

## PLAYGROUNDS AND SAFETY IN NEVADA

By: Sara E Barry, CMCA PCAM CAM UNLV Certified Paralegal, UNLV Certified Legal Secretary and Nevada Licensed Insurance Producer.

Does this article apply just to Nevada? Of course not. However, since the \$20-million-dollar verdict against an association occurred in Nevada, we need to discuss it. The Association only had \$2 Million worth of liability coverage and getting the money for this payment will require almost \$80,000 per homeowner in a special assessment to help pay the injured teenager. Most owners don't have that kind of money just sitting around to kick in their share of the verdict

Classes are currently being developed to help the members of the board and the licensed Community Manager understand what happened and what are the association's duties when it comes to child safety and these "fun" structures that are installed in many common areas. I am sure those putting the classes together are worried about their own liability in making recommendations. This may be the reason for the delay in seeing these classes being offered, but they need to be provided to help our industry stay safe.

As readers may or may not know, I owned a community management company and managed in the San Francisco Bay area for almost 20 years and was fortunate enough to work with a very good developer. At times, the developer's staff was not allowed to speak to me as the owner was so angry at me for my recommendations and/or requirements, etc., but I kept them out of trouble and he kept giving me his new HOA's. Any of you who are working with developers should go out of your way to get the guidelines provided by the manufactures and put it in writing to the developer that you recommend that someone certified nationally, ensure that these structures have been installed properly.

I learned early on that each set of amenities that were installed by his company came with manufacturer recommendations on how to care for the structures in order to promote safety and longer use. Was I going to be responsible to make sure that those recommendations were followed? Absolutely, *however*, I was not going to be the one to physically perform those inspections and any required servicing or adjustments, etc. A checklist was created including the manufacture's requirements as well as what I and my staff had learned over the years that needed to be looked at.

Most of the larger landscaping companies that were used by my clients had a general contractor, GC, on staff. That company, using their GC, was required in their contract to complete the inspections of any "play" structures **monthly** and turn them into our office before they got their monthly service payment. The checklists were kept in a binder as proof of our due diligence in trying to keep the kids safe. Could the recommendations have been stated as quarterly in the manufacturer's recommendation? Possibly, but I wanted my company covered with monthly inspections. Was it an inconvenience? Yes, but I felt it took away some of the liability from the board and my staff by having someone else responsible to make sure it happened. Do you have to do it monthly? At times, you may need to have the inspections performed more frequently if you have very heavy use of the structures. Kids can find all kinds of creative ways to break, damage, and of course play hard on all of the equipment. Hopefully, it has been built to withstand this use, but someone needs to make sure. As my hubby has done a

lot of reserve studies for HOA's, he has seen the damage that can be done to these structures and has reported to management immediately if he saw something concerning on his site inspection. Even though these inspections were done monthly by the GC, when I was out on property, I got out of my car and walked the areas making sure that I didn't see any issues as well.

In most associations, there are routinely many other types of contractors out on the property. Letting them know that you expect them to report any issues that they see even if outside of their contractual responsibilities. Show them that it was really appreciated and made them part of a very valuable team. This was discussed with each contractor at contract start or renewals with reminders.

In contacting the State of Nevada Contractor's Board, I was somewhat shocked to learn that they do not have any requirements for an inspector of these play structures to have a license through them. There is only one for installation of these structures.

The National Recreation and Park Association has a Certification program for Playground Inspectors that follows the National Standards, but I feel very strongly that the manufacture's guidelines need to be found and ensured to be part of those inspections as well as the national standards. They certify the inspectors world wide. Here is the link to their website: <https://www.nrpa.org/certification/CPSI/> There is a list of the certificate holders on this site, but most of them show private, which means that they work for the public entities. There are a few, however who have their contact information should you be looking for someone.

How do I find these required guidelines if it is an older association? I decided to see if it could be done and actually went out to a structure in our master association to see what I could find. I found the manufacture, looked them up on line, contacted their contact shown on line and had a return phone call within 2 days from a marketing person. I asked her where I could find the guidelines and was instructed on where to find them. Maybe I was just lucky, but don't make assumptions.

Let's talk about insurance now. With this type of verdict, \$20,000,000 worth of awards to the child, do you not think that the insurance carriers are now going to find a way to not have to pay if that happens to one of their clients? I think so. I haven't seen any evidence, but the exclusion would not necessarily be in the exclusions now but buried in the Endorsements or somewhere else like they are doing with the Collections issues in Nevada.

I have a \$50,000 Loss Assessment inclusion on my homeowner policy that would kick in should something like this happen in my community and a special assessment has to be paid by owners because the HOA didn't have enough liability coverage. My understanding, however, is that this type of coverage won't pay for any *punitive damages*.

In the long run, the case is being appealed because of that \$20 Million dollars, \$10 Million was in punitive damages and NRS 116 does not allow that. We will see what happens, but it sure was a learning experience for Community Managers to ensure that they have a CYA letter on file if the boards are not willing to pay for the proper inspections and maintenance.

Protect yourself, the HOA, the Board and the homeowners by ensuring that these inspections are done properly by a licensed and qualified company and that any required remedies or alterations are quickly completed to ensure that they are safe.