

TRANSCRIPT OF SEPTEMBER 7, 2007 SUN CITY ANTHEM BOARD OF DIRECTORS SEMINAR WITH ATTORNEY ROGER GRANT

This seminar was led by [Roger Grant, Attorney](http://www.fgmkl.net/jsp2127809.jsp), (<http://www.fgmkl.net/jsp2127809.jsp>) and attended by SCA Board Members Bob Frank, Roz Berman, Bob Berman, Kay Dwyer, and Lanie Berg. Barry Friedman was absent. Mr. Grant was invited to talk about board confidentiality and fiduciary responsibilities. The board majority learned during this seminar that for many years it had been violating the law by holding secret board conversations on matters not protected by statutes..

MIKE DIXON: Mr. Grant, the floor is yours.

ROGER GRANT: All right. Thank you. I was asked to come here today and talk about a couple of things, primarily fiduciary duty, cooperation of board members, and confidentiality of information, things like that. And I brought a few handouts. I also brought the NRS book for anybody that doesn't have one. I have extras. Let me start by passing these around. And, one thing I find is that words are important.

ROGER GRANT: And, let's start out with a Black's Law dictionary definition. A fiduciary is one who owes to another the duties of good faith, trust, confidence and candor. One must exercise a high standard of care in managing another's money and property. So you can be a fiduciary in many capacities. As a board member for an association you are a fiduciary for that association, for that non-profit corporation, and you have a very heightened duty of care for that corporation. Down at the bottom of the page it says that board members must always make decisions based on what's best for the association as a whole. They cannot place their own interests or those of their friends and supporters above those of other members. They have to act in good faith with a degree of care that a reasonably prudent person would use. Any time board members are before the court for alleged misdeeds, a court will look at their actions based on this duty of care and whether they follow the business judgment rule and Nevada law has adopted the business judgment rule. It says board members must follow the business judgment rule and there are 3 aspects to the business judgment rule. Number 1 is to act in good faith. Number 2 is to act in the interest of the association as a whole and number 3 is to act with reasonable inquiry of industry professionals. We're going to talk more about all of those. But I want to focus on doing what's best for the association as a whole. I've been to well over a thousand, maybe 2000, board meetings and I often see board members that are not acting in the best interest of the association as a whole. And it's hard to do sometimes. If you have friends in the associations or people that support you they often will ask you to do something that they want and it's human nature to try to help them out but sometimes that's not best for your entire association. Sometimes it's not best for you individually and sometimes you have to make decisions that adversely might affect you personally because they are best for the association as a whole. An example – we were meeting with a condo association that was contemplating construction defect litigation and had some really bad problems. Their statute was about to expire and one of the board members said, "well I'm selling my condo, I don't want this". And she voted against it. And I don't think that was in the best interest of the association. It was in her best interest because she wanted nothing impeding the sale of her condo. She wanted to get out of there. So she voted in her own self interest and that would be a breach of fiduciary duty. So in analyzing any decisions that you're making for this association, you have to look at what's best for the entire association as a whole. And any decision that you make is probably going to adversely impact some of your members. You can't

please all the people all the time. We all know that. And no matter what you do, there's always going to be some people in your association, and this is such a big association, there's going to be a lot of people that don't like your decision. Hopefully the majority of the people will like your decision but you can never please everyone. I'm sure you've found that out. I want us to be real interactive so jump in and ask questions, but does everyone basically understand what fiduciary duty means. And in expense to of course handling the money, you have to be very careful in handling the association's money – you have to act in good faith. What does acting in good faith mean? Acting in good faith is with good intentions, trying to do what's right. Some examples of where your not acting in good faith is when you treat a particular homeowner differently than others because you don't like that homeowner or that homeowner's labeled as a troublemaker or any reason like that. That would be acting in bad faith when you're malicious in the way you treat that homeowner . I've seen that happen at many, many board meetings where a guy would come in and complain about the board every week or every month, every board meeting and after he left the board would go, well, let's impose some violations on that guy – we don't like him. That's acting in bad faith and, it's being...it's also retaliation. Retaliation's strictly prohibited by NRS 116. It says a board member or board as a whole may not retaliate against a homeowner for any reason particularly if that homeowner is asking for records or if that homeowner is complaining about the board's actions.

ROZ BERMAN: Even if it's disparaging, defamatory comments?

MIKE DIXON: To the Board?

ROZ BERMAN: To the Board?

ROGER GRANT: Well, you have to deal with everyone in a similar manner. I mean, you can't single somebody out because they're complaining. Now, if someone's making disparaging remarks, the best way to deal with that would to be to issue a rebuttal perhaps. But you don't say, all right, you made a disparaging remark about me – we're gonna go and look at your house and make sure you don't have weeds in your yard

ROZ BERMAN: No, I didn't mean that.

ROGER GRANT: ...and things like that.

ROZ BERMAN: But, um, we have a member code of conduct – for member to member – and to me includes board members. You know, we're members of the association so if defamatory, disparaging comments are made at a board meeting about board members, does the board have a right to sanction the person for doing that?

MIKE DIXON: That's up to a code of conduct committee to enforce that code of conduct.

ROZ BERMAN: Yeah, that's what I'm talking about.

ROGER GRANT: But it depends on how that rule is formatted. The rule says that disparaging comments can be, you know, can result in a fine, then you may have that right.

ROZ BERMAN: If our member code of conduct says that...

ROGER GRANT: That's it.

MIKE DIXON: Yes, it does.

ROZ BERMAN: Yes, it does.

ROGER GRANT: And certainly you'd want to have a fair hearing and go through all the necessary process.

ROZ BERMAN: Right.

BOB BERMAN: In the past our enforcement of the code of conduct, as applies to other residents, it also applies to the staff, the paid staff, and depending on the severity of it, we get going from fines to, in one case where there was a physical type of altercation, to banning that person's ability from coming to any of the common assets here for a year.

ROGER GRANT: But remember that people are entitled to express their opinions. If someone says, I think you're a bad board member, that's an opinion. They can say you're a deadbeat...

ROZ BERMAN: That's mild... (laughter)

BOB BERMAN: How about – you're a piece of garbage?

ROGER GRANT: That's an opinion, and they have the right to express that opinion. I don't think that's something you can sanction someone for. Now if they...

KAY DWYER: How about stupid or incompetent?

ROGER GRANT: Again, that may be an opinion. If they say you're embezzling funds from the association...

KAY DWYER: If they say you committed an illegal act when you didn't?

ROGER GRANT: Well, that would take it out of the realm of an opinion.

KAY DWYER: OK.

ROGER GRANT: That's an allegation of fact that can be proved or disproved. But people have the right to say, uh, you're an idiot. That's an opinion. (laughter)

KAY DWYER: OK.

MIKE DIXON: What about if your mother wore combat boots? (laughter)

ROGER GRANT: But once they start alleging facts, saying we're stealing...

KAY DWYER: They were guilty of negligence...

ROGER GRANT: Or negligence – those are statements of fact that can be proved or disproved. I haven't seen your code of conduct. It's kind of rare that an association has one. But alleging...and the court's going to look at it the same way...You've all heard of defamation, libel and slander. And all of the court cases, and some of them involve associations, say this person has a right to express their opinion. Also, truth is a defense to libel, slander and defamation. If I say you're stealing money from the association coffers, and that's true, there's nothing you can do about that.

ROZ BERMAN: If that can be proven to be true.

ROGER GRANT: If that can be proven to be true, right. Now, if that's false, that can be libelous, slanderous, defamatory, and is actually a tort under Nevada law that you could sue someone for and possibly win damages from them.

MIKE DIXON: Talk a little bit about what constitutes retaliation by the board. What kinds of things do constitute retaliation, and what kinds of things don't.

ROGER GRANT: Retaliation is typically when you're singling someone out who has done something you don't like. An example would be, you know, we're not inspecting yards of anyone except for the guy that comes to the meeting and complains. We're going to inspect his yard every week and every time there's a weed or blade of grass or rock out of place, we're going to write him up. That would be retaliatory because you're not treating him the same as everyone else. And that's the most common area where it's used in imposing fines or violations against someone.

BOB BERMAN: If a resident gets in the face of another resident, by getting in their face, comes within arm's length, threatens that person with physical violence, tries to grab that person, does not succeed, then yells and screams, I'm gonna get you out of here...

ROGER GRANT: Well, when there's an altercation resident to resident, I'm not so sure that's a board matter. As long as it doesn't involve a board member.

BOB BERMAN: How about resident to staff?

ROGER GRANT: Resident to staff, um, that is a matter for the board to consider. You control the staff. If someone is assaulting your staff, I think the association has a right to take action against that person.

BOB BERMAN: I know in California, in western law, they impose the eastern bridged based case law. In western law you have the right to stay on the space that you are on as long as you immediately occupy it. No one has the right to force you off that, and you don't have to retreat. In cases I have not been involved in, but witnessed, the mere fact that a violation of somebody's face as threatening action is defined as assault, and that touching a person in a threatening way defines battery...

ROGER GRANT: Well, an assault is when you have reasonable apprehension in a sense of touching or bodily harm. That would be an assault. Like if I stood there and said, I'm going to beat you up, and I said it in a very mean manner, and you had reasonable apprehension that I was going to hit you, that would be an assault. There has to be a reasonable apprehension.

BOB BERMAN: ...and the person?

ROGER GRANT: And it has to be a imminent touching or battery. What if I said, I'm going to beat you up two years from now? That's not an assault.

BOB BERMAN: I know that if you're sitting in a wheelchair and your 280 pounds and he says, I'm going to beat you up...

ROGER GRANT: There again, it wouldn't be reasonable apprehension.

KAY DWYER: What if the person does follow through and does the touching is that battery?

ROGER GRANT: Well, battery is a harmful or offensive touching. If I just patted you on the back that wouldn't be a battery because it's not harmful...

KAY DWYER: If someone grabs, after making the threat...

ROGER GRANT: Grabbing someone's arm would be a battery and I think the original question was, does the association have some right to take some action. Again, homeowner to homeowner, I don't think you should even get involved unless there's some discrimination involved. The court said that if there's discrimination involved, the board has to get involved – homeowner to homeowner. If you did that for homeowners that don't get along, it's really not the board's business. Now, if we have a homeowner that's assaulting or battering your staff, that's different. I think you do need to get involved, and the association would have a right to take that homeowner to a hearing.

BOB FRANK: Clarification question: If you had a loud crowd with a lot of noise and somebody reached over and touched somebody on the shoulder to get their attention, without any other expression of attempt, would that be considered offensive?

ROGER GRANT: If it went to court as an assault, I don't think that they would be convicted of assault for touching someone on the shoulder to get their attention. Again, it depends on how you touch someone.

BOB FRANK: Sure.

ROGER GRANT: I mean, if I just tapped you on the shoulder, no judge is going to say I assaulted you. If I grab your shoulder or smack you in the shoulder, maybe. And again, it also depends on the parties involved. If Hulk Hogan grabs your shoulder, that might be an assault, or a battery. If you grab him, I don't think anybody's going to say that he had reasonable apprehension that you were going to kick his butt. (Laughter) So, it depends on the actors involved.

BOB BERMAN: Where do we as board members, we're homeowners and the residents are homeowners, so that we have that category. We're not paid staff, we're not their staff, because we have in the past, some of us, received threats on our lives, and at least in one case it's been reported to the police. But, where do we fit in this equation that you're evolving here, of homeowner to homeowner?

ROGER GRANT: Well, as a board you're officers and directors of the association. If the homeowner's threatening the board, I think you can take action against them.

BOB FRANK: If you have proof that they did it.

ROGER GRANT: Well, yeah, you would need some proof. And that proof would come through the hearing process usually. Most threats to kill somebody are not honest. I've have them, many of them. (Laughter)

ROGER GRANT: Most people that are really going to kill you don't tell you about it first. (Laughter)

ROGER GRANT: So, because you're the guarding entity of the association, I think that's a threat on the association, and you would be allowed to take action. But you'd have to go through the hearing process; you'd have to present evidence, um...

BOB FRANK: Clarification, also – I had previous experience before here with this touching type situation, and the circumstances surrounding the touching also seem relevant. For example, in my experience, somebody reached over to touch somebody, and then they got bumped from behind, and it looked like they were pushing somebody, but in fact evidence showed that they had been pushed by someone else, and it seemed like it was inappropriate touching, but in fact it was just an accident.

ROGER GRANT: You're right. All the circumstances surrounding the event would come into play, and, it sounds like you had an incident involving this. I don't know about it.

MIKE DIXON: This is strictly hypothetical. (Chuckling)

ROGER GRANT: So, all of us are

BOB FRANK: Hypothetical because you're not our attorney of record, right. We're just getting opinions here, right?

ROGER GRANT: Right. All of these circumstances will come into play.

MIKE DIXON: What we are trying to do is get educated, at least that's the intent.

ROGER GRANT: If you, you know, if somebody's just putting their hand on someone's shoulder and not pushing them down or something, a court...a judge is probably not going to convict him of assault and battery.

KAY DWYER: Wouldn't maybe the determining factor be the element of fear by the person who's being grabbed? If they perceive that the person grabbing them is a threat? Even though it may not be a harsh grab, if they are fearful of that person, wouldn't that be a part of the...?

ROGER GRANT: That's certainly one of the factors, a reasonable apprehension.

(Background conversation)

ROGER GRANT: So, a reasonable apprehension is the key.

KAY DWYER: That would be the key.

ROGER GRANT: And again, it has to be reasonable.

KAY DWYER: Right.

BOB FRANK: How about a related thing – about conversations at a board meeting for example, or any other meeting sponsored by the board, if a resident is rather antagonistic, how do you draw the line between how much is free speech and how much is crossing the line? How do you define harassment over antagonism beyond the acceptable behavior because in the past we've had problems for a couple of years, off and on, and I don't think we ever figured out how to define that.

ROGER GRANT: Well, you said free speech. The right of free speech doesn't really apply in a private setting like a homeowner's association. And there have been some recent cases on that. Freedom of speech applies to public forums. For example, any of us has the right to go stand out on the sidewalk on the strip and voice our opinions about the war, the government, anything you want. That's evidenced by the passing out of the sex pamphlets on the street. The casinos tried to stop that and they couldn't. But once you cross over onto casino property there is no right of free speech. It's private property and you don't have a right to go there and say anything that they don't want you to. And the courts have held that the right of free speech does not apply to homeowners associations. There have been some recent cases involving large communities similar to this where some people argued that this is the only public forum available, that this is like a city. And the courts have rejected that argument and said it's a private enterprise, there is no right of free speech. So you have the right as an association and its board to control, to some extent, people's right of speech at your meetings. And I think you should let people express their opinions and let them say what they want, but to the extent somebody gets up there and starts swearing and being obnoxious and screaming, you have the right to say, you know, we're not going to let you speak at our meetings. So, you've got to draw the line somewhere and...and where to draw the line is sometimes difficult to determine. But certainly if somebody's using offensive language and screaming and intimidating other owners, I think you have the right to say, we're not going to let you speak at our meetings. Even though the law requires you allow every homeowner to speak, they can lose that right if they're being very obnoxious. Now, if somebody's just not a very nice person, you still have to let them speak. We don't want people swearing, using offensive language, intimidating other homeowners, that's where we draw the line. Did I answer your question?

BOB FRANK: I assume it's two ways also? The board members have a higher level in terms of talking back to residents?

ROGER GRANT: Absolutely. You have to set an example for the whole community. And I know it's hard sometimes. No one appreciates what you do. It's difficult. But the board has to stay calm and collected. And always treat people with respect. Treat the homeowners with respect, make it appear you're very concerned with what they are saying even if you're not, and thank them, and say we appreciate your input.

MIKE DIXON: So, the Ombudsman's Office should provide a seminar in acting as well?
(Laughter)

ROGER GRANT: Sometimes you have to be an actor, particularly during the homeowner's forum. And I'm sure the homeowner forums here are quite interesting.

ROZ BERMAN: Quite interesting. Yeah.

ROGER GRANT: And let's talk about that a little bit. Homeowner's forums...I see a lot of boards who think that during the homeowner forum they have to resolve every issue that comes up. And you shouldn't even let yourself be drawn into debate. How long does your homeowner's forum last?

ROZ BERMAN: Two hours.

ROGER GRANT: OK. Well, what I tell my board members is, we're going to give everyone an opportunity to speak, and after someone says, you know, I don't like this and I don't like that, we're going to say, thank you Mr. Jones, we appreciate your input on that matter, we're going to look into that, we're going to put in on the future agenda, we're going to investigate it, whatever the answer might be, but don't debate them on it. Don't say, oh, you're wrong, or don't think you have to provide them with an answer right there and then.

MIKE DIXON: Let me show you the way that we currently do this and this is just what recently we ascertained. Generally we try to get a draft agenda a week before the board date, so we can hold the board meeting although by practice it really isn't due out until the Monday of the board meeting week. That's common practice here. We try to get a draft agenda out and then at the end of that week, Thursday or Friday or sometimes Monday before the board meeting, we have a town hall meeting for a couple of hours. Sometimes it's just the board. The one we'll have in October we'll have some representatives from Henderson to talk about some stuff such as traffic and things like that. And so we have a two hour period where they can ask questions about the agenda, the agenda items of the board, and then we have the open board meeting...or anything else...and then we have the open mic period at the beginning of the board meeting, and the way we have that structured is that its two minutes per person for approximately 30 minutes, although we have gone as long as 50-55 minute. That's approximate. It seemed to be a reasonable limitation to keep filibusters from happening at a board meeting, and to keep the board from doing business. So that's the way we do it here. I know others do it differently.

ROZ BERMAN: But we also tried one other thing which was to offer the homeowners comment during the agenda items when we were deliberating and making decisions, and that was dragging our meetings on. Extremely long.

ROGER GRANT: So when somebody gives their 2 minute speech, does the board respond, do they rebut that, or do they just move on?

MIKE DIXON: It depends on what it is. For example one person recently talked about their interest in having a screen, a shade, being put over our pool and it was something that had been proposed and was in the queue to happen and so I think I responded that it's one of the things being considered in the capital budget for next year. We had another question about when the third rec

center is being built and whenever possible one of the board members, Bob generally because he's most familiar with it right now, will answer a question. If it's a reasonably posed question and not confrontational or argumentative, or whatever.

ROZ BERMAN: It's like half and half. A lot of them are thank you for your comments but some of them we actually know something we could say.

ROGER GRANT: Try not to get drawn into a debate. I've found most people just want to vent, and they don't even care what the answer is. I have a lot of homeowners and board members call me all the time and they'll talk for 20 minutes complaining and complaining, and at the end I say, what would you like me to do for you, and they say, oh nothing, just wanted to tell you. (Laughter)

BOB FRANK: Well, I think you're aware that we're also having the week before the board meeting, we're having what we call a town hall where a lot of the venting and conversations occur and over time it seems to me like, except for a monumental board meeting where we pretty much drove the agenda because of what we were trying to do with budget policies and other things, but it seems to me like it's working from a Town Hall point of view, we're getting a lot of conversation out and reducing, I'm not saying minimizing, reducing the actual amount of comments during board meetings. The biggest frustration that we've had in that area is that most of the members, and I was one of them last year before I ran for this board, were unhappy with the lack of knowledge of the agenda items, and not being able to understand exactly what the board is going to do during the agenda, and so forcing myself and others to say, I don't know what you're going to talk about but this is my opinion. And that's causing a lot of problems if the agenda is not clear about what is going to be done.

ROZ BERMAN: But we've made a big change in that because we're putting a lot of detail out...

BOB FRANK: We've done a lot better. We can do more, but the point is that will help to cut down on some of this frustration of agenda subjects as we do better in that area.

ROGER GRANT: Good.

BOB BERMAN: Is this a free form type of question?

ROGER GRANT: Absolutely.

BOB BERMAN: I'm going to see if I can phrase this correctly. We have tremendous interest in our budgets, our dues, and our expenditures, and we have residents who keep threatening our personal liability for mismanagement, or whatever, in different areas. I come from a corporate background, 47 odd years. And I notice here about thinking about expert opinion. I am not an accountant. I don't know anybody else that is, well maybe one. I'm not an accountant. I had a CFO, and I had an accounting department, etc., etc. that I relied upon. Of course, from the management point of view you apply some kind of analysis of your own to see if its credible in an overall sense, but we have here a finance committee who has a number of CPAs on it and we have our accounting firm that does our annual audits, etc. etc. We have a lot of the checks and balances, in my view, it is, and this is where I want your comments, is that being a manager and supposedly the board of directors sets policy and makes decisions based on the information that's available to them, and we get this

information, we get these audits, we get the budget, and analysis from our internal and external, and so forth, and try to make decisions going forward. Are we insulated from personal liability, as far as fiduciary responsibility is concerned because I don't go in, and I can't, I'm not really capable, of analyzing the details of an accounting. So where do I sit, for instance, or any of the others with regard to personal liability if we acted on information that was available to us.

ROGER GRANT: You have every right to rely on that information as long as you have reason to believe it's accurate. Sounds like you have CPAs on your finance committee. You have every right to rely on that. As far as your personal liability, board of directors for homeowners associations in Nevada have the right to indemnification from their association. If somebody sues you...

BOB BERMAN: We have insurance...

ROGER GRANT: You have insurance as well. The association has to indemnify you if anybody sues you, or gets an award of damages against you. You're not personally liable for your actions, even if they're negligent. The only way you're personally liable is if you act in bad faith or act maliciously. For example, you say I know the law doesn't allow retaliation, but I hate this guy, and I'm retaliating against him. That would be a malicious, bad faith act and you could be personally liable for that. But as long as you're following the business judgment rule, the courts have ruled consistently all across the country that you're not going to be personally liable. It protects you and insulates you. Again, that means you have to act in good faith, in the interest of the association as a whole and with reasonable inquiry, in this case inquiry from your finance committee, your CPA. You have every right to rely on that. The example that I gave you earlier where the lady said I'm selling my home, we're not doing this, and the statute of limitations expires, and they can no longer bring a claim against their builder for millions of dollars in damages. That would be an act of bad faith that was not in the interest of the association as a whole. She could be held personally liable for that. But certainly for the finances, you're not personally liable if they turn out to be wrong. You've done everything correctly by putting in place probably one of the best HOA finance committees in town.

ROZ BERMAN: I think so.

ROGER GRANT: So, you should rely on your manager; rely on your finance committee. You're never going to be personally liable for that. If you embezzled money, you would be personally liable. But as long as you are following the business judgment rule, acting in good faith, you're never going to be held personally liable for that, or for criminal acts in your association. The association has a duty to indemnify you for any negligent act or mistake, and you also have directors and officers insurance that provide you with a defense and provides you with coverage for damages.

BOB BERMAN: Sometimes you're right and sometimes you're wrong.

ROZ BERMAN: Right.

BOB BERMAN: And arm chair quarterbacking is very simple to do. We have a situation on lease arrangement that have gone on forever and ever. We tried to negotiate our way out of this situation for a long time. During that time period, and that's one of the problems we have is that we change management each year, so you have to then take a step back and acting on the legal advice of two separate law firms who reviewed the lease, pay a couple thousand dollars for each law firm to

review it, came with the same advice. Both enter the litigation at all possible continue to negotiate and try to get your way out of it. Well, it failed. The negotiations failed, and now we are into Whereas we were acting under the advice of two separate law firms, 2 separate evaluations, that we paid for, yet we were being accosted. I don't mean physically, but for not having done our fiduciary responsibility. I don't know how to...

ROGER GRANT: Well, when you follow the advice of counsel, it's going to be extremely rare that a court would say you did something wrong or breached your fiduciary duty, and that's part of business judgment law, getting advice from a competent professional. Like you said being an armchair quarterback is easy, and courts recognize that. Every court across the country, when they're facing a situation where somebody sues because they don't like what the board did, the courts never analyze your decision. They analyze how you got there. And case after case after case they'll apply the business judgment rule, and they'll say, OK, did they act in good faith? Did they do what they thought was best for the association as a whole, and did they get advice from an industry professional? And the courts will say, if they did those 3 things, we're not even going to look whether their decision was right or wrong. It doesn't matter. They may have made a totally wrong decision. I can give you some examples of a couple of cases. There was a case in San Diego where they had termites in the condos. And the Board...some of the homeowners wanted all of the condos tented, they said that termites are going to ruin our investment; we need to move everybody out, put tents over it and fumigate. The board met with some termite control experts, and they decided that, we don't need to tent, we can just spot treat and get rid of these. Well, the homeowners sued them. They said, you made the wrong decision, you didn't protect our investment. And it went actually up to Appellate Court in San Diego and all the court said was, did they follow the business judgment rule? They acted in good faith, they got advice from termite companies--termite experts, and they did what they thought was best for the association as a whole, that being not spending all their money tenting and moving everyone out. And the court said, we're not going to even look at whether this was the right decision. Maybe it would have been better to tent, maybe not, but they got to that decision the right way and we see that in many, many cases all across the country. So, in your situation with Trumpets, and I don't know the details of it, it sounds like the board acted in good faith. They were trying to do the right thing. Nobody was maliciously doing something to hurt the association, or act in their own self interest. You got advice from two attorneys which is going to go a long, long way ...

BOB FRANK: But Roger, doesn't that have to be in writing? Good advice?

ROGER GRANT: Well, not necessarily.

BOB FRANK: Does it have to be given to the entire board at one time, or can it be interpreted by one member?

ROGER GRANT: It would certainly be best if it was given to the board at one time.

BOB BERMAN: It's moot because the entire board was available to the opinions.

ROGER GRANT: And it's best if you get opinions like that in writing so you have a history, a written record.

BOB FRANK: Especially if there's a half million dollars involved.

ROGER GRANT: And again, I don't need to know the details...

BOB FRANK: Well, I don't want to pursue this, but a lot of the frustration among our board members, including myself, as well as the 3 previous board members, is that I believe I was unfairly sanctioned last year for questioning the way Trumpets is being handled, and I was driven to run for the board because of strong objections about the way it's being handled. So now I'm here on the board, I still have the strong objections that I had before. I still feel very strongly that the board did not behave properly, and they're very unhappy because I won't meld in with the board and say well, let's all forgive what's past--because it's hard for me to do that. That's the problem because I don't...I don't believe they did anything maliciously, and I agree with Bob Berman that they could have entirely had good advice from their point of view, but I say the end result is really bad, and we need to fix it. And that's what they're unhappy with me about that. And I can't just abandon it...because I'm on the board because I feel very strongly about it. So, how do I deal with that? And how do they deal with that?

ROGER GRANT: Well, you're not always all going to agree. And that's why we have a group as a board of directors, and majority rules, and I have 5 law partners. And there are many, many times when I strongly disagree with what they want to do, but if they all vote to do something that I don't like, I just have to suck it up and deal with it.

BOB FRANK: But you're compensated by that decision. If you don't like it, you can quit the firm, right?

ROGER GRANT: Well...

BOB FRANK: You have to stay with the firm?

ROGER GRANT: But I'm not in a situation where I can quit the firm.

MIKE DIXON: The question is how you get 4 attorneys to agree on anything. (Chuckles)

ROGER GRANT: Well, with 5 of us, we have to have a majority so...

ROZ BERMAN: This is an important point to push on. Once the decision is made, then the decision is made, and we should all go along with the decision that's made, shouldn't we?

BOB FRANK: I object to that. Because as long as I continue to believe it's illegal, or improper, I cannot be forced to agree to it. I just cannot do it. I have to disagree.

ROGER GRANT: Once the board makes the majority decision, I think you have to. You don't necessarily have to agree with that decision, and you have the right in the future to try and get them to change that decision, but I think you have to show some sense of unity to the homeowners. The board's made its decision, and this is how it's going to be.

BOB FRANK: That's my problem. If I don't think the homeowners are being fairly served by the decision, so how do I just stay quiet? If I feel strongly with my fiduciary responsibility that we are not doing the right thing, I have an obligation to speak up even if the rest of the board members

consider me wrong. Otherwise I go along with something that I believe is not correct, and perhaps even illegal.

ROGER GRANT: I don't know all the details. It's hard for me to answer that. Aren't you in litigation now?

ROZ BERMAN: This is a concept. There's board deliberation, and there's board vote and there's a decision made. Now a board member doesn't like the decision, and the board member wants to continue to make it clear that they don't like the decision, and they don't support the decision. Is that acceptable?

BOB FRANK: It's more than like. It's not a question of like. It's a question of feeling that it's wrong. OK? Not just like--it's wrong.

ROZ BERMAN: That's fine.

ROGER GRANT: I think you have the right to go on record and say I disagree with this decision, um, I think it's illegal, or I think it's a bad decision...You certainly have that right.

BOB FRANK: I should defend my position, not just to state those positions. I feel like I'm obligated to say why.

ROGER GRANT: That's fine if you say why, but I also believe that you don't want to create dissension in the community because you don't like a decision the board made.

BOB FRANK: Unless it's going to increase dues, then I strongly object to an increase in dues because of that decision. This is really tough problem.

ROGER GRANT: But at some point you all have to act on what's best for the community as a whole and think about it. Is creating dissension the best for this community?

ROZ BERMAN: And it is creating dissension.

LANIE BERG: A tremendous amount of dissension.

KAY DWYER: With all the evidence, whatever you are referring to would increase dues--that's merely your feeling, it's not an established fact.

ROZ BERMAN: And no decision's been made.

KAY DWYER: No increase has been made.

ROGER GRANT: But you have the right to bring this up to the board...every month if you want. Say, let's reconsider this decision--I don't like this decision. But I don't think it's a good idea to use it to create dissension amongst the homeowners. A board has to appear that they are unified in doing what's best for the community as a whole. When people see the board infighting, it causes them to lose confidence and to lose trust in the board of directors.

ROZ BERMAN: That's what's happening.

ROGER GRANT: When my partners and I disagree on a decision, once we come out of that room, I support the decision that they made even if I don't like it. It would be different if I thought it was illegal or an unethical decision.

BOB FRANK: I've been on lots of boards, so I'm not a novice in this area. When I'm on that board, it depends on who I am representing. If I'm just representing myself, and my partners or my corporation, that's one thing. But we're here as volunteers to represent 7000 roof tops. I'm not speaking for myself; I'm representing the whole community.

LANIE BERG: Excuse me, Bob, but we don't represent the roof tops or the homeowners. We represent the association and the common areas, and I disagree wholeheartedly.

BOB FRANK: Oh, I know, but that was part of the campaign. I objected to that. I don't agree with you at all that way. That was part of the campaign. The 3 of us that are here spoke out strongly saying that this is partly a representative government, with a corporation to run the community. And, you and I will never agree on that point. Never!

LANIE BERG: There's a lot we won't agree on.

ROZ BERMAN: What does the law say?

LANIE BERG: What does the law say?

ROZ BERMAN: We exist because we have common properties to manage.

BOB FRANK: And, we have residents to represent.

ROGER GRANT: The board of directors acts in the interest of the association, the non-profit corporation, and you need to do what's best for that association, and that should be something that's best for the majority of the homeowners. What's best for the association as a whole is typically best for most of the homeowners--the majority of them. So, technically you do represent the interests of the association, but that interest is the knowledge as to what is best for the majority of the homeowners.

ROZ BERMAN: But what we manage has to do with our common properties.

BOB FRANK: Right.

ROZ BERMAN: Not each individual home.

BOB FRANK: Every decision we make affects the value of their property, their dues, and everything that goes with the association. The community represents the association.

ROGER GRANT: But you all have to understand that you're not always going to agree. You're not always going to get along. And as board members, what we typically see are the most headstrong, the most...the people with the most leadership qualities, all rise to the top and become

board members. And in large communities like this, you get people with a lot of experience...people who have ran corporations, people who are CPAs, people who have a lot of experience, and they tend to be, I don't know if headstrong is a good word, but more adamant on their views, and what they want for the association and they don't always get along.

ROZ BERMAN: And that's to be expected.

ROGER GRANT: It's to be expected, it happens. You're some of the cream of the crop of the association, the people who are take charge people. The docile people aren't running for the board. So you're going to clash on a lot of issues, and that's why we have a 7 member board so that there are no ties. The majority rules and I think to some extent you need to support the decision of the board. You don't have to agree with it, and you can continue to try and get them to change their mind, but it's not good to create dissention in the community. Again, I don't know the facts of this so it's really difficult for me to speak on this particular situation. I assume that you are not in favor of going into litigation.

BOB FRANK: No, that's not the issue at all.

ROZ BERMAN: There's many.

BOB FRANK: There are quite a few issues related to...

ROZ BERMAN: There's not just one.

BOB FRANK: A year ago my main point was that I strongly objected and was sanctioned for speaking out that we should separate the enforcement of the lease from the negotiation for other terms and conditions and I absolutely objected to that. I was quite vocal about it, and was sanctioned for using my club to help study that stuff. But it hasn't gone away because we've lost hundreds of thousands of dollars by not enforcing the lease, and they did confidential negotiations while we were doing that, and my experience is that it was the wrong thing to do, and I don't blame the board members for not knowing better. What I am upset is that we have an obligation to the homeowners to go back and recover as much of that money as possible. And what I'm told by the current attorneys, and by current advisors, oh, that's impossible to do, we can't pierce the corporate veil, we can't do this, we can't do the other.

MIKE DIXON: That's not exactly true.

ROZ BERMAN: (Laughter) That's not true...

BOB FRANK: But what my opinion is that we, under our fiduciary responsibility, we are obligation to go recover that money, even if mistakes were made.

ROZ BERMAN: We are going to be counter-suing. I don't know where your opinion is coming from.

BOB FRANK: Anyway, you don't want to get involved in details. These are the kinds of issues that are going on here, and it's very frustrating to both sides of the discussion because we have a difficult time even talking about the issue--because it gets so emotional.

BOB BERMAN: We have legal counsel that's looking into litigation and we'll get proper guidance and we'll follow that advice.

ROZ BERMAN: Right.

BOB BERMAN: I think there are more generic things we're talking about (coughing) board members, the modus operandi has been that if one board member does not agree, regardless of what it is...

ROZ BERMAN: Right.

BOB BERMAN: If he doesn't agree, the first thing that is said is that I'm going public with it. If you're going to vote this way, I'm going public with it. And we can annoy the residents and fight it on virtually any issue where there's disagreement.

BOB FRANK: I actually campaigned saying that. I campaigned saying that I disagree with rubber stamp boards, saying everything is in agreement--without ever any disagreement--and the board members tell me privately that well, I disagreed with that in our executive sessions where we've decided ahead of time what we're going to do, but in the board meeting I voted in favor because it's the majority vote. I ran on the campaign for months saying that I will never do that. If I disagree, I will tell you that I disagree with something, and I will tell you why. And I'm doing exactly that, and I feel obligated to do that. And I don't see anything wrong with it.

ROGER GRANT: Well, you have the right to talk to anybody you disagree with, but how far do you want to take it? Do you want to take it to where you're creating a lot of dissension in the community--because that's not good for the community as a whole.

BOB FRANK: Unless the board is making a mistake. What if it's making a mistake? The majority wins, and therefore it's right?

ROGER GRANT: Who knows if they are making a mistake though. They could be right.

BOB BERMAN: It's one person's opinion.

BOB FRANK: My opinion is that the majority of the community should make the decision, not the majority of the board.

LANIE BERG: We were elected for the board.

BOB FRANK: Unless it comes to raising the dues and financial management. There's where it gets to be a real problem.

MIKE DIXON: The board is the one who has the fiduciary relationship, not the majority of the community.

ROZ BERMAN: They've been elected to represent the community.

MIKE DIXON: It's a representative democracy, not a pure democracy.

ROGER GRANT: Right. The board has the power to make decisions. They also, from time to time can solicit the input of the homeowners. And you certainly have a right to object to a board decision. You have the right to tell people about it in most cases. But taking it to the level where it disrupts harmony in the community is probably not a good idea.

BOB BERMAN: What about trying to solicit membership to join together with the dissenting board member to fight this?

ROGER GRANT: Well, yeah, that's creating dissention in the community. Once the majority of the board says this is what we're doing, I think you certainly have the right to tell people I disagree, but the rest of the board needs to fall in line and support that decision...even if you disagree with it. And that the majority rules in this situation. I can tell you don't like what I'm saying but...

MIKE DIXON: Can we move on because I have a bunch of points here that I think are really interesting and informative so... We can belabor the point to a fault....

ROGER GRANT: Yes.

ROGER GRANT: I have another hand out too on confidentiality. Pass that one around. This was written by a Virginia law firm to give confidentiality. It's pretty good.

MIKE DIXON: By the way, for the record, we're represented in the Trumpets case by Jones-Vargas.

ROGER GRANT: That's a pretty good law firm. I would say that they are extremely competent and I don't think anyone can fault you for following their advice.

LANIE BERG: Can I ask you one thing on confidentiality? In an executive session there is of course very definitely what is confidential. If we meet, not in an executive session, but we're brainstorming, or we are discussing a situation, and there is a request for confidentiality, where does that request stand? Does that mean that we all obey, or one can go off and tell everybody else?

ROGER GRANT: I'll answer that by going over this handout.

LANIE BERG: OK.

ROGER GRANT: This is a pretty good article written by some homeowner association's attorney. I think they're in Virginia, and they start off by saying in the second paragraph that the duty of confidentiality is applied to board members less frequently than the duty to disclose. Because you do have an obligation to tell your homeowners what's going on. The board has a fiduciary duty to the members to keep them generally apprised of the association's business affairs as much as reasonably possible. Then they go on in the second column there to list the following types of information to remain confidential. Any information received from legal counsel in written form marked "attorney-client privilege" or verbally received from the legal counsel. You want to keep that information confidential. There's attorney-client privilege – the board can waive that privilege,

however that should be a board decision, a majority board decision, if you decide to waive it. You don't want one board member going off and talking about privileged information.

ROGER GRANT: An example, somebody gives you a settlement offer, and the board is considering that settlement offer with their attorney, that's going to be attorney-client information. Your response to that is that you don't want one board member saying I'm going to go tell everybody about this--I think we should have taken it--because that waives the privilege. Now if the board says we want to tell everybody about it, then you can vote to waive the attorney-client privilege. A settlement offer's probably not a good example, because actually they have a duty to tell the homeowners about that anyway. The second thing is any information related to pending litigation which relates to the board's deliberation or strategy concerning settlement not a matter of public record. Another confidential information is related to the basis of the board's decision to terminate employment, and Nevada statutes provide that that's to be done in executive session. You don't want to air dirty laundry of your employees. So that should remain confidential. Any personnel decisions.

BOB FRANK: That includes the subcontractors?

ROGER GRANT: No. That includes your employees, not the subcontractors.

BOB FRANK: OK.

ROGER GRANT: And you do have employees here, I understand?

ROZ BERMAN: Uh huh.

MIKE DIXON: Actually...the way it's structured here, we contract with RMI, and RMI hires the staff, and we pay them the salary plus a burden based on a level...

BOB FRANK: Actually, we reimburse their expenses.

MIKE DIXON: Yeah. Essentially we reimburse their expenses. There's a 27-37% burden on salaries mostly due to comps. There are also some here who are contractors to the association. Examples of that are people who teach classes in our activities or in our business area over there where we have teachers and people pay for the right to...

BOB FRANK: But in fact we have no employees to pay--right?

MIKE DIXON: But we have no specific employees of our own.

ROGER GRANT: OK. I don't think it applies to contractors, and if somebody wanted that contractor's contract, we'd have to provide it. If they want to know how much they are paid you'd have to provide that information. It's different with actual employees. You don't give out that information for employees.

ROZ BERMAN: Because we contract with a management company and they have all the employees, we could reveal what the salaries are of all of them?

ROGER GRANT: I believe so.

BOB FRANK: I've had to do it in my previous business experience...

ROGER GRANT: I think the law provides that you have to do that if someone requests it in writing. They say, I want to see RMI's contract, you have to give it to them.

KAY DWYER: An individual's contract, or for the payroll as a whole? Do we have to say what Suzy Jones currently makes...or could we say, we pay X number of dollars for administration costs.

ROGER GRANT: Well, since they're not your employees, I think you have a duty to disclose that contract.

BOB FRANK: Well, Kay, in my past experience I had to reveal what I was charging the association, not related to this, I had to tell how much per person, by individual, what the cost was. Right? Now that was fully burdened cost. I didn't have to break it down in terms of their incentives or anything like that.

ROZ BERMAN: Right, right. She's saying per individual? Yes? Per individual?

ROGER GRANT: Once you have that information. RMI may be the only one who has that information.

MIKE DIXON: Do we pay with one check?

ROZ BERMAN: Yeah.

MIKE DIXON: We pay a gross check, but we budget...but the budget is crazy...

MIKE DIXON: We don't have any way to know exactly what the individual checks are. We pay a gross amount.

ROGER GRANT: Then you don't have to disclose that.

MIKE DIXON: So the gross amount is disclosable?

BOB FRANK: But, Mike, even as a board member we have the right to know. Because we can't pay them if we don't know what it goes for. We have a right to know...

BOB BERMAN: It's not a ...

ROGER GRANT: There was a case about 5 or 10 years ago, at Canyon Gate, where homeowners demanded to know how much each employee at Canyon Gate made. And they fought. They said we're not going to disclose it, and, I don't know if it was an arbitrator or the court, who ruled they had to disclose it. And these were actual employees. They are accorded some protection under the law. That's probably a wrong decision. But, when they're independent contractors, any homeowner has the right to see that contract, to know what they're paid...

ROZ BERMAN: If it's stated in the contract.

ROGER GRANT: Right. I mean, if you don't know...

ROZ BERMAN: Our contract doesn't state anybody's salary.

ROGER GRANT: You don't have to go research it for them.

ROZ BERMAN: Yeah, our contract doesn't have a management fee. We don't pay to the employee, we pay a management fee and they paid them.

ROGER GRANT: For example, if I was a homeowner here, and I said I want to see all the documents concerning your contracts and your payments to RMI, you would have to give those to me.

MIKE DIXON: Right.

ROGER GRANT: If I said I wanted you to go out and research how much each RMI person is making per hour, you wouldn't have to do that. If you have a document that says that, I think you'd have to turn it over.

BOB BERMAN: We don't pay the individual employees.

MIKE DIXON: Right.

ROZ BERMAN: No, we don't.

MIKE DIXON: We make a payroll payment every month.

ROGER GRANT: So just your documents with RMI you need to give those upon written request.

MIKE DIXON: And actually our contractors, I think all the teachers are paid the same amount, it's \$25.00 a class. Regardless...

ROZ BERMAN: That's nothing. That's standard..

MIKE DIXON: There are others, there are trainers in our fitness area that I believe are paid based on their...they have a contract with us... but they're paid based on...

ROZ BERMAN: It's rent...they're only paying rent.

MIKE DIXON: Individual contracts with employees so that's a different situation.

ROZ BERMAN: Right, they only pay us rent.

BOB FRANK: But, personally, one more step and I'll release it, but my question is, and Roz knows how passionate I am about this, I have strong objections to our contractor refusing to disclose how they built up the reimbursable costs. I think they are obligated by law to itemize exactly what they billed us to be reimbursed on a monthly basis. If I sign a check with Roz for \$81,000 and whatever for last month's reimbursement, I think they are not allowed to not disclose to me as a board member, what it is that really built up to, and the detailed breakdown.

ROZ BERMAN: They give me some detail and I match it to the budget.

BOB FRANK: Pardon?

ROZ BERMAN: They give me some detail and I match it to the budget but it's not per person. It's a different department.

BOB FRANK: When you sign a check, in my opinion, each month – not on the budget – each month, the roll up of what that cost is for has to be disclosed, in my opinion. It has to be.

ROZ BERMAN: They give me the department code.

ROGER GRANT: That's an issue between you and your contractor. If you stated this is how I want it done, and they want to keep the job, then that's how they should do it.

BOB FRANK: It's a little bit more complicated than that, but if the majority of the board doesn't want to know that, we have a problem.

ROGER GRANT: You disagree again.

BOB FRANK: Yeah. And I consider that a fiduciary issue.

ROZ BERMAN: I disagree. We have a budget process and all the salaries and everything are part of figuring out what the budget's going to be and once the budget is reviewed by our finance committee and approved, we know what the numbers are expected to be to go through the year so then when the checks come through we sign based on what was budgeted and we get department totals. We don't get individual totals, we get department totals. That equals how much the check is for. That seems reasonable.

BOB BERMAN: I'm not on either side of the issue, but if I were a contractor, and I know that what ever the contract terms are, and we had to bid, and all of my internal salary structure is all public knowledge don't I as a contractor have some rights as to confidentiality so that my cost structure isn't available to my competition?

ROGER GRANT: Not really. That's between them and you. If you say I want all this detail, or I'm not going to hire you again, they can make the choice of providing it or not.

BOB BERMAN: Are we obligated to at least keep that confidential?

ROGER GRANT: No.

BOB BERMAN: No?

BOB FRANK: My argument, Roger, is not that. I'm on a different wavelength. My wavelength is if I'm signing a check with one other board member authorizing a payment of \$81,000, I have to know what that is really being spent for because, in my opinion, and I've had a person in charge of submitting things to get reimbursed, I'm very sensitive to the fact of how many hours did that person work, where's the build up to that cost. If I don't submit that to the customer and if the customer doesn't know that is, I see a real problem here in terms of potential fraud.

ROGER GRANT: You want more detail than other board members.

BOB FRANK: I think you're obligated to give me what it is that you think I should reimburse you for because it's variable. It's not the same every month. It's a variable cost, OK, it's not a flat rate. And I feel very strongly that they are obligated to tell me what that variable cost is.

ROZ BERMAN: That's not a real problem...

ROGER GRANT: Again, that's an employer contractor issue. We have some clients who want to see a report of their cost every two weeks. We have others who couldn't care less about it. They don't care if they don't see it for a year. Oh, those are the costs, fine. So it's really between you and your contractor.

BOB FRANK: I don't want to belabor the point, but I have had some experience with fraud. I've actually had abuse against me as a contractor and as a government person and I'm probably more sensitive to it because if you haven't been in that seat where you actually had that happen to you, maybe you don't worry about it as much, but once you've had that experience, you do worry about it.

ROGER GRANT: There's certainly no harm in asking them for more detail. The burden's on them to provide it and if it's not a burden on their community.

KAY DWYER: Does it have to be...for instance, say we said to RMI, we want to have a breakdown every pay period when we send you the check. We want to know how much goes to our manager, how much goes to our assistant manager, how much goes to our people, how much goes to our staff on an individual basis. I don't think I have a problem with that. What I do have a problem with it being broadcast to the community.

ROZ BERMAN: But not only that, what would we do with that? Am I going to go verify their hours? I don't know what their hours are.

BOB FRANK: Hold on a second. Can I answer your question?

ROZ BERMAN: Yeah.

BOB FRANK: If you're in a position where you're signing the check, and you're authorizing the expenditure of somebody else's money – it's not your money, it's someone else's money, right...

ROZ BERMAN: Uh, huh.

BOB FRANK: If it turns out later, perish the thought but it can happen, that there's fraud going on, and people are being billed and not actually worked for other costs, ok, whose accountable for the failure. Is it you or is it the manager that submitted the invoice?

ROZ BERMAN: I can't imagine you'd expect the board member to review the details of how many, 50, 60 employees each time I have to sign a check!?

BOB FRANK: I'm not suggesting that, but what I'm saying to you is this. When the finance manager or whoever authenticates the bill for \$81,000, that person or that company should authenticated that and if fraud occurs, is culpable.

ROZ BERMAN: Who should authenticate it?

BOB FRANK: That's up to the company.

ROZ BERMAN: The contractor?

BOB FRANK: The contractor.

ROZ BERMAN: They do.

BOB FRANK: Not the check that you asked me to sign.

ROZ BERMAN: After you saw that check, which was the first one I ever did...

BOB FRANK: Yeah...

ROZ BERMAN: I asked for backup, but I'm not asking for it per person. I'm asking for a department and they give me enough detail to satisfy me...

BOB FRANK: There has to be an executive signature on there that takes the responsibility for the accuracy.

ROZ BERMAN: I'll go double check that. That's fine.

BOB FRANK: That's my point.

ROZ BERMAN: But I'm not going to validate their hours.

BOB FRANK: I'm not asking that...I wouldn't and you wouldn't. I want somebody to be hung if there's a mistake on their side, okay. That's all. If they have fraud and if they're not managing the money they have an executive on their side that is, in fact, culpable, not you for signing the check. And I've had experience when that happens. If you don't have someone else signing it, then you're in fact taking the responsibility.

MIKE DIXON: Okay. If this became known that there was fraud involved in employees hours from a management company, they wouldn't be a management company very long. They have a fiduciary responsibility to their company to make sure that the hours are accurate. So, on a couple of different levels...

BOB FRANK: You're right Mike, but if you have that responsibility then you go after their insurance company, not ours.

ROGER GRANT: RMI's a good ethical management company.

BOB FRANK: We hope.

ROGER GRANT: My experience of 10 years with them has been very good.

BOB FRANK: Well, their financial work lately hasn't been all that impressive.

ROZ BERMAN: But you can't really judge, because you haven't been close enough to anything?

BOB FRANK: I've been to the finance committee.

ROGER GRANT: But there's nothing wrong with asking for more detail. Um, again, that's something your board might disagree on.

LANIE BERG: Can we turn off the (recorder)...for one minute? ...because I want to ask a question.

BOB FRANK: All right. I don't have to, but I will--as a courtesy. (Recording is stopped for a couple of minutes while LANIE BERG asks a question. The reply is recorded in the next file segment.)

-----Change from file 2 to file 3-----

ROGER GRANT: As I said earlier, once the board makes a decision, any board member has the right to say I'm opposed to that decision. But it's not a good idea to use that to create dissention in your community. As a Board you have to act as a unit. A board is a unit that runs this association. And it's a democratic process. The Board votes and the majority rules and that's the decision that goes forward. And again, you have the right to say I'm opposed to that decision, but does it do any good to create dissention in the community, and the decision's not going to change.

BOB FRANK: Well, my experience is that if a person does along with the majority vote, and they have reason to believe that it is not legal, they are culpable if they go along with it, and not say something.

ROGER GRANT: Well, you can say something. You can say I don't believe that's a legal decision – I'm opposed to it and I'd put that in the minutes.

ROZ BERMAN: At the meeting..

ROGER GRANT: But how far to you want to carry that? Do you want to start a community campaign to try to overturn the Board's decision – I don't think that's good for your community as a whole.

BOB FRANK: Unless, but if your concern is about raising the dues and it's unfair and unreasonable.

ROGER GRANT: If your concern is just to protect yourself from liability, you can do that simply by noting in the minutes that you disagree with the decision. It's important to keep harmony in your community.

BOB FRANK: As long as it's not harmful to the community. Harmony is not beneficial if it causes harm to the whole community.

ROGER GRANT: We're going back to the Trumpets thing, right?

ROZ BERMAN: Not just that, there's a reserve issue.

BOB FRANK: And it's you, and others that interviewed for our association attorney, who told us that it's very common for developers to manipulate the reserve fund process to where we don't get a fair amount. And I'm convinced we have been manipulated. I'm absolutely convinced that our reserve fund settlement was not adequate, and that's causing dissention--because I believe that.

ROGER GRANT: That may be something that's too late to do anything about. I understood that was already settled.

BOB FRANK: Well, I'm not convinced it is.

ROZ BERMAN: We have an agreement...

ROGER GRANT: But, let's get back to confidentiality. We're at the bottom on page 1. Another thing that must remain confidential, and this is probably the most important thing, is set forth numerous places in Nevada statutes, in the information related to deliberations or strategy in pending enforcement matters involving a member of the association. You do not want to disclose information about hearings, fines, allegations about any of your homeowners. That has to remain strictly confidential and Nevada law states it in numerous places in Nevada's Administrative Code and NRS 116. And that's one of the easiest things to violate. It's easy to talk about the crazy homeowner who runs around naked in his yard and we've got a hearing against him. It's easy to talk about this. You have to be real careful about that because that can get you in trouble with the division of real estate. Any information related to the Board negotiations with a third party over a contract or bid for services. That's not necessary the law in Nevada. Nevada provides full disclosure of bids, contracts, everything. So that does not remain confidential here unless they are actual employees which you don't have.

MIKE DIXON: Can contracts be negotiated in private? Can you talk to a person you're negotiating a contract with privately, and not in a public meeting?

ROGER GRANT: Well, you can't do it in executive session. Can you...there's a split of authority on that. I think that a Board, especially a Board of a community that's large, has to consider contracts and bids and discuss them perhaps in a workshop prior to the Board meeting cause there's not time to do it at a board meeting. What I would envision is you're getting these bids, you're meeting, you're looking them over, you're having some discussion, and then at the actual meeting you're making a decision on a noticed agenda as to who to hire. As far as negotiations with the contractor, that can certainly be part of that workshop in my opinion. Otherwise...what do you meet, once a month?

MIKE DIXON: Yes.

ROGER GRANT: It's going to take a long time to get a contract done. During that workshop you can review these bids and say, you know, let's see if this guy will take X dollars instead of XY dollars.

ROZ BERMAN: We have that with property and grounds funding.

MIKE DIXON: We have a lease and RMI is required by contract to use for our leases and collect that and it was up for renewal and it got renegotiated because, RMI CAM and a couple of board members sat down with the tenant and renegotiated the lease. Now it's with the attorney, and eventually it will go to the board for approval but, the actual...you know, what I want and, what I'd like to see, was not done publicly. Is that a violation, or can we have those negotiations, not with a quorum of the board, but just with a couple of board members and the responsible administrator?

ROGER GRANT: You can have those negotiations prior to a noticed board meeting. I think all of the board needs to be given an opportunity to participate.

BOB FRANK: That's the point.

ROGER GRANT: If they say, you know, we'll leave it to you, you go negotiate it, that's fine, but don't exclude board members from that process.

ROZ BERMAN: The first meeting was with the whole board.

MIKE DIXON: Yeah, the first meeting was the whole board, then we broke it down.

ROGER GRANT: You should never exclude any board member from the process but it is OK if half your board says you guys handle it. That's OK to do that in a workshop setting. It's not practical and sometimes it's not even possible to do that at a board meeting. The actual decision should be made on noticed agenda, but some negotiations, some homework, some preparation is always necessary before that board meeting. You don't just show up and say oh, we've got these bids here. Let's open them and look at them. Your board meeting's gonna last forever.

BOB BERMAN: We have a generic process for the kinds of contracts where property and grounds, and Bruno who works for RMI, develop an RFP and go out for bids. They get the bids, they evaluate them, and the committee, and that's usually done at community workshops or community meetings which are open, and they make a recommendation to the board, and then sometimes the board will accept it and, sometimes it will send it back and say, "see if you can't get this, this or that"

to better the contract. And in a couple of cases, in one case I know of, where when you redefine the scope, prices went up, which is not unusual, and in that case, I personally and another board member who'd been involved with the group, had already decided on the certain bidder because we didn't want the higher price, had telephonic discussion saying we want to redefine the scope and can you get it back down to your original bid price, and still do this, this and that. They said yes. Will we be offering any of that process?

ROGER GRANT: I think you're allowed to do that. What you don't want to do is make a decision to hire that person outside of a board meeting.

BOB BERMAN: Right.

ROZ BERMAN: We know. We know.

BOB FRANK: Roger, my point is this; the RFP should always be approved by the board. It's wrong to have the CAM send out an RFP that has not been approved by the board or a committee, and then come back in with bids and say ok, I select this one. I absolutely object to that.

ROGER GRANT: And again that's between you and your management company. Some boards don't want to deal with it, and they'll have their management company deal with it. If your board wants to deal with it, then you need to tell your management company we need to approve this before you send it out.

BOB FRANK: But would that be normal? Because otherwise, you're not going to get bids back on what you think should be bid against. If you don't approve the RFP before the management company goes out for bids, you have no idea what you're gonna get back.

ROGER GRANT: I think it's perfectly acceptable to require them to get your approval first.

ROZ BERMAN: It's acceptable but not required? We could decide that we want to do it?

ROGER GRANT: You can delegate things to your management company.

ROZ BERMAN: Yes that's what I'm getting at – you can do either way?

ROGER GRANT: And this is a pretty sophisticated board. Some boards, I don't know if I should say this, but some boards, they don't know anything.

BOB FRANK: We're obviously spending a lot of money. Most boards don't have 7 million dollars to spend, correct?

ROGER GRANT: Right. Yes, this is a sophisticated board. Some boards just say manager, you deal with this, we don't know what to do.

ROZ BERMAN: So it can be either way, whatever you want?

ROGER GRANT: But you can delegate those things to your management company. You have a legal right to do that, or you can take them upon yourselves.

BOB BERMAN: In the past, we've basically done that. On the past board...we've gone out for an RFP for a particular compressor to replace a compressor that failed, or something like that. It's a pretty simple thing. If it has to do with either contract for services that have many elements to it--in the scope of the work, deliverables, things like that--that's where I think the board has to be involved...

MIKE DIXON: Let me give you an example of what happened here recently that maybe will illustrate what happened. Last year in 2006 it was decided that Anthem Center, this building, needed to be exterior painted. It was a reserve matter. The money was in the reserves. They went out to get bids. There were a couple of problems. The bids were enormous – almost twice what people thought were reasonable. The second is that there were some repairs that needed to be done . I think negotiation were with Del Webb, or did we wind up dealing with it?

BOB BERMAN: Del Webb.

MIKE DIXON: It was Del Webb. Stucco had some problems. A decision was made to put off the painting for a year. The amount that was budgeted last year was on the order of 90 some thousand dollars a year. This year the maintenance building manager had all of the prep work done and the bids went out again. He got three bids. And the low bid this year was \$72,000. And there were two others that were higher. So the board just said, that sounds good – paint. It was within the scope of what we needed to be done. It was clear it had to be done but it didn't seem to me to be necessary for the board to look at an RFP that said paint the outside of Anthem Center using this kind of paint because that's what our standard is, you know, and this color scheme, you know, 2 coats, backrolled, sprayed on and backrolled, or whatever, and I think that's what we're talking about. There are some things I'd use an RFP for. There are some I'm not sure I would contribute anything anyway.

BOB FRANK: But as an individual board member don't I have a right to ask for it even though nobody else wants to see it?

ROGER GRANT: You have the right to ask for anything you want. Certainly. And I don't know why everyone else would even be opposed to it, if you want more detail.

BOB FRANK: I might get tired of reading the stuff and decide that it's OK and that I don't want to see it any more, but right now not seeing it at all makes me troubled if I can't see a thing.

ROGER GRANT: And you seem to think you personally want more detail on a lot of things that, I guess, the rest of the board does.

BOB BERMAN: I don't think anyone has ever refused you, have they?

BOB FRANK: No, actually they did.

BOB BERMAN: The Board refused you?

BOB FRANK: No, the CAM has refused and then Mike has not directed them to do it.

MIKE DIXON: But that was a unique situation. It was when you requested the CAM turnover, hundreds of pages of copies of documents in 2 days.

BOB FRANK: No, no, no. I'm talking about RFP information through the P&G committee and asked specifically...

MIKE DIXON: When was that?

BOB FRANK: It was at a P&G committee.

MIKE DIXON: What was the other thing?

BOB FRANK: It had to do with the lighting contract and it had to do with the painting contracts. No need to beat it up, I just ...the questions is...there should be no question about it being allowed...

ROGER GRANT: If you ask me the question, and the question is Bob wants more detail from this company that's bidding, or he wants more detail from the accountant, I would say it places no burden on the association – give it to him – demand it. If the contractor wants the job they should give you as much information as you want. If you want more information from RMI, they're going to give it to you because they want to keep this account. So as long as it doesn't place a burden on the rest of the board, or your association, my opinion is, why not give it to him.

LANIE BERG: Does that give all of us the right to go to any contractor and say, we want more information or should that be done through the board?

ROGER GRANT: It should be done through the board. You should be acting as one unit. But, you know, I think having a guy on your board who wants a lot of information about everything, is okay. If one of my partners said, I want more information on this bid, I'd say, go for it. Spend your whole weekend looking over it, and let me know what you find out. So, there's no harm there in somebody wanting more information so why not just give it to him.

MIKE DIXON: Yeah, that's fine.

ROGER GRANT: But you do have to...you should request it as one unit...you should act as a unit, the board of directors. Don't go off on your own or be doing things on your own. You have to act as one and give a...work in harmony. I know that's hard to do, but in this particular situation I would say, Bob, go get as much information as you want, analyze it, if you find anything wrong tell us.

Other things that have to be confidential: Any information that's discussed in executive session is supposed to remain confidential. Executive sessions are very limited in Nevada. They're limited to discussion of your manager, your manager contract, discussion of homeowners and alleged violations, and discussion with your attorney regarding privileged matters. Those are really the only 3 things you should be discussing in executive session, so all of that should remain confidential, and I think we already discussed most of those things. Now the manager contract that, perhaps, is something that you would have the right to discuss publicly. That can be done in executive session. Again, if a homeowner wants the manager contract, you have to give it to him.

ROZ BERMAN: I think we actually have it on our website.

MIKE DIXON: Yes...it's on the website...

ROZ BERMAN: We haven't kept up...

MIKE DIXON: The management company was actually chosen by a group of 3 or 4 residents from the board. They interviewed a number of different companies and based on the...

ROZ BERMAN: A selection committee and a presentation was made to the board at a public meeting...

BOB BERMAN: The board made the decision--the recommendation came from the residents.

ROGER GRANT: And that's fine.

BOB FRANK: The problem is, and I'm sure that Lanie, or Kay or Bob will bring it up because it is a contentious issue, is that there's a tendency in our executive sessions just for human reasons, to lapse into conversations that have nothing to do with the agenda.

ROGER GRANT: It happens all the time. Should you be doing that? No! You certainly shouldn't be making decisions in the executive session regarding...

ROZ BERMAN: Usually discussions...

LANIE BERG: Usually discussions...

ROGER GRANT: Technically...technically, those discussions should be held in your general open meeting. But everybody does it. It's hard not to do it.

BOB FRANK: And where my fellow board members get mad at me is when I..when we discuss something that I feel passionately opposed to, and say to them, and probably I shouldn't. I'm trying to learn how to be less emotionally and less passionately when I object. It's not easy sometimes, on both sides. But when there's talk about doing something that I'm really upset about, it's difficult for me to say, well, I'm just going to ignore that and keep that confidential. Whether it's protected by law or not is difficult for me to say well I just have to go along with that and I suppose in a different environment it would be easier if we were all close friends and we have a common idea on how things should be done, but unfortunately I didn't get here by having a common idea. I got here from having quite different opinions about how things should be done. And it's hard to overcome that sometimes, OK? But we have to do it professionally. Sometimes both Bob Berman and I have had cases where we probably allowed our emotions to go beyond where they should have been. OK? But we've got to respectfully disagree, I think, and that's the main issue.

ROGER GRANT: Well, it sounds like you all have to give and take a little. You certainly should treat each other with respect. I mean, you're all smart, accomplished people, so you might not always be right, you might not always be wrong, but show respect for the other peoples decision or their opinion, and especially when you're in front of the homeowners, you need to treat each other

with honor and respect, and present a good impression. This isn't that much different than parenting. I think you're all parents. You don't want to argue in front of the kids. (Chuckles) And it's not that different when you're running an association.

BOB FRANK: Actually, I've discovered since I've been on the board I'm wrong more often than I used to be. (Chuckles)

ROGER GRANT: You want to present a good front to homeowners so they have confidence in your board. And you're going to disagree on things. But do it professionally. Remember there's give and take involved. You're not always right, he's not always right.

BOB FRANK: Even the way we express ourselves is not always right. The point may be right, but the way you say it might not be right.

ROGER GRANT: And obviously you're very passionate people. That's why you're in this position. I've noticed that in master associations...I know that this really isn't a master association...I get the most dissention and fighting among board members – in big master associations. I think the reason is the most powerful people rise to the top, and get on the board. In small associations, in some of them it's hard to even get people on the board and they're like, ok whatever. So in the big associations this is a problem. I've been at some where there were fist fights at board meetings.

MIKE DIXON: Cool! (Chuckles)

LANIE BERG: We'd heard about one where people were shot.

ROGER GRANT: There was one in Arizona where people where people were shot. And in that one, the homeowner felt that he was treated really badly, and I think there is some evidence that he was. And he came back with an assault rifle and started shooting people. But you all just have to give and take a little. It's not easy and realize that as passionate as you may feel about something, the other guy may feel just as passionate about their position. It doesn't mean that you're wrong. It doesn't mean that they're wrong. But you have to try to reach a happy medium. Of course any unified front and try to keep some harmony in this community, and everybody should try to do what's best for the association as a whole, and I think once the board makes a decision, you need to go along with it. You can express that...you certainly can say that you disagree with it. You can tell people, I disagree with that. But once the vote's done, that's the way it's going to be, and then you have to adapt and improvise and say, how can we make the best out of this decision, now that its been made.

ROZ BERMAN: And I would imagine the one thing you should not be doing is claiming to the residents that your fellow board members have done something illegal, inappropriate, things like that.

ROGER GRANT: Well, that's not a good thing to promote harmony in your community.

ROZ BERMAN: Exactly. Exactly...

ROGER GRANT: Doing something illegal...I mean...

ROZ BERMAN: Without proof...

ROGER GRANT: Violation of the statute is illegal. But it's not something you just want to take lightly and start saying. And don't argue in front of the kids. Remember that.

ROZ BERMAN: Discussion doesn't necessarily mean argument.

ROGER GRANT: Discussion is fine but discussion often gets heated, and people get mean and disrespectful, and you don't want to do that. You want to say, Bob, I respect your opinion, but I disagree. And keep it professional as you can. And you guys might never agree on anything. You probably won't. But try to respect the other person's opinion. They might be right. There's a lot of experience in this room. In retirement communities you get high profile board members. I have condo communities, hundred thousand dollar condos where the board members don't know anything about anything. My retirement communities, I often have former CEOs, CFOs on the board.

ROZ BERMAN: We've even got former presidents of boards.

ROGER GRANT: Right, and they're headstrong. They're used to everybody following what they say in being the decision makers. And then you get 5 of those people in a room, your heads are going to clash.

MIKE DIXON: We call them up here, FIPS, "Formerly Important Peoples". (Chuckles)

ROZ BERMAN: We have a lot of that...

ROGER GRANT: And it happens at these big associations, but I think you're all an asset to your community, and all of your opinions are an asset to your community. You all need to respect each other's opinions, and try to do what's best for the association as a whole. I gave this speech to a master association a few years ago. As soon as I left they got into a big brawl.

(Laughter)

ROGER GRANT: I'm thinking I may not be too good at this. (Laughter)

ROGER GRANT: I'm telling you, you can't fight in front of the homeowners, and as soon as I left, they got into a fistfight and they broke each other's noses... (Laughter)

BOB FRANK: I don't think we have that problem here.

ROGER GRANT: Well, that's good.

BOB BERMAN: It's a given that we're at least worth what we're paid. (Laughter)

ROGER GRANT: You're not overpaid. But any time you disagree, talk it out, listen to what the other guy has to say, and keep in mind you might be wrong, they might be right.

LANIE BERG: What I like on this confidentiality comes down to my original question to you. It is at the bottom of the second page where it says you have published very general guides, and whenever any board member has any doubt about the confidentiality on a particular matter, the

best course of action for that member is to seek the guidance of the president or the full board of directors, before disclosing that information to a third party. And that, I think, is essential.

ROGER GRANT: Disclosure of information should definitely be discussed amongst the board--the best way to disclose it. For example, if one board member says I insist that I disclose, that I disagree with this, maybe the board can agree on the way that it can be disclosed so that the manner in which it's disclosed. But certainly you should be discussing that. You don't want to go off as a rogue board member, and start disseminating information on your own. That's never good for your community. If someone insists that their objection be aired to the community then talks about the board. Perhaps you can agree on a manner that it's disseminated. That would certainly be the best way to approach it. You want to keep harmony in your community. It's very, very important.

BOB FRANK: I have a really tough question for you.

ROGER GRANT: There have been a lot of tough questions. (Laughter)

BOB FRANK: Yeah, well, this one's really tough. One of my greatest disagreements with some of my board members, is with the selection of the association attorney. That's a very contentious issue. How do I deal with that?

ROGER GRANT: I think that they should all select me. (Laughter) Now, I know your association attorney, and I think he's a good association attorney, overall. Again, there's a situation where it's going to come down to a majority decision.

BOB FRANK: Well, one of my frustrations is having dealt with a lot of attorneys over the years, particularly in large organizations. I find very few attorneys have all the answers. And, you can be hostage to only one opinion. It's like a doctor's opinion, I've found over my lifetime, occasionally you have to have a second opinion--particularly on attorneys and doctors--and I feel like we shouldn't be stuck with just one association Attorney.

KAY DWYER: Stuck?

BOB FRANK: Stuck!

ROZ BERMAN: And, if we wanted a second opinion, if we discussed getting a second opinion, I see no reason why we couldn't get a second opinion...on certain issues.

MIKE DIXON: We're doing that. We have...

ROZ BERMAN: Joe Farr.

MIKE DIXON: Joe Farr who's primary counsel for the Trumpets litigation.

ROZ BERMAN: Right.

MIKE DIXON: We also have John Leach and Shawn Anderson of his firm who we've consulted at times. And we also have (garbled) on retainer, and in case there's something that we need a second opinion on we at least have that option so, but, we do that.

ROGER GRANT: Those are some pretty good firms.

ROZ BERMAN: Yeah.

MIKE DIXON: We try. We do.

ROX BERMAN: We're not restricted from getting a second opinion on anything, if we discuss it, and we come to a conclusion that we'd like a second opinion.

ROGER GRANT: Was there a situation where you wanted a second opinion and the rest of the board said, no, we don't need it?

BOB FRANK: Yes.

ROGER GRANT: Was it fully discussed at a board meeting.

BOB FRANK: I was outvoted. I mean, I understand that can happen but it's frustrating I think.

ROZ BERMAN: I don't remember that.

BOB BERMAN: Nobody here knows what you're talking about.

BOB FRANK: If you want to discuss it, it might be confidential. I mean, it's not...

ROGER GRANT: You can discuss that after I leave, but there again, that's something you have to bring to the table, everybody should listen to why you want the second opinion, and show respect to what other people want, or what their ideas are. And you could be right. All of us have been wrong at one time or another.

LANIE BERG: At least once.

ROGER GRANT: At least once, yeah.

MIKE DIXON: I like to say that the only people who have never been in judgment error are people who've never been in judgment.

ROGER GRANT: That's true. And you're making a lot of them for this community. They might not all be correct but the key is, you have to try to do what's best for your community. I really want you to try, everybody to try to bring harmony to this community. That's so important.

KAY DWYER: We don't have it right now.

ROGER GRANT: And as a retirement community, you have a lot more homeowner involvement than most communities have. You go to board meetings at a lot of places, 5 people show up. Here you probably have hundreds.

LANIE BERG: Uh, oh. We wish we would.

ROGER GRANT: You don't have hundreds?

ROZ BERMAN: What do we have?

KAY DWYER: Maybe a hundred.

LANIE BERG: Maybe a hundred.

ROZ BERMAN: We've been getting more than that lately!

BOB FRANK: We have 2 to 3 hundred most every time.

MIKE DIXON: Yeah, probably...the hall only holds 250 I think.

BOB FRANK: 3 I think... 2 or 3?

BOB BERMAN: Seats 300, 350.

ROGER GRANT: And remember, rumors and things can really fly in these HOAs. You don't want to let that happen. You want to control that as much as possible.

BOB FRANK: I have another tough question for you before you go. Are you about to wrap up?

ROGER GRANT: I think so.

BOB FRANK: Here's my other tough question. I have an ongoing debate with our community manager on whether she has ...or the organization has...the right to put their confidential clause on the bottom of every one of their messages regardless of whether it should be treated as confidential, just in case it might be confidential. I used to be a consultant in this business for almost 10 years, and I am quite familiar with this kind of procedure, and I object to that being on there if it doesn't belong on there. If something is confidential it should have a statement slipped on it, not rubber stamped on everything. I really object to that. If it is confidential, then the person who creates the message has an obligation to declare that this is a confidential matter, and I don't...notices of meetings, routine administrative stuff, I just object. Because what happens is, what that does is to dilute the real confidential material so that you don't really know for sure whether it's really confidential. And I think that's very important to declare it--carefully.

ROGER GRANT: And I see that on every fax they send out – this fax is confidential. Well, the only things that should really be confidential are information regarding other unit owners and information regarding your dealings with your attorneys.

BOB FRANK: She knows that. ...they know that. My point is it's kind of inconvenient to think about that and I'm not very sympathetic to that inconvenience. I think,,,

ROGER GRANT: They work for you so if you tell them, don't put it on there, they're probably going to stop.

ROZ BERMAN: ... the board.

ROGER GRANT: Right, they work for your association.

BOB FRANK: But her response to me was, I've gotten advice from our attorney, that I can do this, and that I should do this, and that needs to be resolved, I guess.

MIKE DIXON: My take on that is...this is a difficult question. My take on that is that it should not be a board member to decide if it's confidential, it should be for the board to decide.

ROGER GRANT: I agree.

MIKE DIXON: ...whether it's confidential. So if the manager wants to correspond confidentially with the board and let the board make that decision. That's sort of all right. I don't have a problem with that.

BOB FRANK: I won't pursue it...I don't want to beat a dead horse...but one of my complaints is we do get other messages that have to do with hearing matters that are not marked confidential--which is wrong. It should have been declared confidential, so it's filed separately, handled separately, and alerted separately. In my opinion if something is truly confidential in terms of hearing, in terms of litigation matter, that should be in the subject line, and it should be a notification at the beginning of the message, not some boilerplate at the bottom that you might forget. Maybe I'm a little zealous because I had to do this for so many years in the military, but I'm very adamant that if it really is to be protected, the person who sends that message should, in fact, make a choice and make sure that there's no chance that a person who receives the message understands that it is to be confidential.

BOB BERMAN: Let me follow up on that.

BOB FRANK: Ok.

BOB BERMAN: If a board member e-mails another board member over an issue and gives his opinion and states in that e-mail that this is a confidential correspondence not to be exposed to others, does the recipient have an obligation to hold that confidentiality?

ROGER GRANT: Legally, no.

LANIE BERG: Morally?

ROGER GRANT: Depends on your morals. (Chuckles) Attorneys have a duty of confidentiality to their clients. Legally you don't have any duty of confidentiality in a situation like that. It's like saying, don't tell anybody, but let me tell you this.

BOB BERMAN: Ok, if one knows of anything that's said or transmitted in written form that's going to be distributed to a portion of the community, am I not proper in saying I can't discuss it?

ROGER GRANT: You can choose not to discuss it.

BOB BERMAN: I don't have to. If I considered my discussion to be confidential, and the recipient has no obligation and will distribute it to a segment of the community then...

ROGER GRANT: Then be careful what you say.

BOB FRANK: My feeling is that even by definition it's not confidential. Two people can agree if they want to protect something as confidential, but there's no guarantee.

ROGER GRANT: In that situation it's not confidential. If a client sent me an e-mail, that would be confidential because as an attorney, I have a duty of confidentiality with my client. But I guess in that situation, be careful what you say in e-mail.

MIKE DIXON: Let me ask you this. This is an interesting discussion we had. Let's say that the board is trying to decide whether to get a legal opinion on a particular aspect. Should the discussion of whether to seek a legal opinion be confidential because it could lead into, or has led into a confidential transaction? How does that work? I mean, if you're trying to decide whether to spend money on a lawyer because you have a problem that needs a solution, should that be confidential?

ROGER GRANT: I don't think under NRS 116 that's confidential because...since you haven't yet hired an attorney, it doesn't fall under the realm of attorney/client privilege.

MIKE DIXON: Yeah...well...each transaction with an attorney is a separate hiring of that attorney, is that the way it's...if you're going to consult with your attorney about a matter involving the board?

ROGER GRANT: That's privileged.

MIKE DIXON: But you haven't decided whether you want to spend the money yet. You're discussing whether or not it's worth spending the money to, or, deciding whether it's an appropriate instance.

ROGER GRANT: It's probably not privileged.

MIKE DIXON: Even if you wind up going to the attorney and getting the bid?

ROGER GRANT: Well, it's probably not privileged until the attorney gets involved, so you have to be careful what you say prior to the attorney's involvement. You don't want to say, we know we're negligent, we know it's our fault. That would be discoverable information in subsequent litigation. If the attorney's sitting there when you say that, it's absolutely privileged. So you really have to be careful what you say until you get the attorney involved.

BOB FRANK: That reminds me also of a conversation between me and Bob Berman and Kay Dwyer, that Bob Berman and I had last year with the attorney, about the Trumpets agreement. And I was quite upset because the board, I don't know whether it was the President, the board or the attorney or all of the above, had decided that the negotiations were confidential. But they'd also

decided, I was told by Kay and also Bob, that everything to do with discussions about the contractor in any respect was confidential, and I was told that I couldn't even have a meeting to discuss the lease agreement itself, and that's probably why I'm here today because I was so appalled by that decision, because I saw myself being harmed by that kind of behavior, and I objected to that being confidential, to even talk about lease enforcement, and not be able to separate that from negotiating changes to the contract. And I still feel that that was a mistake. Whether it was on purpose or an accident, I don't know, you know, and right now I'm not really involved in that, but that was really a problem for me because I didn't see how lease enforcement was a confidential matter.

KAY DWYER: You're not stating the facts Bob.

BOB FRANK: That's the way I remember it.

KAY DWYER: What the argument was that what you were doing was operating outside of the scope of the charter that you were granted, and you and I sat down and wrote the by-laws for that charter before you even formed the club, and when you decided you were going to do this, we asked you not to do it because it was outside the purview of what you had agreed to in the chartering of that club. And the sanction that you've talked about was not a sanction on you, it was a removal of the charter because you refused, and you violated the charter, not once but several times, and that was what the hearing was about. It was not about you. It was not a sanction against you. All we asked you to do was to fulfill the agreement that you made on the charter. And we never did pull your charter. We gave you a month time to get in line with the charter, and said would you agree to do this. As far as I know the club is still in operation, you did not lose your charter, you lost nothing. And all we did was ask you, because we were in the middle of negotiations on the Trumpets lease, not to discuss some of the things that could be used in discovery. That's all. And you refused to do it.

MIKE DIXON: Let me, let me

ROGER GRANT: (garbled)

MIKE DIXON: This was the situation last year. I looked at the lease. It was one of the reasons I decided to run for the board. I used to run a restaurant and I was interested. Here was a situation where the lessee, S & D, was well behind in their rent, and it could very easily, at any time, have gone into an unlawful detainer action. So you have pending litigation at that time, does it not, and doesn't the law say that actual or pending litigation is confidential. Isn't that the way NRS 116 reads?

ROGER GRANT: It's going to be confidential only when your attorney is present--your attorney's involved. That's the attorney-client privilege, attorney work product. If you were all just sitting around talking about it, it's not confidential.

ROZ BERMAN: But if the attorney was sitting with you, then it is?

BOB BERMAN: Our attorney had been though it dozens and dozens of meetings in negotiations for 3 years and the attorneys were involved, sometimes together, both parties had decided at some point that it's better not to have the attorneys there, just man to man, or something else, that they were there, they weren't there, sometimes we were, sometimes we weren't and it was

an evolving process. We were trying to avoid the threatened lawsuit that we're now defending against.

ROGER GRANT: If I was Trumpet's attorney, I would have the right to question you about any discussions you had where your attorney wasn't present. Say the board met and talked about this. What did you say? And you'd have to tell him. But if you said, our attorney was there--that closes the door. They can't get any of that information.

BOB FRANK: The argument was, when you are discussing lease enforcement on one hand, and that's not confidential, lease enforcement is not confidential – I am passionate about that – you can discuss the lease...you owe me so much money, I sent you an invoice you haven't paid, I put you in default, it's not confidential. OK?

ROGER GRANT: I don't think any of it is confidential unless your attorney's present.

BOB FRANK: That's right. Ok, well, I'll go with that. Now let's go to the other side.

ROZ BERMAN: You are definitely consistent.

BOB FRANK: On the other side, on the other side, your attorney's present and your talking about, I want to change the terms of the lease to try to avoid this threatened lawsuit. So your attorney says to you, is there a viable threat against you, or why would you want to change the lease terms if you're threatened with a lawsuit, OK, that's another conversation. But meanwhile, on the other hand, you've got lease enforcement duties to your fiduciary responsibility to your association because you're losing anywhere from 10 and 15 thousand dollars a month in terms of rent and operating costs and what have you, and you're allowing that to accumulate.

KAY DWYER: The issue wasn't the lease, the issue was that this was a business development club and in their charter the purpose of the club was to promote employment among the retired people in the community. Basically that was all their purpose said, so when they came to us and said, this is a volatile issue, and you can tell me this is not true if you want to, but I was there and I know. You said we're going to do this in spite of the fact that we discussed some of the things that could be a problem in the litigation if it were to come about, and we asked you not to do it, and you said I need to get membership for my club, I'm going to do this as a marketing strategy. And that's what you did and you violated the charter, and that's what we got you for, not because of what you did on the lease.

BOB FRANK: That's why this is still a burning issue...

ROGER GRANT: We're going off on a tangent...

KAY DWYER: I know, I know...

BOB FRANK: But it won't go away. The problem is that it won't go away.

BOB BERMAN: Let me go back to the legal part... In fact the board met with 2 separate attorneys, actually 3, but two that we hired to simply review the lease agreement and then we had meetings with those 2 separate attorneys on separate occasions and went into the details of the

threatened lawsuit, and all of the ins and outs, and possible pros and cons, and so forth, and their delinquency, who should be plaintiff, who should be defendant, who goes first, who goes second, what's the best strategy, why do we want to continue negotiations when in fact we can give you unlawful detainer, etc., etc. Then is it wrong to say that now, if we're going to...if somebody wants to have an open meeting with all of the residents on the lease to discuss all of the issues of the lease, and all of the things that we have discussed with these law firms, where does confidentiality fall into that cauldron?

ROGER GRANT: Look, I think any discussions the board had regarding the lease and those issues were confidential. You weren't on the board at the time, right?

BOB FRANK: No.

ROGER GRANT: I mean, does the homeowner have the right to say, hey, I want to have a meeting and talk about this lease, yeah, they do. Things you discussed with your attorney, as I'm sure your attorney advised you, you weren't to talk about.

BOB BERMAN: What I'm getting at, the meeting with people who don't have the information and we're being criticized because we're not giving out the information because we've been advised with threats of the lawsuit and everything else. This is confidential information; you're not going to divulge that information. So now, all it does is peak the problem of the people, why don't we know this, and why haven't they done this, and our advice was that we shouldn't do that.

MIKE DIXON: Let me try to simplify that, because I think I can. The situation is, we had a conference call with our attorney. Ok? And we discussed things that we might do involving the litigation. At the end of that conference call, the conference call ended, and the board's still in executive session, we took some votes on which actions to take. Were the votes in executive session improper or anything? Are they disclosable in discovery, or is that the kind of...and I think that's what Bob is getting at. Because there were discussions in executive session on what actions to take based on discussion with attorneys, but we didn't have to have the attorneys present at all of the time.

ROZ BERMAN: I don't think that's what he's getting at. What we're talking about is resident to resident with no board involved. Resident discussion...

ROGER GRANT: That executive session should be confidential.

ROZ BERMAN: Right. Ok.

ROGER GRANT: Do residents have the right to say, I want to have this meeting and talk about this lawsuit, sure they do. What our attorney usually does, and we're involved in a hundred association lawsuits right now, we go and talk to the homeowners. We bring an attorney down there and say, here's what's going on. I went to one last month where people were saying, oh this is horrible, the board shouldn't be doing this. I had probably 70 people there. And I said, here's what's happening, here's why the board decided to do this, here's why we're employing this strategy, and 99% of the people left there satisfied that the board was doing the right thing.

BOB FRANK: It was the right thing to do.

ROGER GRANT: And, I think...I'm not going to tell them everything that's going on, we can't reveal all of our strategies, but I gave them information to stop the misinformation, and the developer had a guy there. So I couldn't tell everything. But the developer's person was sitting there, probably with a recording in his pocket, and that way I was able to inform the people, here's what's going on. I think that's a good thing to have your attorney come in and give people an update now and then. We do that all the time, because the rumors go rampant. So maybe it would be a good idea to bring this attorney in and say, here's why we did it this way.

MIKE DIXON: Probably yes.

BOB FRANK: In the case of last year, Bob, hindsight's always beautiful and I'm not criticizing you for not having this knowledge at that time, but hindsight says that if the board had brought the attorney out and simply said, we're negotiating to avoid a potential lawsuit because these are the claims that we've been told can be levied against us, there's nothing secret about the claims the contractor was claiming to have against us. And the question is, our adjustment is, there may be some validity so we're trying to avoid that. I think that's perfectly legitimate to talk about that.

MIKE DIXON: Depends on what claims are alleged.

BOB FRANK: They were different, right. But most of us agree that most of the claims have always been bogus but that's a different issue, right.

ROGER GRANT: I think it's a good idea to have your attorney show up every now and then and give the homeowners an update on legal action, and we do that all the time. If I heard there's a meeting of 50 homeowners that want to talk about this, I say I'm going.

BOB FRANK: Well, we also had 3 board members attend also.

ROGER GRANT: But put that burden on your attorney. You go in and quell the resistance and tell people what's going on.

KAY DWYER: I hate to belabor the point, but the issue was not the lease!

ROZ BERMAN: What we have here is 2 different views.

ROGER GRANT: One thing we all need to do – what you all need to do, I don't need to do it – but, you need to forget about what went on in the past, live for the future, and start working together to benefit this community and realize that you're not always right, you're not always wrong, and respect each other's opinions, and try to present harmony with this board, and harmony in this community. You're all smart people. You might be right, she might be right.

LANIE BERG: I might be right.

ROGER GRANT: Yeah.

MIKE DIXON: Oh, come on Lanie! (laughter)

BOB FRANK: Unlikely... (laughter)

ROGER GRANT: With 7 people on the board, the odds are some of you are right every time.

ROZ BERMAN: (laughing) Right...

MIKE DIXON: Thank you. Thank you, Roger.

ROZ BERMAN: Thank you very much.

ROGER GRANT: I hope I helped a little.

MIKE DIXON: That's a good way to end the discussion.

BOB FRANK: Thanks for coming.

ROGER GRANT: Don't get in a fistfight when I leave.

BOB FRANK: No chance!

BOB BERMAN: I haven't done that for four or five years... (laughter)

(End of recording.)

*(Professional transcription services for this recording were provided
by Mrs. Richard Arendt, a Sun City Anthem homeowner.)*