangements are difficult and expensive to prove absent written admission as outlined above.

Another important issue to address is that some Governing Documents define a "Unit's Owner" as a "Record Owner," while NRS 116.095 does not explicitly state a requirement of record ownership. Therefore, the question arises as to whether this requirement in some Governing Documents violates NRS Chapter 116, and is resolved in favor of the broader definition in NRS Chapter 116, or whether the

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additional qualification of record ownership found in some Governing Documents prevails when determining who is a Unit's Owner.

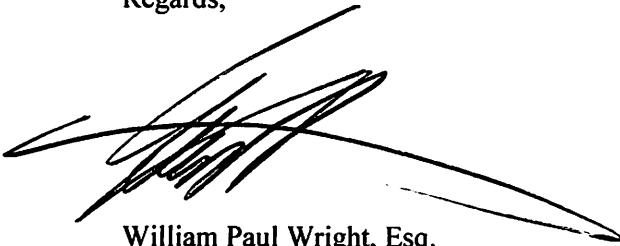
Common-Interest Communities have been plagued for several years now by a perception of corruption, which is a consequence of the actions of a few individuals that resulted in the Federal Bureau of Investigation's probe into election fraud within the industry. As the definition of "Unit's Owner" determines who is elected to an executive board, it is vital that an association be able to definitively determine who is actually a Unit's Owner. The possibility for fraud in elections today, based upon the uncertainty which exists now, endangers the very integrity of our executive boards.

Associations have traditionally determined who is a Unit's Owner by reference to an individual's name on a deed, or a recorded deed. The concept that Unit Owner status may be obtained through individual factors and circumstances, on a case-by-case basis, appears untenable, and may render the definition of "Unit's Owner" illusory and meaningless. Who makes the determination? Does each case need to be litigated? Is "*reasonable assurance*" all that is required, or is objective knowledge the standard?

If conveyance of a relatively miniscule percentage of ownership makes someone a Unit's Owner for purposes of NRS Chapter 116, then fraudulent conveyances for the purpose of evasion of Governing Document restrictions would appear to be encouraged. If Unit's Owner status is conveyed by operation of law under Community Property statutes, or if requiring record ownership pursuant to the Governing Documents violates NRS Chapter 116, then associations need to know.

Associations in Nevada need the Commission's guidance as to who constitutes a "Unit's Owner" to ensure they are compliant with legal requirements, and that they are not conveying substantial rights under NRS Chapter 116 to individuals who are not entitled to such rights, to the detriment of the rest of the community. There simply must be a definitive definition of "Unit's Owner," with requirements that associations can objectively determine, if the term is to have any meaning.

Regards,

A handwritten signature in black ink, appearing to read "William Paul Wright", with a long horizontal flourish extending to the right.

William Paul Wright, Esq.

Selected Opinions & Considerations re: Unit's Owner Definitions & Status

The NV Commission for Common-Interest Communities & Condominium Hotels at its August, 2013 meeting requested input from Community Associations Institute's Government & Public Affairs attorneys on possible legal meaning for "an unit's owner".

Two of CAI's most respected attorneys were kind enough to respond to my invitation. One commented: *unfortunately there is no easy solution to this issue.* [I think the other concurs]

However, several important points were raised and might serve the commission well in its discussion:

- A transfer of a minimal interest in a unit does not make the grantee a "unit owner" for the purpose of evading limitations or qualifying for benefits depending on being a unit owner. [Serve on the BOD, e.g.,]
- In order to qualify as a unit owner, a natural person must have authority to sign a deed conveying the unit and own more than a ___% interest in the unit. [Determine percentage]
- NRS 116.095 unit's owner defined[as of 1-1-2012] means a declarant or other person who owns a unit or a lessee of a unit...but does not include a person having an interest in a unit solely as security for an obligation. NAC 116.080 agrees with NRS 116.095. [Fairly common language across the states]
- Except for the Declarant during the Declarant Control Period, a unit owner who owns multiple units may hold no more than one seat on the Board of Directors. For example, a unit owner of several units could not be represented simultaneously by more than one member on the BOD, nor could more than one owner, officer, director or other representative of an entity owning multiple units serve simultaneously on the Board of Directors. Multiple unit owners of a single unit may hold no more than one seat on the BOD. A husband and wife each owning one unit or jointly owning more than one unit; in that case, only one of them could serve on the Board at a time.
- Here is how a few non-UCIOA states deal with the definition of "unit owner" : [UCIOA being the language NV has adopted some, but not all of, for NRS 116]
 1. New Jersey's Condominium Act defines "Unit Owner" as "person or persons owning a unit in fee simple."
 2. Florida, defines the term as:" 'Unit owner' or 'owner of a unit' means a record owner of legal title to a condominium parcel." [This appears to be the cleanest way to determine an owner.]
 3. California does not appear to define "Unit owner" at all in its Davis-Stirling Act.
 4. Washington state defines it as " 'Unit owner' means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. 'Unit owner' means the vendee, not the vendor, of a unit under a real estate contract."
 5. North Carolina defines it as follows: " 'Unit owner' means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation."
- Since Nevada's version of UICOA makes no reference to an owner having to be a person named on a recorded deed, are provisions in governing documents that add such a requirement inconsistent with the law and therefore invalid?
- With respect to the concern that adding to the declaration that an owner must have record title would be inconsistent with Nevada's statute, that would not, at least to me, appear to be a serious concern. The general structure of UCIOA is such to give draftsman considerable flexibility. While there are mandatory provisions in UCIOA that cannot be changed, so long as a declaration or bylaw provision doesn't contravene Nevada's statute, it shouldn't be an issue. To say that to be considered an owner, one must be a "record owner" does not appear to contravene the

Nevada statute's definition. It expands upon it, but it doesn't act in a manner to change the fact that one must "own" the unit to be a unit owner.

- Is someone who is not listed as the grantor in a deed may still be considered an "owner" based on a series of factors, including the relationship between the record owner and the other person, whether the non-record owner has resided in the property since it was originally purchased, whether the property was purchased with the intent that both parties be the record owner, whether the non-record resident has paid the mortgage on the property, etc. Is this valid?
- If it is not necessary to be set forth as a record owner on a recorded deed to be considered an owner, how would an association know who may run for a position on the governing board, who may exercise the right to vote, etc. **[This appears to be an important element.]**
- The Florida statute does address that issue [of an unrecorded deed] and might be something to consider for Nevada. I personally cannot think of a legitimate reason for being an undisclosed owner of a property, so this approach makes some sense. Since, though, the Nevada statute does not define what "owns" means, this may, perhaps, be an opening for a regulation. That would, I would imagine, have to be determined in conjunction with the office of the Attorney General of Nevada.

Compiled by Marilyn Brainard for CCICCH
11-14-2013



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
ADVISORY OPINION

Subject: What is a “unit’s owner”?	Advisory No. 14-01-116	3 pages
	Issued By:	Real Estate Division
	Amends/ Supersedes	N/A
Reference(s): NRS 116.095, NRS 116.093, NRS 111.205	Effective Date: December 12, 2013	

QUESTION:

What is a “unit’s owner” within the meaning of NRS 116?

SHORT ANSWER:

A unit’s owner is any person who is considered an owner of real property by law. Real property interests must be transferred in writing. Therefore, a unit’s owner is a person or entity that can provide a written conveyance or other writing that transfers a unit to them. The written conveyance or other writing must be signed by the person transferring the unit. A unit’s owner is also a lessee of a unit if the written lease expires when the common interest community expires. An owner of an entity that is a unit’s owner is anyone who can provide the association with evidence of ownership of the entity regardless of the ownership percentage.

ANALYSIS OF THE ISSUE:

NRS 116.095 provides a definition of “unit’s owner” as:

a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

“Unit’s owner” refers to ownership of a “unit” which is also defined by NRS 116. NRS 116.093 defines a unit as:

a physical portion of the common-interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to paragraph (e) of subsection 1 of NRS 116.2105.

Based on these definitions, it is clear that a unit’s owner is based on ownership or lease rights to real property within a common interest community. According to NRS 111.205 no interest in real property (other than a lease not to exceed 1 year) may 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, or by the party’s lawful agent thereunto authorized in writing.” In addition, a conveyance must be either acknowledged or proved – as in notarized by a notary public. NRS 111.240.

There may be situations where title to real property is transferred by a court order, but generally speaking, interests in real property must be in writing and notarized. Therefore, a unit’s owner is one who can provide – in writing – evidence of ownership of a unit. Associations can use public records to see who the record owner is of a particular unit. But the law does not require that the writing be recorded in the real property records to be effective. If a unit’s owner wishes to exercise rights under NRS 116 or the association’s governing documents, but they are not the record owner, the association may require such person to provide the writing evidencing their ownership.

The result is no different when spouses are involved. The Division has been asked about a situation involving a husband and wife where only one or the other is the record owner of a unit. Can the spouse who is not the record owner be treated as a unit’s owner since Nevada is a community property state? Regardless of community property law, the non-record owner must provide a deed or other writing in their favor to evidence ownership. A deed or other writing does not need to be recorded to be effective. This approach puts the burden on the owner wanting ownership rights instead of the association who is not in a position to know an individual’s marital status and community property rights.

NRS 116 provides support for putting the burden to prove ownership rights on the person claiming ownership rights. A unit’s owner may be a corporate entity, a trust, a limited liability company, a partnership, or an estate. Under NRS 116.31034(10), a person seeking to serve as a board member who is not the record owner is required to provide proof of their association with the record owner. They must show they are an officer, employee, agent or director of a corporate owner; a trustee or designated beneficiary of a trust owner; a partner of a partnership owner; a member or manager of a limited liability company owner; or a fiduciary of an estate that owns a unit. The proof must be sufficient to the association to show the person is associated with the corporate owner, trust, partnership, limited-liability company or estate and identify the unit(s) owned. Associations should also consider that their governing documents may include

more detail as to what documentation must be shown by a person wanting to serve on the board when they are not the owner in the real property records.

ADVISORY CONCLUSION:

Owners have significant rights within an association. It is important that an association grant those rights to anyone who is entitled to them. While a deed need not be recorded to be effective, the law does require that any transfer of an interest in real property be in writing, signed by the grantor, and notarized. An association should require any person claiming to be an owner to provide evidence in writing if they are not the owner of record.

TRANSCRIPT

Public Meeting of the Nevada Commission for Common-Interest Communities and Condominium Hotels December 4, 2013 – Discussion and Action on Commission Agenda Item 8(H)

Participants (in order of appearance):

Commissioner Randolph Watkins, Chairman
Administrator Gail Anderson, Nevada Real Estate Division (“NRED”)
Michele Briggs, Esq., Senior Assistant Attorney General, NRED Counsel
Commissioner Robert Frank
Commissioner Jonathan Friedrich
Commissioner Scott Sibley
Commissioner Gary Lein

WATKINS: Item H. Uh, discussion, decision regarding the definition of unit owners and possible Division opinion.

ANDERSON: And, could I just add the Commission requested the Division to draft . . .

WATKINS: Right.

ANDERSON: . . . this . . .

WATKINS: And we had some input . . .

ANDERSON: . . . OK.

WATKINS: . . . from CAI National . . .

ANDERSON: Yes.

WATKINS: . . . Uh, and, and its all in the packet, and so.

ANDERSON: Yeah, the, the, the CAI National input was submitted separately. . .

WATKINS: Right.

ANDERSON: . . . it wasn't submitted as part of the Division's consideration.

WATKINS: Oh, no, but I mean, as, as, as . . .

ANDERSON: So, the Division yes, did draft an advisory at the request of the Commission.

WATKINS: Right.

ANDERSON: Ah, it's in your package, and then in addition to that you have some notes submitted from, um, Mrs. Brainard.

WATKINS: Right, Right, that's the . . .

ANDERSON: And so that is what, we just responded to your request on this.

WATKINS: And, and I think this all started, uh, with a request from the public, from a member of the public, to uh, we could help define what a units' owner is. And, so this is the draft, uh, Advisory Opinion. Uh, would you like to speak to this before the Commissioners ask questions?

BRIGGS: No, I think it's self-explanatory.

WATKINS: OK, alright.

BRIGGS: I mean you just saw it and read it.

WATKINS: OK, um. Questions by the Commissioners, comments, uh, uh, Commissioner Frank?

FRANK: Is this uh, it seems awfully strange in 2013 that this subject is coming up after all these years. Have we not had a question on this before, in terms of who runs for the board and all that kind of stuff?

BRIGGS: Uh, most recently, I don't know, uh, about historically, but there are questions about, for instance whether husbands and wives can serve if only one of em' is on the deed, stuff like that.

WATKINS: Yeah.

BRIGGS: So, um, you know the issues that Marilyn raises, uh, are not addressed by the statute so, um, I don't think that an Opinion could, could imply language into the statute, and the statute defining a unit owner. My understanding is that if you're an owner of real property under real property statutes, then you're an owner for purposes of 116. So, uh, to the extent . . .

WATKINS: Whether you are on the deed or not.

BRIGGS: Well, um, the Opinion is that you're either on the deed, or you're on a deed, whether it is recorded or not.

WATKINS: OK.

BRIGGS: Um, you have to have some conveyance of title to you, whether that be by court order, or any other way that's allowed for title to transfer.

WATKINS: And that's in your conclusion.

BRIGGS: Yeah.

WATKINS: Which is if you're not. . .

BRIGGS: Yeah.

WATKINS: . . . on the deed, show us some documentation . . .

BRIGGS: Correct.

WATKINS: . . . that you are a party . . .

BRIGGS: That you are an owner.

WATKINS: . . . to that piece of property.

BRIGGS: Yeah. Some evidence.

WATKINS: And I agree with that. I mean it's so much easier to look on the Assessor's site and see Mr. and Mrs. Smith, and bang, you're off and running. When we see just see Mr. Smith . . .

BRIGGS: Right.

WATKINS: . . . you might a got married three months ago . . .

BRIGGS: Exactly.

WATKINS: And you haven't put Mrs. Smith on yet, uh . . .

BRIGGS: Yeah.

WATKINS: So, . . .

BRIGGS: You don't know, right.

WATKINS: I agree with the conclusion.

FRANK: And my follow, my follow-up on that is, is that, my impression is that the FBI case actually precipitated some of this discussion because it there were some strange things going on in terms of ownership that, that shouldn't have happened apparently.

BRIGGS: Well, the Legislature didn't address that if that was the issue that, uh, and they addressed a lot of things within, within 116 having to do with those, uh, scams that were being run . . .

FRANK: Right.

WATKINS: Yeah.

BRIGGS: . . . they didn't change the definition of unit owner. It didn't say you had to own a certain percentage of an entity, um, I, so I, I don't think you can imply that into the statute.

WATKINS: Right.

FRANK: Right.

BRIGGS: So . . .

WATKINS: Anybody have any questions?

FRIEDRICH: Yes.

WATKINS: Alright, go ahead.

FRIEDRICH: You just said, um, a party to the uh, let's see, property.

WATKINS: Um, hum.

FRIEDRICH: So what you're saying is just clarification that your name does not have to be on the deed, but would a, uh, paying the HOA monthly assessments, would that count?

BRIGGS: No.

WATKINS: No.

BRIGGS: No, I . . .

FRIEDRICH: Paying the utility bills, paying the . . .

BRIGGS: No.

FRIEDRICH: . . . real estate taxes.

WATKINS: No.

BRIGGS: What I'm, what the, what the Opinion says is that you're an owner if you're on the deed. If you're not on the deed, and it's recorded, and the association can see that, that's it's of record that you're on the deed, uh, if that doesn't exist, then you either need to be on a deed that's not recorded, or some other conveyance of some type. So either you got the property through, um, uh, a court order or some other way.

SIBLEY: Or if you're like an officer of the corporation, or a trustee, or . . .

BRIGGS: There, yeah, there's different, you know an entity can own property and there's, uh, any representative of a corporation can, can serve on the board for example. That's just by separate statute. That's not, that doesn't have ownership, you know, rights in terms of . . . the owner is the entity.

WATKINS: Yeah, but in a case where an entity owns a unit in an HOA . . .

BRIGGS: Yes.

WATKINS: . . . and, and that corporate executive, for lack of anything better, comes to a meeting, uh, and says I represent this piece of property, then it would be alright for the association to say prove to us by minutes that you're an officer . . .

BRIGGS: Sure.

WATKINS: . . . of this, so, of that corporation . . .

BRIGGS: Yeah.

WATKINS: . . . and you have the right to be there. That's what you . . .

BRIGGS: Absolutely.

WATKINS: . . . mean by that conclusion, right. There has to be some definite proof that you are connected with that property, recorded or unrecorded.

BRIGGS: Sure.

FRIEDRICH: What if, it's not your spouse but another member of the family. . .

BRIGGS: I . . .

FRIEDRICH: . . . that's on the deed.

BRIGGS: The way the spouse issue came out was that if your spouse is not on the deed, and that's the person who wants to run for the board, then they need to be on a deed if they're an owner. So, even if that deed's not recorded, they need to be. . .

WATKINS: Recorded or not recorded.

BRIGGS: . . . on a deed.

WATKINS: Alright, OK.

BRIGGS: That's, so if it's just a family member then they need to be on a deed, or some type of conveyance.

FRIEDRICH: Even if it's um, in a, just a, a written agreement between the parties?

BRIGGS: It's not, uh, well, I mean I've . . .

FRIEDRICH: A father and son, for instance.

BRIGGS: No. It has, there are specific requirements for transferring real property. And so that's what, that's what is detailed in the, um, Advisory. That, those are the steps that you have to take, it's not just, um, written on a piece of paper. I mean it has to be acknowledged, it has to be signed, and notarized. And it has to have conveyancing language. So, um, for example a power of attorney does not transfer title. I don't know what exactly you're referring to, but, um, if it complies with the statute, it's conveyancing language, it's signed and notarized, that's, that's fine.

FRIEDRICH: At what point in time, um, is another question.

BRIGGS: Well, the date that it's done. The date it's signed and notarized.

FRANK: More it sets the criteria for eligibility in terms . . .

WATKINS: Well . . .

FRANK: . . . of it has to be done by . . .

BRIGGS: Right, well yeah . . .

WATKINS: You set a record, a record date . . .

BRIGGS: You set a record date.

WATKINS: . . . for nominations, and, um, elections . . .

BRIGGS: Sure

WATKINS: . . . and so forth, so if you're not on a deed by that time, or some other conveyance that proves that you're a units' owner . . .

BRIGGS: Yeah.

WATKINS: . . . then you can't stand for election, or whatever.

BRIGGS: Well usually you would, if you're going to put in your nomination to be . . .

WATKINS: You'd clear all that stuff up.

BRIGGS: . . . on the board, then you would have to prove you're an owner if it's not of record. So there's some determination made by the association to even put you on the ballot.

FRIEDRICH: And if you're been paying all the expenses, your name is not on the deed, but you're paying all the expenses . . .

WATKINS: You're out.

FRIEDRICH: . . . for years.

BRIGGS: It's just not, that's not how the title is transferred.

FRANK: Should be . . . the title's done.

BRIGGS: It's just a title issue.

WATKINS: If you're that involved in a property, that's not an issue for 116, but if you're that involved in the property you should either get on that deed somehow, or get control of that situation . . .

FRANK: Right.

WATKINS: . . . either by a court order, or actual sale or transfer of the property for a dollar, or whatever the case is.

FRANK: This protects the other homeowners too because you don't want people playing . . .

WATKINS: Yeah.

FRANK: . . . these types of games.

WATKINS: Right.

FRIEDRICH: I know of a, a uh, situation in Boulder City where it was . . . one of the spouses wasn't on the deed, and ran for the board, was challenged. Now, if it's community property, does that have an impact?

BRIGGS: I just don't, I, I didn't conclude it matters because I don't think the association has the ability to determine what community property . . .

WATKINS: Right.

BRIGGS: . . . rights somebody has.

WATKINS: Right.

BRIGGS: And that's just . . .

FRIEDRICH: Yeah.

BRIGGS: . . . you know, that's not gonna be decided, and, uh, and how would the association know how the property was, was paid for, and, I mean there's a lot of issues in community property. Just because you're married doesn't mean you have 50% interest in everything.

WATKINS: So, the, the basic thing is either get on the deed, or get on a, an unrecorded deed which you can document has been transferred from one party to another, or one sibling, or a certain percentage, or whatever the case may be. Document that and have it notarized if that's the case, and present it to the association if the association has a question.

BRIGGS: Yes.

FRANK: It saves the association from making up their own rules.

WATKINS: There you go, and it's pretty, pretty simple.

FRANK: Correct.

WATKINS: Alright, is there any other questions on the, uh, the draft Advisory Opinion on a units' owner.

SIBLEY: Uh, it's not our opinion, right.

WATKINS: It's not our opinion, you're absolutely correct.

SIBLEY: We're, we're banned from them.

ANDERSON: No.

{{{joking, laughing, unintelligible}}}

WATKINS: OK, alright, alright, alright, alright.

ANDERSON: May I, may I ask . . .

WATKINS: You may.

ANDERSON: . . . that if the Commission concurs with this, the Division will issue it as an Opinion.

BRIGGS: Um, hum.

ANDERSON: But . . .

WATKINS: Do we have consensus . . .

ANDERSON: . . . you asked for this . . .

WATKINS: . . . to this.

ANDERSON: . . . and we're bringing it to you.

WATKINS: We don't have consensus. OK, so, uh, you don't even need a motion from us to issue . . .

ANDERSON: Well, no . . .

SIBLEY: I'll make a motion.

ANDERSON: . . . we don't, well . . .

WATKINS: Oh, it is action of the Commission.

ANDERSON: we, yeah, we'd rather . . .

SIBLEY: Since there's . . .

WATKINS: Alright.

ANDERSON: . . . yeah.

SIBLEY: . . . since there's no consensus, we need a motion. I'll make a motion that we have the Division issue this Advisory Opinion.

WATKINS: Do we have a second?

FRANK: We do.

WATKINS: We have a second. Uh, I think we've had plenty of discussion. All those in favor of the motion say "Aye."

Frank, Watkins, Lien, and Sibley {{{simultaneously}}}: Aye.

WATKINS: Those opposed say "No."

FRIEDRICH: No.

WATKINS: Four to one. Motion carried.

ANDERSON: Thank you.

WATKINS: One, two, four to one. . .

ANDERSON: We'll do that.

WATKINS: Four to one. Motion carries. Thank you.