

1 *Attorney Info*

2

3

4

5

6

7

8

9

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

10

11

CAPTION

12

13

14

15

16

NRED CONTROL # XX-XX

17

18

19

20

21

22

23

24

CLAIMANT CORINNE A. TAMPAS' ARBITRATION BRIEF

25

26

27

28

Claimant, CORINNE A. TAMPAS, (hereinafter "TAMPAS"), In Proper Person, hereby submits her brief in support of her claim that the adoption of the "pet rule" by the Board of Directors of Respondent VILLA PACIFICA HOMEOWNERS' ASSOCIATION (hereinafter "VILLA PACIFICA") should be stricken as it is in contravention of the recorded Covenants, Conditions and

1 Restrictions (hereinafter "CC&Rs) to the project.

2 Additionally, TAMPAS reserves her right to assert claims against VILLA PACIFICA
3 concerning the proper licensing of contractors and associated insurance requirements until further
4 discovery is received from VILLA PACIFICA.¹

5 **I.**

6 **STATEMENT OF RELEVANT FACTS**

7 Prior to purchasing her townhouse in October 1995, TAMPAS requested and received a copy
8 of the recorded CC&Rs to the VILLA PACIFICA project. Of primary concern to her were any
9 restrictions regarding dogs as TAMPAS is the sole registered owner of a show quality standard
10 poodle.

11 A reading of the CC&Rs satisfied TAMPAS that dogs were allowed to reside within the
12 individual townhouses, that dogs were allowed to be walked on all common areas of the project, and
13 that there were no restrictions as to the size of the dog or the number of dogs a member of the
14 homeowners' association could own.

15 Subsequently, TAMPAS purchased her townhouse and as a part of escrow she was required
16 to sign that she read, understood and agreed to the CC&Rs. Presumably, all owners of the
17 townhouses in the VILLA PACIFICA community were required to do the same.

18 On or about April 1996, the board of directors of VILLA PACIFICA held a meeting. At that
19 meeting the board of directors imposed a new rule that dogs were no longer allowed on any of the
20 common area, but would be allowed the use of the private patio area of the dog owner's townhouse.
21 Many members of the homeowners' association, including TAMPAS, were opposed to this new rule
22 stating that dogs needed to be exercised. As a result, the VILLA PACIFICA community became

23
24 ¹ As this arbitration is well aware, VILLA PACIFICA has failed to answer two requests for discovery from
25 TAMPAS and ignored two orders from the arbitrator to provide the same.

26 One June 23, 1997, TAMPAS requested sanctions from VILLA PACIFICA due to its failure to provide
27 discovery, the last compliance date as set by the arbitrator's order being more than fifty-five days late.

28 On the morning of July 3, 1997, the due date for this arbitration brief and the date the arbitrator set for yet
another hearing, VILLA PACIFICA provided TAMPAS with more than 200 pages of discovery, none of which
concerned requests for contractors' licensures or insurance.

1 divided into two different camps; one which believed that homeowner-members were allowed to
2 walk their dogs within the common areas as provided by the CC&Rs, and one which verbally, and
3 sometimes physically, threatened owners walking their dogs within the common area.

4 Within a month, the board of directors changed the rule so that homeowner-members could
5 walk their dogs down the middle of the street in the common area, but continued the restriction of
6 dogs from the landscaped common areas and sidewalks. None of the dog owners found this
7 acceptable because the asphalt in Las Vegas gets too hot for either humans or dogs to walk on for
8 any length of time.

9 In the months that followed, several homeowner-members with dogs suspected that VILLA
10 PACIFICA engaged in systematic retaliation:

11 Those that were the most vocal about these new pet rules were sent notices of fines on other
12 matters ranging from a request to remove a clear colored etched glass window as not having been
13 approved by the architectural review committee, even though it had been installed prior to the
14 builder-developer's transfer of the owners' association to the owners; and, "cease and desist" letters
15 were sent to three homeowner-members for running businesses from their townhouses, presumably
16 because they took business telephone calls at home. See, Notices of Fines attached hereto and
17 incorporated by reference as Exhibit "1". [Omitted.] One homeowner-member with a dog had vines
18 growing on her private patio which were chopped down to stubs as they "encroached" on the top of
19 her back fence which the board of directors presumed to be part of the common area. (These vines
20 had been planted by the builder-developer.) Another homeowner-member with a dog came home to
21 find that the specimen rosebush she had planted by her front door had been removed by the VILLA
22 PACIFICA gardeners at the direction of the board of directors. With one exception, these
23 homeowner-members were single women; the one exception being an elderly couple, the husband
24 being too ill to participate in the VILLA PACIFICA community.

25 In September 1996, the board of directors promulgated new rules designating "pet relief
26 areas" with the intent of creating fenced dog runs which would eliminate some of the landscaped
27 area in back of approximately twenty town homes. The new pet rules were deemed necessary by the
28 Board of Directors since dog owners "were not cleaning up urine" from the landscaped areas. Shortly

1 thereafter this claim was filed and the pet rules were stayed by a District Court judge pending the
2 outcome of alternative dispute resolution.

3 4 II.

5 LAW AND ARGUMENT

6 A. THE BOARD OF DIRECTORS MAY NOT ADOPT RULES AND REGULATIONS 7 WHICH CONFLICT WITH THE COVENANTS, CONDITIONS AND 8 RESTRICTIONS.

9 There is no dispute that the board of directors may adopt rules which regulate the use of the
10 common areas of the project. However, these rules cannot conflict with the CC&Rs as plainly set
11 out in the CC&Rs.

12 Article V, Section 5.1.5 of the CC&Rs provides that

13 [t]he Board shall have the power to adopt, amend and repeal the Rules and Regulations
14 regulating the use of the Common area for such other purposes as are expressly allowed by
15 the Declaration. *However, the Rules and Regulations shall not be inconsistent with or*
materially alter any provisions of this Declaration, the Articles, or Bylaws. In case of any
conflict between any provisions of this Declaration, the Articles, or Bylaws, the conflicting
provision of the Rules and Regulations shall be superseded by the provisions of this
Declaration, the Articles, or Bylaws.

16 (Emphasis added.)

17 Likewise, while the Nevada Revised Statutes do not address the priority of rules in relation
18 to the CC&Rs, they do address the priority of the bylaws to the CC&Rs stating that “[i]n the event
19 of a conflict between the provisions of the declaration and the bylaws, the declaration prevails”.
20 N.R.S. 116.2103 subd. 3. Hence, it is apparent that the state legislature did give some thought to the
21 hierarchy of a homeowners’ association’s governing documents giving the CC&Rs the greater
22 importance. It seems inconceivable that rules, which are merely adopted by a board of directors and
23 are not agreed upon by the homeowner-members as part of the purchasing process, or even by vote
24 of the homeowner-members, would hold greater weight under a statutory scheme than recorded
25 CC&Rs followed by bylaws.

26 Moreover, while counsel for VILLA PACIFICA has been quick to cite case law throughout
27 this dispute, there is not one published case which stands for the proposition that a board of directors
28 may ignore recorded CC&Rs in favor of its own discretionary rules. Specifically, counsel in

1 correspondence cites, *ad nauseum*, the California case, *Nahrstedt v. Lakeside Village Condominium*
2 *Association, Inc.*, 33 Cal. Rptr.2d 63, 878 P.2d 1275 (1994). This case is distinguishable in that the
3 CC&Rs stated that pets were not allowed in the common interest community, either in the individual
4 condominiums or the common areas. Simply put, when that board of directors in *Nahrstedt* enacted
5 its rules concerning pets it was *enforcing* the CC&Rs, not contravening them.

6
7 **1. The Covenants, Conditions and Restrictions permit pets on the landscaped**
8 **common area of the Villa Pacifica community.**

9 Article III, Section 3.12 of the CC&Rs provides that

10 [n]o animal shall be permitted outside of the Lot of the Owner of such animal unless
11 such animal is under the control of a responsible person by means of a leash or other
12 restraint and such person shall immediately clean up and remove any feces or other
13 matters left by such animal.

14 This section has been interpreted by responsible pet owners in the VILLA PACIFICA community
15 as keeping dogs on a leash while in the common areas and immediately picking up any feces or
16 vomit left by the owner's dog.

17 This is in contrast to the most recent rules adopted by the VILLA PACIFICA board of
18 directors:

- 19 1. Pets will be restricted from all areas surrounding the pool.
- 20 2. Pets will be allowed to exercise but NOT relieve themselves on all common
21 areas except those stated above [sic].
- 22 3. Pets will be allowed to exercise AND relieve themselves on streets,
23 sidewalks and designated "pet relief" areas. "Pet relief" areas will be
24 identified by a four inch yellow stripe on the curb.
- 25 4. Owners' pets will also be allowed to exercise AND relieve themselves on the
26 common area directly behind that pet owner's unit only.
- 27 5. Owners are required to immediately clean up and remove any feces left by
28 such animal.
6. Penalties for infractions will be as follows:
 - a) 1st offense \$50.00
 - b) 2nd offense \$75.00
 - c) 3rd offense \$100.00
 - d) Subsequent offenses \$100.00 each
 - e) Unpaid fines can result in a lien on your property.

1 Effective October 1, 1996.

2 See, “Pet Rules” attached hereto and incorporated by reference as Exhibit “2”. [Omitted.] It should
3 be noted that as part of the board of directors enforcement, homeowner-members and their dogs have
4 been followed about the VILLA PACIFICA community with video cameras. See, Affidavit of Jackie
5 Beer attached hereto and incorporated by reference as Exhibit “3”. [Omitted.]

6 Aside from the silliness of expecting a dog to recognize a four inch yellow stripe on a curb
7 as a “pet relief area”, these new rules are not workable since many townhouses in the VILLA
8 PACIFICA community do not have any appreciable landscaped area in back of the property.
9 Notably, there is an entire row of townhouses on Tropical Peach Drive which do not have more than
10 three feet of landscaped area between the property line and the garden wall. See, plat plan of the
11 VILLA PACIFICA community as provided by the Clark County Building Department attached
12 hereto and incorporated by reference as Exhibit “4”. [Omitted.] As a result, these homeowner-
13 members have no other place to permit their pets to relieve themselves except on the private patios
14 as decreed by the board of directors in the very first pet rule of April 1996.

15 Regardless, the CC&Rs allow homeowner-members to walk their dogs about the common
16 area, landscaped or hardscaped, with the only requirement that that homeowner-member remove any
17 solid waste left by the dog. These CC&Rs are *the* controlling document as there is no Nevada statute
18 which would give a board of directors the right to circumvent the plain meaning of recorded CC&Rs
19 absent a conflict with another statute, nor is there any case law which would effect the same.

20
21 **2. The current provisions concerning pets in the Villa Pacifica community can only
 be changed by amendment of the Covenants, Conditions and Restrictions.**

22 The board of directors has expressed the view that the majority of the homeowner-members
23 desire the enforcement of the new pet rules. This is questionable at best since there is a large
24 percentage of homeowner-members who never attend meetings or respond to any of VILLA
25 PACIFICA’s official correspondence other than to pay dues. However, assuming that the board of
26 directors is correct, the procedure for a change of the pet rules as stated in the CC&Rs is to amend
27 the CC&Rs.

28 In order to amend the CC&Rs, a vote of not less than sixty-seven percent of the homeowner-

1 members must consent, the amendment must then be put to a writing, executed by the president of
2 the association, recorded and certified. Article III, Section 12.2 of the CC&Rs, N.R.S. 116.2117.
3 Additionally, fifty-one percent of the mortgage holders must agree in writing since any restriction
4 on the use of the common area has the potential to disparately affect a portion of homeowners-
5 members, those with pets. *Id.* While this may be a high bar for change of the pet rules, it is the only
6 way the board of directors may deviate from the current CC&Rs.

7
8 **B. CLAIMANT TAMPAS RESERVES HER RIGHT TO ASSERT CLAIMS**
9 **CONCERNING THE PROPER LICENSING OF CONTRACTORS AND**
10 **INSURANCE REQUIREMENT.**

11 TAMPAS has not received discovery concerning licensing of contractors. For this
12 reason, she reserves her claims concerning the proper licensing of contractors and insurance
13 requirements.

14 **III.**
15 **CONCLUSION**

16 It is apparent to even the causal observer that this community has some very serious problems
17 governing itself. The board of directors has attempted, with some success, to circumvent the CC&Rs.
18 Many of the homeowner-members have never read and/or understood the CC&Rs, yet believe that
19 dogs are not allowed within the project at all and, therefore, the members with dogs are somehow
20 taking advantage of those that do not own dogs. And, several members with dogs are of the belief
21 that not only are the dogs' safety at risk, but so are the dog owning members' safety at risk. This
22 must stop.

23 The CC&Rs are not ambiguous. Dogs are allowed to reside within each individual
24 townhouse. Owners are allowed to walk about all common areas with their dogs as long as they clean
25 up after the dog should the dog defecate or vomit. And, owners who do not clean up after their dogs
26 should be fined per a rule which the board of directors is free to impose. These are the rules all
27 members of the VILLA PACIFICA community should live by unless, or until, the CC&Rs can be
28 properly amended.

For the forgoing reasons, TAMPAS respectfully requests that this arbitration revoke the

1 present pet rules, reinstate the rules as stated in the CC&Rs, and entertain the hearing of issues
2 regarding proper licensing of contractors and corresponding insurance requirements.

3 DATED this 8th day of July, 1997.
4
5
6

7 _____
8 CORINNE A. TAMPAS
9 In Proper Person
10 CLAIMANT
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28