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## NEVADA STRONG

THE IMPACT OF THE ARMED  
FORCES IN THE SILVER STATE

p8

**+** Legal  
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# The Axe that Never Fell

## Overtime Rule Permanently Invalidated

Last year, business owners across Nevada were facing a serious challenge to employee compensation in the form of changes to the overtime rule. As it stands now, overtime is required for any employee working over 40 hours but provides an exemption for executive, administrative or professional employees. The law is part of the Fair Labor Standards Act and the Department of Labor (DOL) is responsible for defining the job duties that are considered executive, administrative or professional employees.

However, changes to that law were issued from the DOL as a response to former President Obama's directive regarding overtime. Set to go into effect on December first of last year, the new rule would have denied the overtime exemption to any employee that makes less than \$47,476 a year, regardless of the duties that employee performs. Clearly a contradiction of the Fair Labor Standards Act, Nevada Attorney General Adam Laxalt joined 21 other states in protesting the new rule prior to it being enacted. Thankfully, they were successful and, at the end of August, the U.S. District Court granted a summary judgement to permanently invalidate the DOL's rule.

If you've read any of my previous commentaries, one thing should be clear, I don't like government overreach. We should exist in a free market in which business is allowed to thrive and those that don't take care of their employees have to deal with losing good people. The problem with a rule such as this is that it removes the flexibility business owners have when dealing with their employees.

Employers and employees working together to figure out what works best for them is an important part of any business. In fact, if you've ever hired someone, before that person began working for you, you sat down with them and had a clear conversation of expectations on both sides of the table. That conversation would have included salary expectations and overtime rules. Having the government step in and tell you what that conversation should look like limits yours and your employee's options. Even worse, it limits the options needlessly.

I believe the DOL and President Obama intended to protect workers that were being given too many hours and unfairly compensated for those hours. I have to go back, however, and remind you that we live in a free market. Unemployment, currently, is very low and businesses are having a hard time finding qualified employees. If a business owner doesn't treat their employees fairly, it's very easy for that employee to simply find someone that will. Having government involved in that process for any reason is both unnecessary and potentially harmful.

The current administration has also announced an intention to revisit the overtime law through new rule making and, I hope, will consider the affect on business when government overreach becomes so burdensome as to limit flexibility.

**CALL TO ACTION:** A big round of kudos is deserved by Attorney General Laxalt for his efforts to keep business in Nevada as free from government intervention as possible. It's up to us, business owners and decision makers in Nevada, to ensure that our government remains in their designated seat and doesn't try to put it's nose in where it doesn't belong. Stay vigilant when it comes to government overreach. 

**2 Chronicles 7:14 (NKJV)** "If my people who are called by My name will humble themselves, and pray and seek My face, and turn from their wicked ways, then I will hear from heaven, and will forgive their sin and heal their land."



**Lyle E. Brennan**  
Publisher

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**By Whose Authority?**

For more information on my Commentary and to see some of my backup research, or if you wonder why I take the position I take, go to [www.LyleBrennan.com](http://www.LyleBrennan.com).

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# NEVADA





## THE IMPACT OF THE ARMED FORCES IN THE SILVER STATE

*By Doresa Banning*

**THE** U.S. Armed Forces are doing work in Nevada that's critical to the defense and security of the nation and the state — training pilots, testing drones, fighting overseas remotely, storing munitions and helping battle fires, to name a handful.

The numerous installations throughout the Silver State — those of the National Guard, Air Force, Navy and Army — contribute to the state's economy by way of job creation, employment of people and businesses, financial and social community support, tax generation and more.

The U.S. Department of Defense (DOD) spent \$2.3 billion, or 1.6 percent of the state's gross domestic product, in Nevada in 2015, according to a 2017 report by the National Conference

of State Legislatures, an organization that provides tools, information and resources to state legislative bodies. This federal outlay increased economic output here by \$28 billion and state taxes by \$307 million.

The same year, the DOD employed about 20,683 individuals (active/reserve military and civilians, not contractors) in Nevada, about the same amount of K-12 public school teachers on the payrolls statewide.



Col. Paul Murray

Nellis Air Force Base, Creech Air Force Base, Nevada Test and Training Range

Looking individually at the military bases in Nevada, it is clear that each one has impacted the state's economy.

## Southern Nevada Nellis Air Force Base

Located in the northeast corner of the Las Vegas Valley, Nellis is responsible for advanced training of pilots, developing tactics for warfighters worldwide and operationally testing the Air Force's most advanced aircraft and weapons systems, said Col. Paul Murray, installation commander, Nellis Air Force Base (AFB), Creech Air Force Base and the Nevada Test and Training Range (NTTR).

Along with various units, the base is home to the United States Air Force (USAF) Warfare Center and more than 52 tenant units and agencies, including Air Combat Command's largest medical center and civil engineer, communications, logistics readiness and force support squadrons.

It's also the site of the 3.1 million-acre Nevada Test and Training Range, where various kinds of testing and training are conducted. A practice known as Red Flag is an example of weeks-long, high-intensity, air-to-air combat training exercises that give pilots experience fighting in real-world scenarios.

"Today's Red Flag exercises include fighter aircraft, bombers, tankers, airlift, rotary wing, intelligence, surveillance and reconnaissance platforms within the DOD and international partners," Murray said.

Nellis also is where the USAF Aerial Demonstration Squadron, more commonly known as the Thunderbirds, is based. Created in the mid-1950s, the "ambassadors in blue" fly in numerous air shows year-round at various locations throughout the U.S., one being Nevada. It participates in the Aviation Nation Open House events held at the base, too.

"What they bring to our air force is inspiring our young people to join," Murray said of the Thunderbirds.

Between fiscal years 2012 and 2019, about \$450 million worth of construction has or will take place at Nellis. It includes additional buildings for the Fighter

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Weapons School specifically for the F-35, which should be completed in the next few months. Subsequently, the school will launch its F-35 doctoral program in January. The base has 12 F-35s and will get 24 more over the next few years.

Nellis continues expanding its virtual test and training center to provide entirely virtual worlds that simulate the real world. Further, through the Electronic Warfare Infrastructure Improvement Program, existing Cold War era equipment is being modernized.

“We’ve diversified into multi-domain operations,” Murray said. “It’s not just air anymore. Nellis is kind of the epicenter of training for space and cyberspace.”

Also in progress is Nellis’ collaboration with the state, local counties and cities on a Joint Land Use Study aimed at developing a strategic plan, which should accommodate all parties’ needs, for the land surrounding the base.



Tim Wong

Arcata Associates Inc

“When that product is complete, we’ll all be able to say, at least from a government and military standpoint, this is what the valley is going to look like in 2030, 2035,” Murray said.

### Creech Air Force Base

Indian Springs-based Creech is where pilots remotely fly and fight using Predator and Reaper armed aircraft, Murray said.

A major change that’s planned is to increase the workforce there from 3,000 to 4,000 to allow pilots to work schedules of six months on and three months off, rather than year-round without significant breaks.

Because this requires, in part, recruiting and training additional pilots and building more infrastructure, increasing the population would start in 2018 and take place over time requiring two or three years to accomplish, Murray said.

The operations at Nellis, Creech and the NTTR had an economic impact in fiscal year 2016 of about \$5.2 billion, according to the “Economic Impact Analysis Fiscal Year 2016” report.

During that time, about 10,148 military and 3,432 civilians were employed between the three entities with a combined payroll of more than \$983 million. Further, on any given day, more than 1,000 temporary-duty personnel conduct business on site.

The installations created 6,933 indirect, high-tech, high-paying jobs (average

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## Economic Development *in* Nevada

*By Doresa Banning*

**I**N 2012, The Silver State released “Moving Nevada Forward: A Plan for Excellence in Economic Development,” a three-year roadmap for continuing to advance from post-recession doldrums and a 12 percent unemployment rate toward “a vibrant, innovative statewide economy,” Gov. Brian Sandoval wrote in the document.

Since the plan was released, Nevada’s leadership and business community has been hyper-focused on diversification. So, the real question is, what has the state achieved since then and where is Nevada when it comes to economic development now?

## Economic Development Goals

The state has made progress on the five primary goals outlined in “Moving Nevada Forward,” said Steve Hill, executive director, Nevada Governor’s Office of Economic Development (GOED).

The first goal was to establish a cohesive economic development operating system. This has been done, Hill said. GOED organized the state’s nine Regional Development Authorities (RDAs) and unified the economic development efforts of all of the contributors, including its office, the RDAs, local governments’ economic development departments and businesses. The nine RDAs, covering different regions in the state, are Economic Development Authority of Western Nevada (EDAWN), Great Basin Regional Development Authority, Highway 95, Humboldt Development Authority, Las Vegas Global Economic Alliance (LVGEA), Lincoln County Regional Development Authority, Northeastern Nevada Regional Development Authority, Northern Nevada Development Authority (NNDAA) and Nye County Regional Economic Development Authority.

After the unification of those nine RDAs, the next step was to advance targeted sectors and opportunities in each region. The select industries to advance were manufacturing, customer service and back office operations, healthcare services, e-commerce fulfillment operations and headquarters, warehousing, distribution and air cargo and national defense research.

“We’ve seen great employment growth that’s covered all of the sectors,” Hill said.

Expanding global engagement was the third goal included in the “Moving Nevada Forward” plan. Nevada has been engaging other countries in conversations and collaborations related to economic development. For instance, with state-funded WaterStart, a cluster of global leaders in the implementation of water innovation, GOED has evaluated more than 250 water technologies, many



Steve Hill

Nevada Governor’s Office of Economic Development

from international businesses, and recruited 11 tech companies to Nevada.

Catalyzing innovation in core and emerg-

ing industries has also been a primary goal. Through its \$10 million Knowledge Fund for spurring homegrown research, innovation and commercialization, the state has financed about 10 projects. They include creation of the Institute of Quantitative Health Sciences at the University of Nevada, Las Vegas (UNLV) to boost research on data analytics, bioinformatics and biostatistics.



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The last goal was to increase opportunity through education and workforce development. Efforts there have included setting up the Workforce Investment for the New Nevada (WINN) fund program, designed to bridge the educational community with industry and assist in recruitment, assessment and training for high-wage, high-skill jobs. One WINN investment was \$500,000 for equipment to help train high school and College of Southern Nevada (CSN) students in manufacturing technology.

A shift has taken place from academic and training institutions generally training a future workforce to now training dedicated workforces for specific companies, Hill said.

With that in mind, GOED, in 2016, awarded a STEM Workforce Challenge Grant to Truckee Meadows Community College to develop a new training program for data center engineering technicians in anticipation of Switch's employee needs in Northern Nevada. The agency also gave funds to Western Nevada College to develop a Siemens certified training center.

GOED is also establishing and administering two new initiatives resulting from the recent legislative session: a loan program for small businesses and businesses owned by minorities, women and the disadvantaged (AB126) and the Nevada Main Street Program (AB 417), to help revitalize and spur economic development in the Silver State's downtowns.

## The Way Forward

One important aspect of economic development is finding the right path forward. For example, the aim of the Northern Nevada Development Authority (NNDa) is growing the economy of the Sierra region in a balanced and sustainable way, said Rob Hooper, executive director. The agency is focused on employers and jobs, incoming and existing businesses, the workforce and supporting the building of infrastructure to facilitate growth in those areas. "We're the concierges



Rob  
Hooper

Northern Nevada  
Development Authority

who help bring all that together," he added.

Current NNDa efforts include attracting a skilled workforce internally and externally. For example, a new program called Realizing Opportunities for the American Dream to Succeed (ROADS) retrains local people for higher-paying, high-skilled jobs.

In Southern Nevada, Las Vegas' leadership has been focused on developing three key components for economic development: the Medical District, information technology (IT) and aerospace in downtown (including unmanned autonomous vehicles and systems) and a business park in the northwest, said Bill Arent, director, economic and urban development department.

Current economic development efforts are also happening in the Innovation District, Las Vegas' downtown sector, which has been focused on tech companies. A team remains committed to getting companies worldwide to showcase in Las Vegas their technology related to unmanned autonomous systems, smart cities and related apps. For example, 1,000 smart city sensors are being installed in Las Vegas, which, when integrated with the transit system, would provide real-time data such as traffic light durations, traffic flows, pedestrian info and more.

Also downtown, Las Vegas is working with the hospitality industry to effect changes and expand the gaming/hotel



Bill  
Arent

City of Las Vegas

corridor. Two developments underway are upgrading the Fremont Street Experience infrastructure and maximizing traction in the growth of e-sports.

With the UNLV School of Medicine's first class just having started, Las Vegas is working to finish the infrastructure to support interest in the Medical District and to help companies that want to move into the area and partner with the university. There are currently 80-plus prospective firms looking at the area. And, in fiscal year 2016-2017, 12 companies announced an expansion within the city with an additional two moving there.

Meanwhile, Henderson has been working to develop a plan for the city. This last summer, the city council approved the new economic development strategic plan. The plan is part of the in-progress, citywide planning document, "Henderson Strong, Comprehensive Plan," said Barbra Coffee, director of economic development and tourism.

The outlined target industries are: advanced manufacturing/logistics, healthcare and life sciences, headquarters and global finance, tech and tourism/hospitality/retail.

Henderson's economic development department assisted in the creation of more than 1,220 jobs in fiscal 2016-2017, Coffee added.

North Las Vegas has also been working on comprehensive growth. A primary goal of the city's economic development division is to create development opportunities for large-scale industrial projects in specific locales. Those areas include the Apex Industrial Park, Speedway Industrial Park, the 150 acres for planned medical and research and in-fill areas like the Craig Road Corridor, according to Gina Gavan, director of economic development.

The target sectors for the region include warehouse and distribution, integrated and assembly manufacturing, medical, clean energy, advanced technologies and artificial intelligence (AI).

"We've seen an enormous amount of progress," Gavan said.

## The Right Fit

When it comes to recruiting companies to Nevada, agencies are putting careful thought into who to target and how to bring them to the state.

For example, NNDA is targeting two types of companies, both with high growth potential: advanced manufacturers (ones utilizing robotics and mechatronics) and tech innovators (firms with 50 to 100 employees), Hooper said.

A few of NNDA's many recent successes include attracting Cosmetic Enterprises Ltd. (cosmetic and skin care product manufacturer), Webstaurant (an online commercial restaurant supplies and equipment retailer) to Dayton and Starbucks' expansion of its coffee roasting plant in Minden. Five or six bigger companies have moved into the region in fiscal 2016-2017. All of the existing industrial space in the region has been filled, so companies looking to move there have long lead times, Hooper said. NNDA's pipeline spans seven years and involves 772 businesses.

"Our track record is very diverse and it's really good," he added. "We've moved this region along."

Henderson is also seeing companies move in through targeted efforts. The city has more than 100 companies in its pipeline with which it maintains a relationship. Recent company recruits include Turano Baking Co., a manufacturer of artisan and specialty breads, whose facility is slated to open next year. Another is Sunshine Minting Inc., a supplier of precious metal and base metal minted products, which secured space in town and will be expanding into Henderson and relocating its corporate offices there.

In Las Vegas, the city landed an institutional partner in Blackstone, which, in July, announced its acquisition of International Market Centers Inc., the Las Vegas-based owner/operator of showroom space.

"To have investors of that scale and pedigree investing in our city is tremendously important," said Arent.

As for the city department's progress, Arent said, "We're really now just starting to see the fruit of those efforts with some of the initial investments we've made in those areas. Based on the business counts we are seeing in the city, we think that growth trend is going to continue."

In North Las Vegas, My Cinemas will break ground this fall on a roughly 70,000-square-foot luxury movie theater complex downtown that will add retail and commercial components in a later phase.

Other companies recently recruited to North Las Vegas include Dr. Pepper, Dignity Health (a micro-hospital in the Craig Road Corridor), JLG Industries (a lift equipment manufacturer) and Bed, Bath and Beyond.

The pipeline for additional activity is full, Gavan said, with 7 million square feet of land development planned for the next three years. The slated development of the Craig Road Corridor "is just huge," Gavan said,

with new retail, food and amenities coming in and some offices planned.

"The outlook [for North Las Vegas] is very positive," she added.

## Additional Focus

With small businesses and entrepreneurship growth as a goal, Henderson offers support for business through its Water Street Rally, a networking event for entrepreneurs, and its monthly Entrepreneurs Assembly, a meeting where entrepreneurs may receive mentorship and support of their endeavors. This month, the city will hold a Business Pitch Competition at the CSN Henderson campus.

"Henderson is doing these things to support the kind of cutting-edge entrepreneurial activity we want to be known for and companies want to identify with," Coffee said.

The city takes pride in being innovative, Coffee added. For example, with re-

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spect to the tech industry, it hosted its first IT Boot Camp last year to fill a computer skills gap in its workforce. It's also proactive about advertising Henderson's competitive advantages.

What Henderson could improve, Coffee said, is building on its robust clusters, such as food/beverage and advanced manufacturing.

In North Las Vegas, city improvements have been a focus for city leadership. Work is currently underway in master planning the 150 acres for the Veterans Administration Hospital, which is designated for a medical and research campus, Gavan said.

"This gives us an opportunity to focus on the gaps we have in healthcare regionally, provide additional assets to complement other efforts and service these new rooftops that we have coming in," she said of the hospital.

In Northern Nevada, in addition to focusing on company recruitment and em-



Barbra Coffee  
City of Henderson

ployee development, NNDA has other projects in the works to improve the region. The Nevada Certified Site Program is one such undertaking. Designed to encourage construction and remove scheduling risk from building a new facility, it streamlines the process for a company wanting to get a site certified.

Another project, with funding from the Environmental Protection Agency's Brownfields program, involves assessing and cleaning up previously used land so that it may be safely reused. That's taking place in Lyon, Churchill and Douglas counties and Carson City.

## Changes in Nevada's Growth

Although its general themes remain relevant, "Moving Nevada Forward" needs updating, Hill said.

"We've been trying to do that for too long," he added. "We just have other things come along. We do need to do that. Over the course of five and a half years, since that plan came out, a lot has changed in Nevada. The circumstances are different. The economy is different."

Generally, it's much stronger. Companies are investing again. Residential and commercial development is active. The state's unemployment rate is below 5 percent. In the City of Las Vegas, for example, the number of businesses (ones with employees and report to the state) grew 3.4 percent year over year between 2015 and 2016.

One major change since 2012 is the emergence of unmanned aerial vehicles

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(UAVs) — which the state has jumped on to develop further. For one, GOED funded creation of the Nevada Advanced Autonomous Systems Innovation Center at the University of Nevada, Reno (UNR) through its Knowledge Fund. Recently, at the City of Henderson’s new UAV range, companies showcased their various applications of the technology via flight demonstrations.

“That industry continues to grow,” Hill said.

Another newer area of concentration is AI and advanced data collection and analysis. GOED awarded \$3 million through the Knowledge Fund in 2013 for establishment of the Applied Innovation Center for Advanced Analytics at the Desert Research Institute.

“There is enormous economic opportunity in that whole general field,” Hill said. “It’s an area that needs to be a part of Nevada’s economic plan and will be a focus of our office moving forward.”



Gina Gavan

City of North Las Vegas

No one could have forecasted the impact on economic development that companies like Tesla and Switch have had. Today, three years after it announced it chose the Silver State for its first gigafactory, Tesla employs more than 3,000 people and has more than 4,000 construction workers on site, Hill said.

“Tesla has made a really significant difference, the kind of thing that happens once in a generation maybe,” he added. “It has transformed the economy in Northern Nevada.”

Switch’s impact, too, has been “huge,” Hill said. It attracts lots of other companies

to the state, even if only temporarily, thereby creating employment. It spotlights Nevada, which all of its customers see. It created a technology infrastructure that makes the state the most connected in the U.S. Further, Switch demonstrates commitment to Nevada, for instance, having provided rural schools with broadband Internet via its “Superloop”.

As for the near future regarding economic development in Nevada, “we’ve still got a lot of exciting things on our plate,” Hill said.

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# TAXPAYERS ALREADY SAID “NO” ONCE BEFORE

## VOTERS MAY ROLL BACK THE COMMERCE TAX

*Michael Schaus is communications director for the Nevada Policy Research Institute.*

**M**uch like government entitlement programs, it seems there is nothing more permanent in this world than a newly-enacted tax.

However, soon, Nevada taxpayers might have an opportunity to create an exception to this rule.

The Commerce Tax — the state’s ill-advised tax on gross-receipts — might finally be brought before the voters. Currently signatures are being gathered to get a question on the 2018 ballot that would let Nevadans vote directly on whether or not they want to keep the tax from the 2015 Legislative Session.

It won’t be the first time voters have had an opportunity to weigh in on state tax policy. In 2014 a similar gross receipts tax was proposed on the ballot, and well over 70 percent of Nevada voters rejected it.

Unfortunately, Republicans ignored the will of “we the people” in 2015 by enacting the tax anyway — slightly tweaking it and renaming it the Commerce Tax.

Republicans paid the price for their tone-deaf tax policy in the following election — but it remains on the books, costing Nevada businesses more than \$140 million in the first year alone.

And that figure doesn’t even take into account the compliance costs — a burden shared by virtually every Nevada business owner, regardless of whether or not they actually owe state coffers a single dime.

This opportunity to roll it back is a godsend for small businesses, workers and consumers in the Silver State. In fact, other states have been doing just that for over half a century.

Gross receipt taxes first became “popular” during the Great Depression for one simple reason: Businesses had to pay up, regardless of whether or not they turned a profit.

In a time when companies were routinely posting negative gains, such a “benefit” was sold as a potential windfall for local coffers.

Of course, that “benefit” has pretty obvious drawbacks. It didn’t take long for struggling businesses to begin moving out of state, laying off workers or closing up shop. By the mid-20th century, it became obvious, even to tax-happy politicians, that such plundering of the private sector did, in fact, have serious consequences.

And so the repeals began. By 2002, all but one state — Washington — had scrapped their versions of gross receipt taxes.

Just over a decade later, however, the taxes began to make a comeback as politicians ignored the proven risk of economic destruction that such schemes inflict.

Worst among the side effects of such taxes, is the fact that it disproportionately burdens small and growing mid-sized businesses. In fact, the very structure of the Commerce Tax — applying only to businesses with more than \$4 million in annual receipts — is an implicit acknowledgement of such a fact.

Now, \$4 million might seem like a big business so some, but it truly depends on the industry. For some ventures, \$4 million in gross receipts might be nothing more than a garage-based business.

Lawmakers attempted to address this variance among industries by adopting a staggering 26 different rates corresponding to different sectors of the economy.

This, however, leads to its own problems.

Dominant industries will seek to ensconce their near-monopoly status in the state’s economy by lobbying for higher rates on industries that threaten to steal some of their political clout — effectively making economic diversification a pipedream for the Silver State.

Even within industries, similar games will be played. Large and established corporations nearly always have higher profit margins than small and mid-sized start-ups — leaving large businesses free to lobby their emerging competitors out of business with higher and more burdensome rates.

For a growing business that is approaching the arbitrary \$4 million benchmark, the threat of yet another tax is already hanging over its head like the sword of Damocles. The potential for even higher rates will simply encourage new ventures to self-impose a cap on their potential growth.

And for the businesses deemed “big enough” to earn a tax bill, the price isn’t merely paid in dollars and cents. The additional cost means fewer employees, less generous healthcare packages and higher prices passed on to the consumer.

For all these reasons, and more, the opportunity to remove this scar on Nevada’s business climate should be celebrated. Gross receipts taxes are little more than a gift to lobbyists and government officials that are anxious to plunder private enterprise for their own gains.

Taxpayers knew that in 2014. Let’s hope they remember it in 2018. 

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# Industry Focus

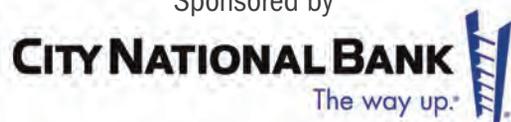


## Education

LEFT TO RIGHT ► **Carola Wittmann**, Alexander Dawson School · **Ray Alden**, Touro University Nevada

**Steven Buuck**, Faith Lutheran Middle School & High School · **Connie Brennan**, Nevada Business Magazine · **Paul Stowell**, City National Bank  
**Maheba Merhi**, National University · **Cedric Crear**, Nevada System of Higher Education Board of Regents · **Renee Coffman**, Roseman University of Health Sciences  
**Kevin Carman**, University of Nevada, Reno · **Spencer Stewart**, Western Governors University · **Bart Patterson**, Nevada State College

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happen and it starts in third, fourth and fifth grade. I was volunteering at a school reading to fifth graders and they couldn't spell. I was just so heartbroken to see that kids couldn't spell some basic things. That's a challenge that seems to continue to spiral into eleventh or twelfth grade, then we get them at the higher education level.

**SPENCER STEWART:** We've seen some statistics coming out in terms of how K-12 is doing as a whole and standardized scores. Something that just came out was ACT scores. Of the 17 states that do ACT testing, Nevada was at the bottom. Making sure that we have a sufficient educated pipeline is a challenge but certainly a lot of opportunities come with that.

## WHY IS THERE A SHORTAGE OF TEACHERS IN NEVADA?

**CREAR:** Why are we scrambling every year to find teachers? It goes back to what's the root of the issue. Is it salary? Is it wages? Is it quality of living? I think this is a great state. Why do people not want to come? We need to do a better job of highlighting the importance of teachers as a society and making it more of an industry. We should celebrate teachers and celebrate education.

**CAROLA WITTMANN:** When I listen to graduates or sophomores in college, they say they're passionate and they want to be educators. At the same time, they appear to be extremely daunted by the cost of the education they're currently incurring combined with what they perceive to be a very low ROI (return on investment).

**KEVIN CARMAN:** I'd say the additional element is pressure from family. They want them to go into business or engineering and medicine and law. There's a lot of pressure from family not to go into teaching.

**WITTMANN:** I agree. I was head of a high school before I came to Dawson and I heard that over and over. [They said,] "My parents won't pay for university or college if I pursue education."

Improving education in the Silver State has long been a priority for Nevadans. Recently, leaders in education met at the Las Vegas office of City National Bank to discuss opportunities on the horizon to elevate Nevada's education rankings.

Connie Brennan, CEO and publisher of *Nevada Business Magazine*, served as moderator for the event. These monthly meetings are designed to bring leaders together to discuss issues relevant to their industries. Following is a condensed version of the roundtable discussion.

## WHAT ARE SOME CHALLENGES FACING EDUCATION?

**BART PATTERSON:** The biggest challenge in improving the education system is continuing to increase the number and quality of teachers that are available to the K-12 system. That's the number one focus of Nevada State College and it will be during my remaining tenure. We intend to work with the K-12 system, particularly the Clark County School District (CCSD), but also with public charters. We're reaching down into the school districts and early identifying student who want to go

into education and identifying dual credit opportunities in teaching education, mentoring and scholarship opportunities.

**MAHEBA MERHI:** That is our focus here, as well, is preparing and increasing qualified educators for the Nevada school system, namely Clark County School District. We've got a partnership with them currently where we're doing accelerated pathways for Bachelors degree for licensure for the support staff, growing their own people and helping them increase stability within the school district with people that want to stay and have roots in Nevada that will contribute to the success of their future.

**STEVEN BUUCK:** I'm haunted by a quote I heard that says, "We need to prepare students for their future, not our past." That requires a lot of paradigm shifting in my own mind of how we deliver both the technology that we allow in our school to the types of classes we have. We have all read that 70 percent of the jobs, 20 years from now, haven't even been invented yet. Numbers like that cause me to think on what we offer kids to make sure they're prepared to get into good schools.

**CEDRIC CREAR:** We don't seem to be preparing our kids to go into higher education. We have so much remediation that seems to

## HOW IS BUSINESS HELPING EDUCATION?

**MERHI:** I think for qualified teachers, they're underpaid. Even if they're licensed, they're not being compensated on a level that's significant enough to encourage others to become qualified teachers. I know in CCSD, they're allowing anyone with 60 units to do "emergency" teaching, so to speak, [while they] work on their degree or their license. I just don't know that there's a big enough gap [in pay] to give them incentive to do it fast enough. A lot of them are staying on the emergency license in teaching as long as they can before they become fully licensed. There needs to be more incentive for fully licensed, qualified, vetted and committed teachers.

**PAUL STOWELL:** There's a lot of teachers out there right now that are living below the poverty line. I think that goes back to a cultural issue. We place more emphasis on sports, celebrities and entertainers. How do we change the mindset of society to place a greater emphasis on teachers? They are

teaching our next generation who's going to be leading this country, yet we don't place emphasis upon that.

**CARMAN:** I would go beyond that. [Teachers] get beaten up on a regular basis. It's not just a matter of not celebrating them. On a daily basis, it's the failure of K-12 and it goes on the shoulders of the teachers. They're being interpreted like they're being a failure and they get demoralized. You have low pay, increasing class sizes and the media thinks it's your fault.

**RAY ALDEN:** In my previous institution, I did a lot of international relations. Asia, whether it's China, India, Malaysia or Thailand, they're investing heavily in education. They honor their teachers. They pay them well. They're duplicating what we did during the sputnik generation. Our school system, K-20, is what made us what we are today and yet we're backing off on that model whereas the rest of the world is embracing it and doing it far more than we are.

**STEWART:** Despite some of the recent rankings, Nevada is moving in the right direction. I'm starting to see this great hand-in-hand relationship between the business community and the education community. Both parties are beginning to understand the challenges and opportunities that the other one faces. It has to be this way because we are now at a time where the state, the world, is in flux. This coming together of the business community and the education community is setting expectations for educators, for administrators and for students as well.

**STOWELL:** I can tell you from the corporate side, in my 32-year career from the banks that I've worked for, the number one contribution is education. City National works with Nevada Succeeds. We work with Be Engaged. We work with Communities in

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Schools. We contribute to all these organizations. We hear that we are making strides, yet I hear the same problems year after year. Why aren't we making a dent when there's millions of dollars going into the educational system?

**PATTERSON:** We actually are making a dent, but other states are too. One of the things you've got to do is stop looking at national rankings that compare

states against states and look at whether we're improving graduation rates and test scores. We may be the lowest, but are we improving? Kids that are coming into Nevada State College are better prepared now than they were five years ago, so we see marked improvement in student performance. We know Clark County School District is doing a better job because most of our students are coming from CCSD. I

agree that there is frustration, but the fact that companies are doing this across the nation is very salutary.

## HOW CAN RESOURCES FOR EDUCATION BE BETTER UTILIZED?

**CARMAN:** We spend a lot of money investing in teacher education and then they go out and teach for a year or two and get disillusioned. That's a very expensive prospect for the state and not good for our children. In addition to that, we aspire to promote our higher education system. From my perspective, we have an emphasis on being a top-rated research university. Our challenge is to achieve that objective while doing all of these other things with limited resources.

**ALDEN:** We're still the second fastest growing state in the country. Many parts of the country are losing students and their demographics are going down. We're still building one school a month from what I understand. Trying to find new teachers all the time sometimes trumps trying to build in the quality programs for the existing teachers. We deal with teachers all the time that want to be endorsed in certain areas, but that's an investment that sometimes is seen as a luxury.

**RENEE COFFMAN:** We all want to do more. We all want to make things better, but that's contingent on resources and how resources are allocated. That can be a challenge, certainly on the public side, the ability to go to the legislature and get the funding that you need every other year is a challenge. On the private side, when you're mission driven like we are, it's difficult to continue to raise tuition but you still need to do more. [Added to that is] the overlay of additional government requirements and having to comply with new and expanding types of services for students. It's very challenging with all of those factors hinging together.

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## HOW DO REGULATIONS AFFECT EDUCATION?

**COFFMAN:** Education is one of the most highly regulated industries. Because of that, there are challenges for innovation. Western Governors [University] has a very unique model. Roseman has a very unique education model. When you try to put that in the system the federal government has set up, there are challenges because it looks different. If you allow people to innovate more within the educational space like they innovate in the business space, that would be really helpful because you could find some efficiencies. When you're in this structural paradigm, it becomes difficult to change because of impacts from the federal government, state government or the accreditation system.

**CREAR:** I think a lot of it falls on politics. Issues become political. They become partisan and our students are sometimes used as pawns in the game of politics, unfortunately. It would be great if we had a general consensus of saying, "Look, we need to make an investment." Money is not the problem, but we've seen what money does when it's not there. A lot of the professors left the state because we did not renew contracts or we had furloughs in place in terms of salaries and wages.

## WHAT IS THE OUTLOOK FOR NEVADA'S STUDENTS?

**PATTERSON:** I'm optimistic because we have about a 70 percent increase in freshman from last year. That's just unheard of. They want an education and see the value of education.

**WITTMANN:** I see a tremendous resilience and an ability to take risks, ask hard questions and think out of the box. All of us in the room had calm waters; we could somewhat predict the outcome or identify the purpose of where we were heading. Our kids don't have that. They have rapids. They have twists and turns and debris in the way and they're excited about it. Their resilience and knowing what to do and where to find the answers is what will drive them forward.

**BUUCK:** I'm hugely optimistic about this generation. If you could see the schedules these kids juggle, the academic schedule, then they're going to football practice and starting their own not-for-profits serving in third-world countries over spring break. This generation is creative. They're energetic. They're passionate. I see a group of kids and I'm excited for their future and the future of Nevada. 



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# Legal Opinions

2017

## Expert Knowledge for Nevada Businesses

### SPECIAL REPORT

**LEGAL** Opinions, a *Nevada Business Magazine* feature for the past six years, is a compilation of expert knowledge on a variety of topics. Written by attorneys, all of whom are highly educated on their featured topic, this special report is a one-stop resource for executives.

Articles in the 2017 edition of *Legal Opinions* range from marijuana to litigation and provide business leaders with a glimpse into complex legal issues.



## Dispute Resolution: Alternative Options

### Aside from going to court, what options are available to businesses to resolve disputes?

By Brandon Johansson, Associate, Financial and Real Estate Services & Kevin Stolworthy, Partner and Las Vegas Office Managing Attorney, Armstrong Teasdale LLP

With the increased costs of litigation, companies are looking for alternative methods of dispute resolution. Alternative dispute resolution (ADR) has become an attractive option for many companies looking to avoid the time and costs typically associated with litigation. Depending on the type of issues being faced, ADR can provide a more effective way of resolving disputes, both from a timing and cost perspective. Although there are many different types of ADR, the most widely utilized are arbitration and mediation. In addition to arbitration and mediation, both the Nevada state courts and federal courts have created an expedited program for civil jury cases, which can reduce the time and costs associated with typical litigation.

#### Arbitration

Arbitration most resembles traditional litigation. In arbitration, a disputed matter is submitted to a neutral third party who hears arguments from each side, reviews evidence and makes a decision. Arbitration is less formal than a trial, and the parties can often control the process by agreement, including by limiting discovery, which can reduce costs. Most parties utilize arbitration rules and arbitrators associated with the American Arbitration Association or JAMS; however, parties can agree to utilize anyone as an arbitrator. Arbitrations generally are resolved much quicker than formal court litigation, and the proceedings are not public record. However, depending on the complexity of the dispute, arbitration might not always be cheaper than court, especially considering that, in arbitration, the parties typically pay an hourly rate for the arbitrator's time. Also, in binding arbitration, parties generally cannot appeal the arbitrator's award even if it is not supported by the evidence or law. In Clark and Washoe Counties, parties may be required to participate in a court annexed arbitration program if certain conditions are met – the main condition being cases with damages anticipated to be less than \$50,000.



Brandon  
Johansson



Kevin  
Stolworthy

#### Mediation

In mediation, a neutral third party helps the parties to reach an agreeable resolution of a dispute. A mediator facilitates communication between the parties, but does not generally make a decision regarding the merits of the dispute nor force the parties into an agreement. Mediation allows parties the ability to craft solutions that might not be available in typical litigation, and mediation can be used to settle a wide range of disputes. Parties can also decide to mediate a dispute even if litigation has already been initiated. Having a successful mediation is usually dependent on having a good mediator who will help the parties to better understand their problems, defuse unrealistic expectations, suggest solutions and persuade parties to accept resolutions. Mediation is generally a good option when both parties are motivated to resolve a dispute.

#### Short Trial Programs

The Nevada state and federal courts have created “short trial” programs that provide an alternative to traditional trials. Although the state and federal court programs have different procedures, the premise of both programs is to expedite civil jury trials. In the short trial program, discovery is more limited, smaller juries are used and there are time limits for the length of trial. In the federal court program, trial must commence within 150 days from the judge being assigned, while in the state court program, trial must commence no later than 240 days of the case entering the program. In the federal court program, short trials are presided over by an active or senior district court judge or a magistrate judge. In the state court program, short trials are presided over by a pro tempore judge, which is an attorney selected from a panel of attorneys who have at least 10 years of trial experience. After final judgment is entered, parties may file direct appeals to the appropriate appellate court.

It's important to consult legal counsel to determine which alternative method is likely to have the best outcome for the given case, but it's also important to know that litigation is not the only option. 🌿

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Alicia Ashcraft



Jeffrey Barr

## Nevada's Gaming Past Illuminates The Marijuana Industry's Future

By Alicia Ashcraft, Managing Partner & Jeffrey Barr, Partner, Ashcraft & Barr, LLP.

When the Nevada Legislature legalized gaming in 1931, the publisher of the Nevada State Journal called the act, “legalized liberality.” The small railroad stop of Las Vegas issued its first gaming license to a woman named, “Mayme Stocker.” A true pioneer, Ms. Stocker ran the Northern Club along Fremont Street, which had been operating in a gray legal area by offering patrons games of chance and alcohol in violation of federal law.

The railroads frowned upon their workers patronizing a speak-easy like the Northern Club. It was no accident that Mayme held the Northern Club in her name—her husband, Frank, was a railroad executive who could have lost his job for his association with such vices. Four generations later, this “legalized liberality” is, of course, Nevada’s number one industry.

Nevada’s present experience with marijuana parallels its past experience with gaming. Like Mayme Stocker, many of Nevada’s cannabis entrepreneurs have operated in a gray area of legitimacy for years, and the stigma of the plant remains.

Nothing illustrates this stigma more clearly than the results of Ballot Question 2 in 2016, which legalized recreational marijuana use in Nevada. Though it won the popular vote, Question 2 passed in only three counties: Clark, Washoe, and Storey. Similar to gambling in 1931, marijuana sharply divides political opinion in 2017. But also like the monumental legalization of gaming in 1931, the passage of Question 2 will someday be seen as equally monumental in Nevada history.

The year since Question 2 has seen some remarkable events.

In July 2017, for example, sales of recreational cannabis began. In those first, few heady days, lines extended out the doors of dispensaries and in some cases, around the block. National news blared, “Nevada Governor Declares Pot Emergency,” when the Governor authorized emergency regulations as inventories ran low in the wake of a failed lawsuit to block distribution of product during the implementation of the temporary program. The permanent program goes into effect in January 2018.

When permanent retail marijuana sales begin, estimates for the size of the market vary widely from \$400 million per year to \$2 billion per year. These numbers are easy to imagine with a quick,

back-of-the-napkin calculation: Roughly 50 million people visit Nevada every year. The National Institutes of Health reports “Past Year Marijuana Use” for adults over 26 was 10.4%. Thus, roughly 5 million visitors are potential customers. If 5 million visitors spend \$100 on one transaction, the market is \$500 million on tourist sales alone if this long-term trend holds true.

But we are seeing some short-term trends, too. Three seem to be emerging:

- 1. Publicly-Traded Investments.** Over the summer of 2017, we have seen a trend toward publicly-traded Canadian companies investing in Nevada marijuana establishments. Regulated by a provincial securities commissions and typically listed on the Canadian Stock Exchange, these investors are showing no signs of stopping.
- 2. Tighter Regulatory Control.** In the medical marijuana program, the Division of Public and Behavioral Health did an admirable job of regulating licensed establishments, balancing the needs of an infant-industry with Nevada’s strict regulatory requirements. Now that the regulation of marijuana establishments (both medical and adult-use) is under the jurisdiction of the Department of Taxation, we expect to see regulators enforcing the rules even more robustly in this maturing industry, including monetary fines for violations.
- 3. More Entrepreneurial Opportunities.** The marijuana industry has attracted an amazing number of entrepreneurs directly in the industry. But there are also seemingly endless opportunities indirectly or around the industry: security services, lighting companies, delivery services, tourism, software development, payment systems, ventilation and odor control, and mobile applications are just a few of the fertile fields surrounding the marijuana industry. We expect this trend to continue as the industry matures.

Four generations ago, no one could have imagined the revolution that Mayme Stocker’s first gaming license spawned. Here is to hoping that four generations from today, Nevada’s experience with marijuana generates a similarly unimaginable revolution. 🌿

**“If you think compliance is expensive — try non-compliance.”**

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## Cyber Challenges in the Gaming Industry:

### For the House to Win, It Can't Gamble on Cybersecurity



**Tracy L.  
Lechner**



**Ellen  
Whittemore**

*By Tracy L. Lechner, Shareholder & Ellen Whittemore, Shareholder, Brownstein Hyatt Farber Schreck*

With large troves of sensitive consumer financial data and more cash transactions per minute than some of the world's largest banks, today's gaming and casino institutions are ideal targets for cybercriminals seeking hefty payouts. Casinos also have to guard multiple points of entry, from on-site stores, restaurants, entertainment venues, ATMs and point-of-sale (POS) systems, to consumer-facing online websites and mobile apps and internal email servers, systems and networks.

The importance of cybersecurity in the gaming industry is not a new revelation. The Nevada Gaming Control Board has reminded the industry that failure to review security measures and comply with security obligations under applicable federal, state and local laws may be considered "an unsuitable method of operation," resulting in disciplinary action. But rapid changes in technology, the rise of the Internet of Things ("IoT"), and the ubiquity of digital data collection activities have posed unique and complex problems for the industry.

The increasing use of IoT devices has expanded opportunities for bad actors to gain access to gaming industry networks. In the summer of 2017, a North American casino installed a high-tech fish tank designed to automatically feed the fish and maintain their environment. While internet connectivity proved convenient and efficient to this effect, it also created an unfortunate vulnerability in the casino's security that was exploited by hackers to gain access to the casino's network.

Wi-Fi networks, a consumer amenity in high demand, can provide casinos and gaming institutions with valuable insights into its consumers. But they are also particularly susceptible to hacking and can be used to siphon customer information and/or as a gateway into the casino's network.

Player cards may also be an attractive target for cybercriminals, given the significant number of players utilizing them at any given time and the vast quantities of cash loaded on or accessible through them.

Email has enabled global connectivity in real time, but a single link in an email opened by an unwitting employee can wreak havoc on a casino's systems. Last year, a cybersecurity breach at three Canadian casinos spanning three years resulted in a ransomware attack and significant business operation losses. At least two of those

instances were effectuated through spearphishing attacks targeting employee emails.

Use of third-party software and services can create vulnerabilities for which gaming operators may ultimately be liable. This past year, a breach of a third-party reservation system affected hotels and casinos worldwide. Additionally, a casino operator's data from its payment card system was compromised through a backdoor on its virtual private network (VPN) and another casino operator uncovered unauthorized access and malware on its card processing network.

Cybercrime poses a very real and very serious threat to the gaming industry. The sophistication and success rate of cyberattacks has increased over the years. Courts are also increasingly willing to expand standing for plaintiffs alleging intangible future harm in data breach actions. While the size and resources of gaming institutions make them a prime target for cybercriminals, it may also be their biggest strength. Many gaming institutions are sophisticated and have implemented and maintain robust cybersecurity programs, leveraging innovative technologies and employing cybersecurity experts to bolster its defenses.

But irrespective of size, for gaming institutions to succeed amid today's ever-expanding cyberthreat environment, they must stay apprised of the dangers that new and existing technologies pose and react accordingly. This includes testing and updating technologies, implementing appropriate policies and procedures, exercising oversight of vendors through appropriate due diligence, audits and contractual requirements and conducting appropriate employee training at regular intervals. While preventative measures are imperative, they alone are not sufficient, as no system or safeguard is impenetrable. As such, gaming institutions would be well advised to develop well-defined disaster recovery protocols, business continuity and incident response plans and to conduct regular training to ensure that when the time comes, they can be activated as seamlessly as possible.

With cybercrime on the rise and costs associated with breached data and business interruption growing, the house simply cannot afford to gamble on its cybersecurity program. 🌿

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Lynn  
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## Telehealth: The Future is Now

By Lynn Fulstone, Director, Fennemore Craig Attorneys

Imagine that a radiologist who resides in Australia reads a CT scan of a patient brought to an emergency room in Ely after a car accident. The CT scan is transmitted with an artifact that results in an incorrect diagnosis by a neurosurgeon in India, which is conveyed to the ER physician. The fiber optic cable used was installed by a vendor with a principal place of business in California and the video equipment used was made in New Jersey. Who is liable? What law governs? Where is the action brought? Is there insurance coverage? Where can a judgment be enforced? These are complex legal issues that challenge the landscape of telehealth services today.

Aspects of telehealth were introduced in Nevada in 2009 with the creation of “telepharmacy.” A telepharmacy was a pharmacy at a remote site accessible via computer link, video link and audio link. This enabled a pharmacy technician to dispense drugs to a patient remotely, but under the supervision of a managing pharmacist at the main pharmacy location. In 2013, the outdated language, computer, video and audio links were replaced with systems that transfer data electronically, telephonically or by fiber optics to keep pace with the current technology.

Nevada jettisoned itself into the age of telehealth in 2015, with the enactment of AB 292. The law defined “telehealth” to be, “the delivery of services from a provider of health care to a patient at a different location through the use of information and audio-visual communication technology, not including standard telephone, facsimile or electronic mail.” Health practitioners using telehealth with Nevada patients must have a valid Nevada license and comply with Nevada law. AB 292 required health insurers, including Nevada Medicaid, to cover telehealth services to the same extent as services provided in person. Nevada’s public policy was declared by statute to promote telehealth services, assure reimbursement and resolve legal barriers.

By 2017, Nevada initiated the use of video telehealth technology to reach Nevada’s rural clinics and critical access hospitals with applications for youth-in-crisis, specialty services and psy-

chological testing for mental health patients. The 2017 Nevada legislature produced several pieces of legislation enabling the expansion of telehealth in Nevada. AB 429 ratified the Psychology Interjurisdictional Compact, allowing psychologists licensed in a Compact state to practice via telehealth in other Compact states. AB 474, the Governor’s “omnibus opioid bill,” allows a healthcare practitioner to meet with patients using telehealth to reevaluate treatment plans for controlled substances. SB 53 revises the duties of the director of the Office of Science, Innovation, and Technology to consider the “expansion of telehealth services to reduce healthcare costs” in coordinating broadband services in Nevada.

Notwithstanding Nevada’s progress in telehealth expansion, legal obstacles still remain. The practice of telemedicine across state lines subjects healthcare providers to the licensing requirements of each state where they practice. The lack of uniform licensing requirements and telehealth regulations force healthcare providers to seek legal advice and increase costs of compliance. The advent of interstate licensing compacts, like those adopted by Nevada, is a step in the right direction. However, these compacts generally require ratification by multiple states, financial support and infrastructure development, before they become fully functional and effective. All of this takes time. Although federal law regarding privacy and security of health information is uniform, each state may also have its own requirements for how healthcare information is to be transmitted and protected. In addition, the duties of confidentiality to the patient, privilege and informed consent may vary from state to state. Professional liability insurance may not adequately cover all aspects of a telehealth services transaction.

Although law lags behind technology, the legal obstacles facing telehealth are gradually being overcome. With Congress battling over how to fix healthcare in the United States, explosion of healthcare costs and impaired access to health care for many, telehealth may be part of the solution. 🌱



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**Daniel H.  
Stewart**

## Administrative Law and Commerce

### The Inevitable Yet Unpredictable Collision Between Business and the Regulatory State

By *Daniel H. Stewart, Partner, Hutchison & Steffen*

As government grows so, too, does its so-called “fourth branch” made up of administrative agencies. In theory, these agencies are the law’s enforcers, tasked with implementing and executing legal commands. In practice, they do much more. They may also be the law’s creators, its interpreters and its adjudicators – all at the same time. They speak first when drafting rules and speak last when deciding disputes (subject only to deferential judicial review).

Few commercial activities remain free of government agency supervision and control. As such, businesses and professionals may end up spending more time worrying about regulatory compliance than they do anything else. The costs and burdens of regulation are real, yet, for better or worse, the current system enjoys strong political support.

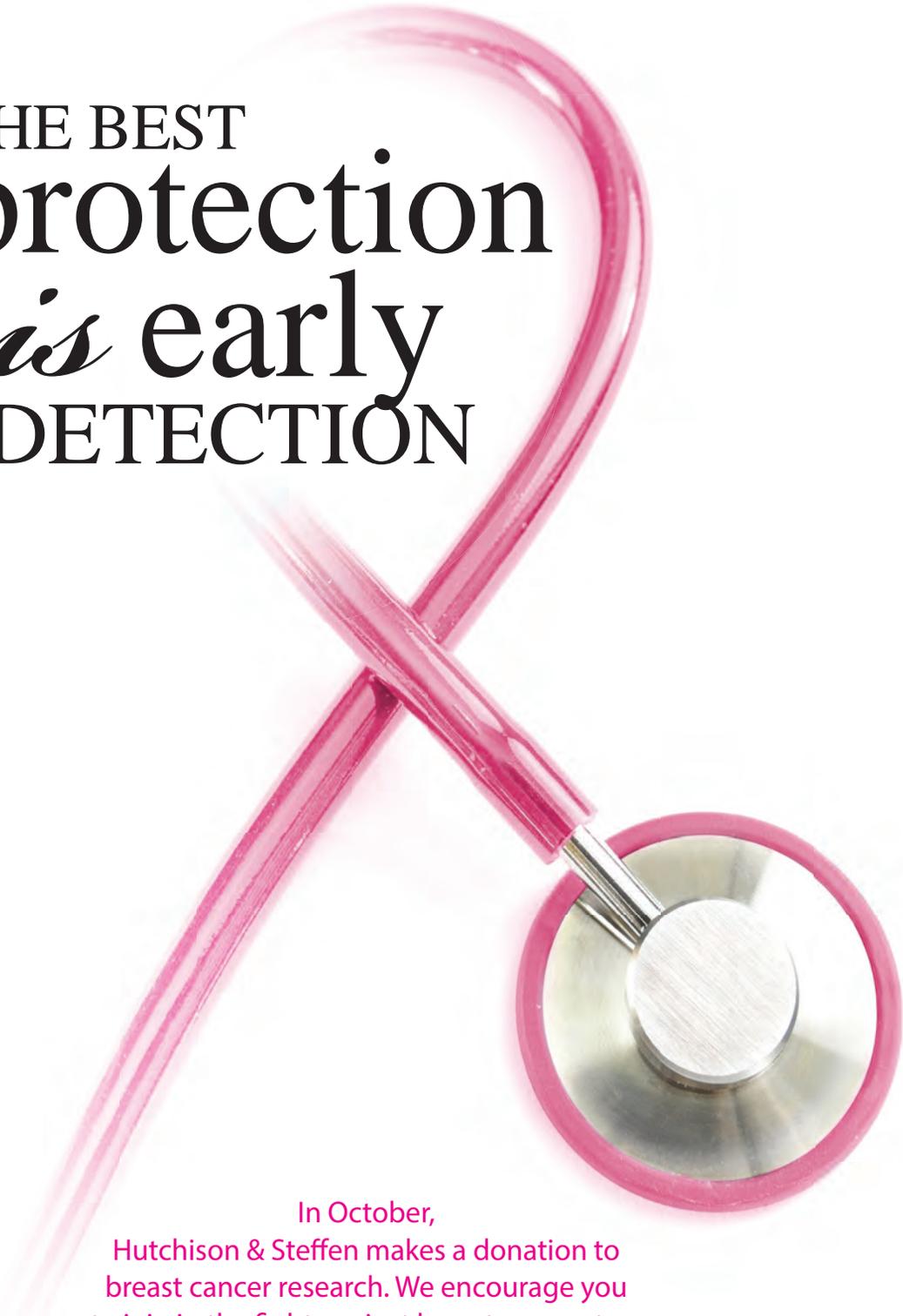
Although most people accept the need for regulated commerce, they rarely realize all that it entails. More often than not, regulators use their authority to grant individuals and businesses the privilege to operate, not the right to do so. As part of the bargain for this revocable privilege, the licensee agrees to abide by all rules, now and in the future. The regulators must also follow the rules, including providing adequate due process, but they are granted broad power to investigate and sanction as necessary. Ultimately, the regulators hold the keys to the kingdom: the power to deny permission to operate and the power to shut down operations, perhaps permanently.

In many respects, the administrative-law regime operates somewhere in the twilight between civil and criminal law. Like a civil plaintiff, a regulator may seek financial satisfaction, sometimes by even “standing in the shoes” of an aggrieved private party. Like a criminal prosecutor, a regulator may also seek non-monetary relief, such as revoking a license, barring one from certain activities or requiring stringent reporting and extra scrutiny.

Unfortunately, it is nearly impossible to foresee when this heavy regulatory hammer will fall. Anticipating a collision with the regulatory state is like anticipating your next traffic ticket. Regulatory intervention into your professional or business life is both unpredictable and inevitable. But you can minimize the threat of an adverse regulatory action by doing the following:

1. Make sure you are aware of licensing and entitlement rules before beginning a new business or profession.
2. Know the obligations of any license or entitlement you receive.
3. Participate in the legislative process and any official agency rulemaking. Not only will you have the chance to make the law better, but you can also develop a record that could be useful in future disputes.
4. When the rules are changed, change with them, if necessary.
5. To the extent possible, be aware of official investigations and adjudications against others in your industry or profession. The regulatory ratchet may be cranked up on all because of the misbehavior of a few.
6. Although tempting, resist the urge to break the rules just because such rule breaking seems widespread. The defense that “everyone else is doing it” will no more get you out of regulatory trouble than it will criminal trouble.
7. When faced with an inquiry or investigation, know your rights.
8. Fight contested matters, where appropriate, through all available legal channels. The stakes may be too high to acquiesce to agency demands.

Like it or not, there are simply too many points of contact between government and commercial life to avoid friction permanently. No one can eliminate regulatory risk entirely. But by being vigilant, engaged and knowledgeable you can manage the risk, so that your next interaction with the regulatory state is not your last. 🌿



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## A Busy Period For the Nevada Supreme Court



**Debbie  
Leonard**



**Jeff  
Silvestri**

*By Debbie Leonard, Partner & Jeff Silvestri, Partner, McDonald Carano*

Business professionals often complain that the lack of case law in Nevada creates a climate of uncertainty for business decision-making. The Nevada Supreme Court has been working to change that and, in recent months, the Court was particularly productive, issuing numerous published opinions that affect Nevada's businesses and the real estate market. Following are a few brief highlights.

### Real Estate

The fall-out from the 2008 housing bubble burst continues to play out in Nevada's courts. Four noteworthy cases regarding security interests and foreclosures were recently decided by the Supreme Court. *Hefetz v. Beavor* dealt with a waiver of the one-action rule found in NRS 40.430. The statute generally requires a creditor seeking to recover debt secured by real property to proceed first against the security prior to seeking recovery from the debtor personally. With limited exceptions set forth by statute, a guarantor, surety or debtor can waive the one-action rule. The *Hefetz* case held that, to avoid waiver, a party must timely assert the one-action rule as an affirmative defense in the party's responsive pleadings.

The Court was also active in the area of homeowner association law, particularly with regard to what is referred to as the "superpriority lien" found in NRS 116.3116. This "superpriority" gives a homeowner association's (HOA) lien on real property for unpaid dues priority over other security interests. In 2014, the Court decided the *SFR Investments* case, which concluded that an HOA's foreclosure of its lien extinguished a first deed of trust on the property. In other words, the HOA could end up owning property worth hundreds of thousands of dollars by simply trying to recover a few hundred dollars in assessments.

Recently issued decisions expand on the *SFR Investments* case. In *Renfroe v. Lakeview Loan Serv., LLC*, the Court held that

the HOA superpriority lien is not preempted by the Federal Housing Administration insurance program. Even a federally insured loan secured by real property can be knocked out by the HOA lien. *K&P Homes v. Christiana Trust* held that the *SFR Investments* decision is retroactive and applies to all foreclosures conducted since NRS 116.3116's inception. *LN Mgmt. LLC Series 5105 Portraits Place v. Green Tree Loan Servicing* held that an HOA foreclosure on a house in Nevada after the homeowners commenced bankruptcy proceedings in Texas violated the automatic stay and invalidated the sale, even though the HOA received no notice of the bankruptcy filing.

### Business Entities/Taxation

The Court was also active in other areas that affect businesses. *Gardner v. Henderson Water Park, LLC* held that a member of a limited liability company cannot be personally responsible for the LLC's liabilities solely by virtue of being a member. This case highlights one of the reasons that Nevada is considered to have a business-friendly climate: its highest court will recognize the protections afforded by the corporate structure.

Also, the Court affirmed a use tax levied on a business for minerals mined outside of Nevada but used in state. In *Southern California, Edison v. Dept. of Tax.*, the Court held that NRS 372.270 does not unconstitutionally favor companies that mine minerals within the state's borders (and that are exempted from use tax). The Court also concluded that the taxpayer was not owed a credit equal to the transaction privilege tax (TPT) levied by another state where the TPT is not a sales tax within the meaning of NAC 372.055.

As these decisions indicate, the Court has been busy building its jurisprudence in a number of areas of law that affect the Nevada business climate. With this level of productivity, we can anticipate greater certainty in the law going forward. 🌿



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## Does the management of your LLC owe a duty to act in the interests of the LLC and the members?



**Michael R.  
Kealy**

*By Michael R. Kealy, Vice President and Director, Parsons Behle & Latimer*

This is not a trick question, and the answer is – it depends. There are several advantages to using a Limited Liability Company (LLC) in Nevada. The Nevada Limited Liability Company Act affords owners (members) wide flexibility and freedom to decide how to operate and manage the entity. These are important decisions, usually made at the time the LLC is created. A Nevada LLC can be managed by the members as a whole, by designated managing member(s) or by manager(s) that do not necessarily have to be members. Any person or entity considering becoming a member of a Nevada LLC should consider what duties the management of that LLC may or should have to the LLC and its members, and what happens when management mismanages. Management can be held liable to the LLC and/or members for acting contrary to the best interests of the company, unless the members eliminated that liability in the operating agreement.

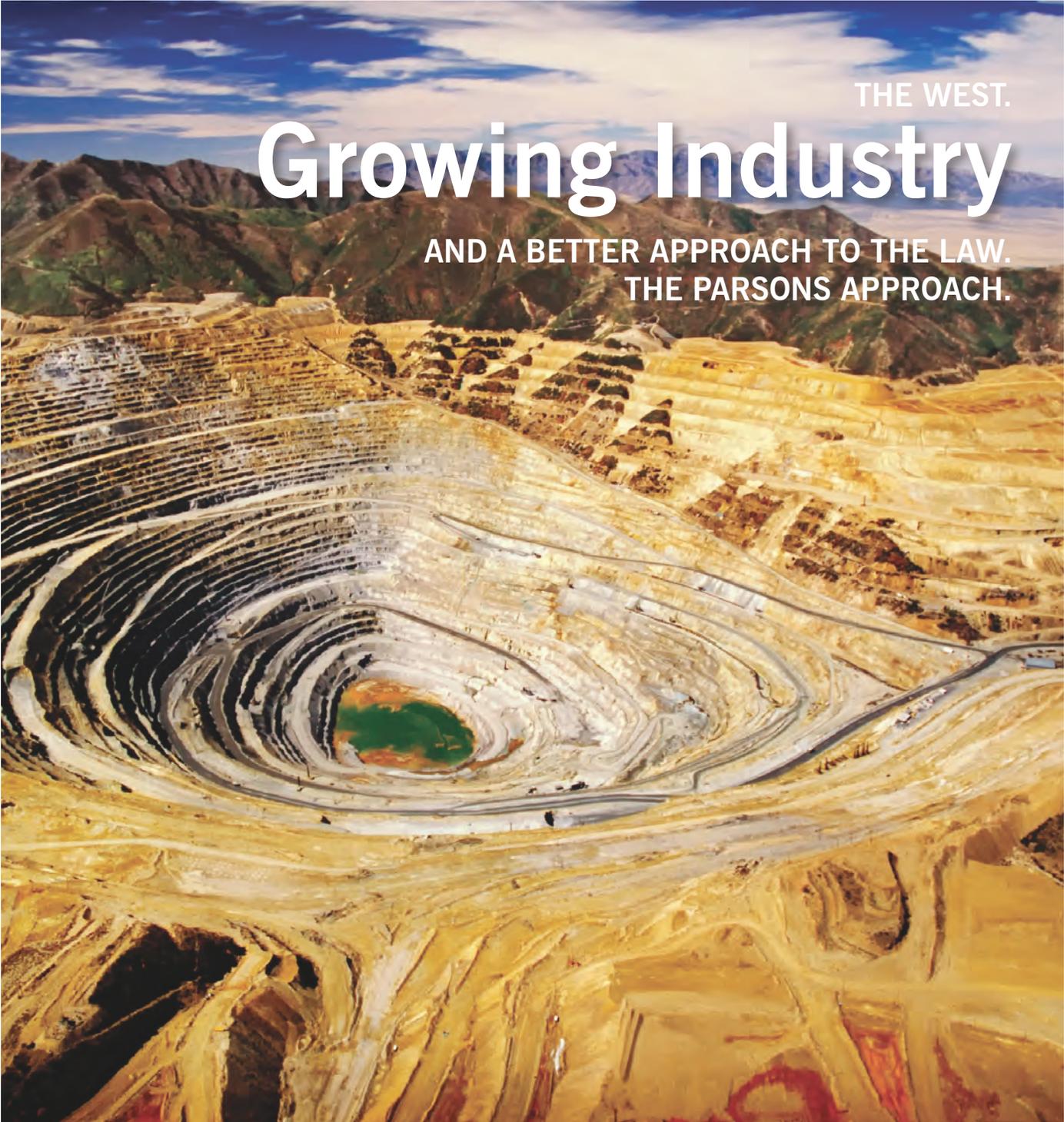
Unlike the laws governing Nevada corporations and partnerships, NRS Chapter 86 (which governs LLCs) does not specifically address fiduciary duties. Fiduciary duties arise when one party is under a duty to act for or provide advice for the benefit of another upon matters within the scope of the relationship between the parties. This statutory silence has been offered by attorneys as support for a conclusion that: 1) the Nevada Legislature did not intend for LLC managers to owe any fiduciary duties to the LLC or its members and 2) that no such fiduciary duties exist unless the LLC members provide for those duties in the operating agreement.

The early history of the Nevada Limited Liability Company Act (1991) reveals that the Nevada Legislature intended that LLC managers owe a fiduciary duty to the LLC and its members. But the Act gives members the power to expand, restrict or eliminate management liability to the LLC and the members for breach of contract and nearly all other duties, including fiduciary duties.

Opting out of fiduciary and other duties substantially limits the ability of the LLC and its members to pursue rogue management, unless the bad acts rise to the level of a “bad faith violation of the covenant of good faith and fair dealing”, NRS 86.286(7). A member should cautiously evaluate any proposed operating agreement that wipes out the fiduciary duties management otherwise owes to the LLC and the members.

In 2013, the Senate rejected a recommendation by the Executive Committee of the Business Law Section of the State Bar of Nevada to revise the law to eliminate the default fiduciary duties unless those duties were specified in an operating agreement. In 2017, the same Executive Committee proposed Senate Bill 264 to clarify and limit the types of fiduciary duties members and management would owe to each other. The Senate killed SB 264, voicing concerns about piecemeal amendments to laws that appear to be functioning well.

Reasonable minds may disagree over the extent to which LLC management should owe fiduciary duties to the LLC and its members, the limits of management liability and what is best for Nevada LLCs and their members in this regard. While an operating agreement is perhaps the best means of documenting the understanding of the LLC members about management principles, an operating agreement is not required for a Nevada LLC. Many Nevada LLCs conduct business without an operating agreement, and certainly many LLC members are not fluent on the nuances of fiduciary duties. Unfortunately, there is no shortage of LLC management that engages in conduct that violates the operating agreement or the reasonable expectations of the members. For these reasons alone, the legislature’s reluctance to statutorily eliminate fiduciary duties owed by LLC management to the LLC and its members is warranted. 🌿



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**Frank M.  
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## Electronically Stored Information

### The Business Litigation Boogeyman

*By Frank M. Flansburg III, Co-Founder and Co-Owner, Schwartz Flansburg*

Electronically stored information (ESI) is a necessary fact of life in business. Technological advances have created staggering volumes of information. While essential, ESI's sheer magnitude has exponentially increased the cost of commercial litigation. Today, responding to a discovery request can be in the millions of dollars if several years' worth of archived emails and files find themselves in the discoverable net. At a recent roundtable among managing attorneys of their commercial law firms, ESI was the single most discussed topic.

#### The ESI Problems

Modern computerization has resulted in a nightmarish amount of information. Some speculate that more than 90 percent of all business information is electronically stored. Companies retain a vast amount of ESI to protect their business from disaster (not for litigation). To that end, just the cost of restoring certain types of ESI to readable, searchable and reviewable formats can be astronomical, particularly when compared with its limited relevance.

Beyond acquisition, businesses must engage lawyers to review ESI in litigation. The literal million-dollar question of ESI is attorney review. There is no heavier drain on resources than reviewing ESI before production. Attorneys must review documents for relevance, responsiveness, privilege and trade secret. Assuming it takes an attorney an average rate of one hour to review 50 documents, it would take five years to review 500,000 documents, working 2,000 hours per year. Thus, it is not uncommon for attorneys to employ a small battalion of law clerks for nothing but document review.

And, while the duty to preserve evidence is not a new concept, ESI has forever changed the import of the obligation. Each time a new litigation matter arises, companies are expected to begin a "litigation hold" on any process that may delete relevant information. It is up to the party and its counsel to preserve ESI in a reasonable and good faith manner. Attorneys often seek to take advantage of poorly executed litigation holds by turning a business dispute into a side-show of squabbles. In comparison with the actual relevance, the negative inference can quickly transform business disputes into concocted conspiracy theories.

#### ESI Management Tools for Businesses

Businesses often embrace a "save everything" approach. In the digital world, as technology improves, storage devices get smaller and cloud-based storage becomes available, companies can actually save everything. Saving everything, however, will have a hoarder's effect on litigation and reduce ESI discovery to a search for the proverbial needle in the haystack. The most effective tool to reduce ESI discovery cost is data management. Developing and employing a sound data management policy can be the ounce of prevention to avoid the pound of cure in litigation.

If a business finds itself approaching litigation, it should act early and engage experts to assist with data collection. Anyone who has ever used a search engine to locate information on the web can attest to challenges in forming the perfect query. People often do not use the same terms, making the search for information difficult and resulting in false positives that yield a vast amount of useless information. An expert can help businesses take proactive measures in identifying its ESI.

Although it may sound counterintuitive, litigants should be cooperative and involve the court early. Traditionally, the party responding to a discovery request bears the burden of expense. While some courts have begun to soften this approach, it is an issue that should be addressed early. Moreover, involving the court early will help avoid the opportunistic lawyer looking for a way to derail the dispute into an ESI sideshow.

#### Predicting the Future

ESI was formerly a big business problem for high stakes litigation. Given the proliferation of computerization in all businesses (both small and large), ESI is no longer a big business problem; it is simply a business problem. Mandatory ESI protocols are likely on the horizon as a first step in any litigation to streamline the process and cost. While ESI costs will never be avoided entirely, poorly planned management will result in staggering litigation costs. 🌿

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## Protecting Purchasers in Commercial Property Transactions

By Wayne Klomp, Associate & Ryan Stodtmeister, Associate, Snell & Wilmer



Wayne Klomp



Ryan Stodtmeister

Congratulations! Your company just bought a large commercial property to manufacture its widgets. Unfortunately, you just received a notice from the Nevada Division of Environmental Protection (NDEP) that the previous owner dumped its manufacturing chemicals down the drain. The pipes leaked and now the soil and groundwater are contaminated. The seller is out of business, dissolved or in bankruptcy. You are left holding the proverbial hot potato. NDEP can and will hold you liable for the costs of cleanup.

In a 2013 opinion, Ninth Circuit Judge Mary M. Schroeder wrote, “Two environmental statutes everyone loves to hate are the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). In combination, they make owners of contaminated property and contributors to contamination responsible for cleaning up toxic waste and, if someone else cleans up the waste, liable for the costs of that cleanup.” These federal acts have similar counterparts in Nevada’s environmental statutes. But generally, environmental enforcement is delegated by the federal EPA to NDEP.

People love to hate environmental laws because they impose strict liability on landowners for cleanup costs, even if the landowner did not cause or contribute to the hazardous spill in the first place. Even though environmental laws are designed to ensure that the cost of clean-up is born by those responsible for the contamination, a business could purchase land, discover hazardous substances and be hit with the cleanup costs—even if the contamination existed prior to ownership.

However, all is not lost. Under Nevada law, subsequent owners can protect against liability by obtaining status as a bona fide prospective purchaser. This status protects buyers from liability relating to property they bought in good faith and did not contaminate. Under Nevada law, a bona fide prospective purchaser is not liable for any response action or cleanup undertaken or enforced by NDEP.

Nevada has adopted CERCLA’s requirements to become a bona fide prospective purchaser and qualify for liability protection, and these requirements provide a long “to do” list before the buyer obtains protection from environmental contamination.

First, a bona fide prospective purchaser must purchase property after the contamination by hazardous substances occurs. Although pro-

tections exist for landowners whose property is newly contaminated by third parties, bona fide prospective purchaser protections are afforded only to buyers of already contaminated property. Additionally, to qualify for liability protection, the buyer must not be affiliated in any way with the party that caused the spill.

Prospective buyers must also take several affirmative steps to qualify for protection. A prospective purchaser must make all appropriate inquiries before it purchases the property. This includes hiring an environmental professional to examine the land; collecting information about the property, its history and its value; interviewing past owners and operators; searching for environmental cleanup liens; reviewing government records; consulting various sources; inspecting the property and obtaining a declaration from the environmental professional no more than 180 days before the purchase.

After making appropriate inquiries, a bona fide prospective purchaser must then take steps to contain and/or prevent any further spills or exposure to the hazardous substance. They must provide all legally required notices with respect to the discovery or release of the hazardous substance and exercise appropriate care to stop any continuing spill, prevent any future spill and prevent or limit further exposure to the hazardous substance. The purchaser must report any discovery, response or cleanup of contamination to the State Environmental Commission.

Finally, a prospective purchaser must comply with any applicable land use restrictions and cooperate with the persons or agencies that are authorized to conduct response actions or cleanups.

Qualifying as a bona fide prospective purchaser can be costly. But the costs generally pale in comparison of removing thousands of tons of contaminated soil or treating groundwater for decades to reach acceptable levels. Qualifying as a bona fide prospective purchaser is a smart move for any business buying commercial property. It is an investment against unknown future cleanups and the associated costs. 🌿

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**Alexander  
LeVeque**

## Business Succession Planning

### Do It Now, Before It's Too Late

*By Alexander G. LeVeque, Partner, Solomon Dwiggin Freer, Ltd.*

According to the Small Business Administration, small businesses make up approximately 99.7 percent of U.S. employer firms. Of that number, approximately 78.5 percent of U.S. small businesses are non-employer (businesses without employees). More than 50 percent of all small business owners are 50 or older.

Although small business owners usually understand the importance of traditional estate planning, such as the preparation of a will and a living trust, oftentimes small family businesses fail when the sole principal dies, retires or otherwise becomes incapacitated because no business succession plan was prepared and implemented beforehand. Estate planning and succession planning go hand in hand, but are separate legal concepts.

According to a 2016 Gallup poll, 68 percent of Americans aged 65 and older have a will. However, a 2017 study conducted by Nationwide Mutual Insurance Company found that 60 percent of small business owners do not have a succession plan.

The absence of a viable business succession plan lends itself to litigation, oftentimes between family members, over the ownership and control of the business and, in some cases between the business owner's estate and the Internal Revenue Service (IRS). The last thing that any business owner should want is a nasty fight between his or her own family members or the IRS because no direction was given on what to do after the business owner retires, dies or becomes infirm.

A functional succession plan will usually require the assistance and advice of an attorney, an accountant and a financial advisor. The process, however, is not painful if done correctly and really boils down to one primary inquiry: what do you want to happen to your business when you die or retire? Retirement is often a pre-planned event whereas death is not. Your plan should address both scenarios.

The most common concerns which should be addressed in a business succession plan are:

- The importance of continued family ownership and management of the business;

- The future cash flow needs of the current business owners;
- The tax implications of selling or otherwise transferring business interests to family members or third parties, including gift and estate tax implications and
- The implications of an unforeseen death or divorce of the business owner(s).

Choosing the right professionals is half the battle. While there are many good attorneys that regularly assist clients with estate planning and there are many good accountants that regularly assist clients with the preparation of income tax returns, competent business succession planning typically requires a unique knowledge and understanding of business law and estate and gift tax law that many attorneys and accountants are not regularly exposed to. It is always a good idea to obtain proposals from a few attorneys before committing to one. Many reputable business succession planning attorneys will not charge you for the initial consultation.

Modern business planning, more often than not, includes a trust component as well. Family trusts and asset protection trusts are routinely used to hold ownership interests in businesses. Incorporating asset protection trusts into a succession plan is intended to create an extra layer of protection from the owner's personal creditors, to streamline succession and also to minimize the chances of family feuds concerning the ownership and control of the business through the generations. Trust drafting can also be complicated, especially asset protection trusts which require strict adherence to Nevada law. A poorly drafted asset protection trust oftentimes results in no asset protection at all and completely defeats that component of a business succession plan.

Paying an attorney (let's face it, we're not cheap) is for many an undesirable act, especially for a product that does not spring into action until sometime in the future. As the old saying goes though, an ounce of prevention is worth a pound of cure. Getting your business succession plan in place now can save your family from a disaster down the road. 

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## Nevada Department of Transportation Receives Additional Federal Funding

The Nevada Department of Transportation has announced \$21.6 in additional federal highway spending authority. The funds have been made available for Nevada road projects through redistribution of Federal Highway Administration fiscal year-end funds. The additional monies will help fund projects throughout the state including Interstate 15 and U.S. 93 improvements. 🌿

## Roseman University Receives \$10 Million Gift for College of Medicine

Roseman University College of Medicine has received a \$10 million pledge gift from the Engelstad Family Foundation. The gift is to advance the opening of Roseman's medical school and is part of the school's \$66 million fundraising campaign for the school. Roseman's College of Medicine is currently an applicant with the Liaison Committee on Medical Education (LCME) and has a goal to achieve accreditation to enroll its first class of 64 students in the summer of 2019. 🌿

## Nevada's First Responder Network Gets Wireless Upgrade

Governor Brian Sandoval has approved a plan from FirstNet and AT&T to deliver a wireless broadband network for public safety. AT&T, in a public-private partnership with FirstNet, will build, operate and maintain a secure wireless broadband communications network at no cost to Nevada. The two companies worked with the Nevada Public Safety Communications Committee to design a network solution to address Nevada's unique communications needs. 🌿

## Western Governor's University Offers Women in Technology Scholarship

Western Governors University (WGU) has announced \$200,000 in scholarships for women wanting to enter the technology field. The 100 new scholarships will range in value from \$2,000 to \$500 per six month term for up to four terms. The scholarships will be for women seeking bachelor or master degrees within WGU's College of Information Technology. 🌿



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◀ CONTINUED FROM PAGE 11

annual salary is \$85,000) with an annual value of about \$292 million.

Additionally, the bases continue to provide work to numerous contractors. Many businesses, small and large, support Nellis in numerous fields including food services, transport, security, information technology, archi-



Zip Upham  
Naval Air Station Fallon

itecture and construction, said Tim Wong, president and CEO, Arcata Associates Inc.

Wong would know, as his Las Vegas-based, 320-employee, federal government contracting firm, is one of them. Many employees of the engineering services, IT, program/acquisition services and multimedia company currently work out of the NTTR. Others work on site at 10 other U.S. contract locations, including various NASA facilities.

Arcata's work for the military tends to involve systems testing, evaluating, engineering and training, Wong said. For instance, the business' experts help support Red Flag, developing new systems to be integrated into the range to make the environment as realistic as possible and helping train the pilots and crews.

## Northern Nevada Naval Air Station Fallon

The primary activity at the 8,600-acre Naval Air Station (NAS) Fallon is advanced tactical flight training, air to air and air to ground, with aviation maintenance and defense contracting also taking place, said Zip Upham, the base's public affairs officer. About 1,400 individuals are employed at the installation, plus about 1,300 to 1,600 contract workers.

Planned for NAS Fallon, between 2015 through the end of the decade, is \$180 million to \$200 million in contracts for maintenance and new, expansion-type construction.

Projects underway include building additional classroom spaces, reworking a runway and establishing a maintenance facility for Naval Special Warfare Command, or the SEAL teams, ground mobility training.

In the works are efforts to modernize the air-to-surface target ranges scattered throughout Northern Nevada to accommodate advancements in naval weaponry. This involves expanding the range impact areas, which requires additional public land withdrawals and withdrawal renewals, land acquisitions, airspace modifications and infrastructure upgrades.

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# Thunderbirds

## 2017-2018 Nevada Schedule

2017

**Oct. 7-8**

In Minden at the Minden-Tahoe Air Show

**Nov. 11-12**

At Nellis AFB for the Aviation Nation Open House

2018

**Nov. 10-11**

At Nellis AFB for the Aviation Nation Open House

[www.afthunderbirds.com/site/show-season](http://www.afthunderbirds.com/site/show-season)

An additional plan is to update NAS Fallon's Air Defense Strike Group Facility to an Integrated Training Facility by 2020, which would allow for integrated live (in the air), virtual (via a simulator) and constructive (computer-generated) training—a significant technological advancement. In other words, pilots in the air could be connected with ones in a simulator to operate in the same constructive environment.

NAS Fallon generated \$517 million in regional (Churchill, Lyon and Washoe counties) economic activity in 2015, according to the "NAS Fallon Economic Impacts May 2016" report.

Military and civilian, excluding contractor, jobs totaled 4,586. The average annual salary for a base-related government job is just under \$60,000. Base payroll and spending stimulated the economy by \$22 million.

### Hawthorne Army Depot

This depot is government-owned and contractor operated. Virginia-based SOC carries out the operations whereas the directly employed staff, about 30 government workers and civilians, oversee the activities, said the installation commander, Lt. Col. Scott Bishop.

This base is one of only a handful of its kind in the U.S. where the primary mission involves receipt, issue and storage of conventional munitions; disposal of unserviceable, obsolete and surplus munitions; and maintaining munitions readiness through inspections, service and renovation.

SOC also continues to seek opportunities to generate revenue for the depot by leasing the excess space to companies. As part of the Armament Retooling and Manufacturing Support Program, in its infancy but going well, Bishop said agreements have been secured with Aerojet Rocketdyne, a California-based defense contractor, to store rocket motors, magazines and propellant and a fireworks company to keep its inventory on the premises. For its work, the SOC was awarded an \$840 million, 10-year contract in 2010.

In August, the depot again executed Operation Patriot Bandoleer, in which Nevada National Guard members move ammunition that needs to be relocated to a different storage depot as opposed to relying on past methods of commercial truckers or trains hauling it. The program, Bishop noted, offers Nevada guardsmen and women real-world training and saves the depot transportation costs.

Another ongoing project involves environmental clean-up of various munitions response sites on 7,000 acres of Bureau of Land Management (BLM) land. The goal is to ensure no munitions remain and the areas are safe.



Lt. Col. Scott Bishop

Hawthorne Army Depot

### Statewide Nevada National Guard

This joint force, comprised of the Nevada Army National Guard and the Nevada Air National Guard, trains and protects life and property in the state when called upon and carries out federal missions, such as cargo and personnel transport, overseas.

For example, in the spring, 140 soldiers and airmen assisted with protecting homes in Lemon Valley in Northern Nevada with sandbags and moving equipment for construction of a four-mile-long wall to stave off damage from flooding. Further, the 152nd Airlift Wing is one of four units nationwide that support the U.S. Forest Service's firefighting efforts, said Tech. Sgt. Emerson Marcus, Nevada National Guard state historian and spokesperson.

The guard occupies 16 primary facilities statewide. In progress at the Nevada Air National Guard Base in Reno is construction of a new operations building. Reno-based H&K Architects was awarded the \$10 million contract for it earlier this year and it has numerous subcontractors working on the project that's due for completion in December, Marcus said.

In fiscal year 2016, the Nevada guard was made up of 3,211 soldiers and 1,137 airmen, 460 full-time federal technicians and 400 individuals on active guard and reserve orders.

In terms of wages, payroll was \$22 million the same year, according to the

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## >> Cover Story



Tech. Sgt. Emerson  
**Marcus**  
Nevada National Guard

“Nevada National Guard Biennial Report 2015-2016.” The guard also provided \$57,824 in tuition assistance to members enrolled in the Nevada System of Higher Education (NSHE).

Other people employed at the Nevada guard’s facilities work for the state. In 2016, there were 102 state employees in administration and facility maintenance of the armories throughout the state, along with firefighters at the Nevada Air National Guard Base and security personnel.

Most of the Nevada guard’s budget comes from federal funds with a smaller portion from state monies, said Marcus. The branch is expected to bring into the Silver State more than \$120 million in federal money in fiscal year 2017.

Contributions from military installations in the Silver State are a significant and oftentimes overlooked portion of Nevada’s economy. Whether through protection efforts, fire fighting assistance, job creation or, as in the case of the Thunderbirds, the “cool” factor Nevada bases are an essential part of the state’s multivariied economic landscape. 🌟

### IN BRIEF

*UNLV has been named as one of the most diverse campus’ in the nation according to the U.S. News & World Report list for “best ethnic diversity”. The school ranked in a three-way tie for first and has placed in the top ten for the past seven years.*

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## High Desert Truss & Lumber

Erickson Companies recently announced the opening of a home framing manufacturing plant, High Desert Truss & Lumber, in Reno. A construction services provider, Erickson has been serving the Reno market from a California location. Increased activity in Reno's housing sector has prompted the construction of the new facility. Once fully operational, the facility could add 75 to 100 new jobs to the area.



## HIL Applied Medical

Through continued collaboration with the University of Nevada, Reno (UNR), HIL Applied Medical, an Israeli-based company, has named Reno as the location for its North American headquarters. A leader in the development of high-performance proton therapy systems for the treatment of cancer, HIL Applied Medical is working with UNR to bring together expertise in physics and specialized equipment. HIL Applied Medical will invest in advanced equipment at UNR's Terawatt Facility.



## Sunpreme, Inc.

This solar energy solutions company, based in Silicon Valley, plans to open a 100,000-square-foot manufacturing facility in Clark County. The company has developed advanced solar cell technologies, designing and manufacturing hybrid cell products used primarily for commercial and industrial applications such as large rooftop and ground-mounted power plants. The new facility is projected to create 1,000 jobs in the region over the next five years with a capital investment of almost \$30 million.

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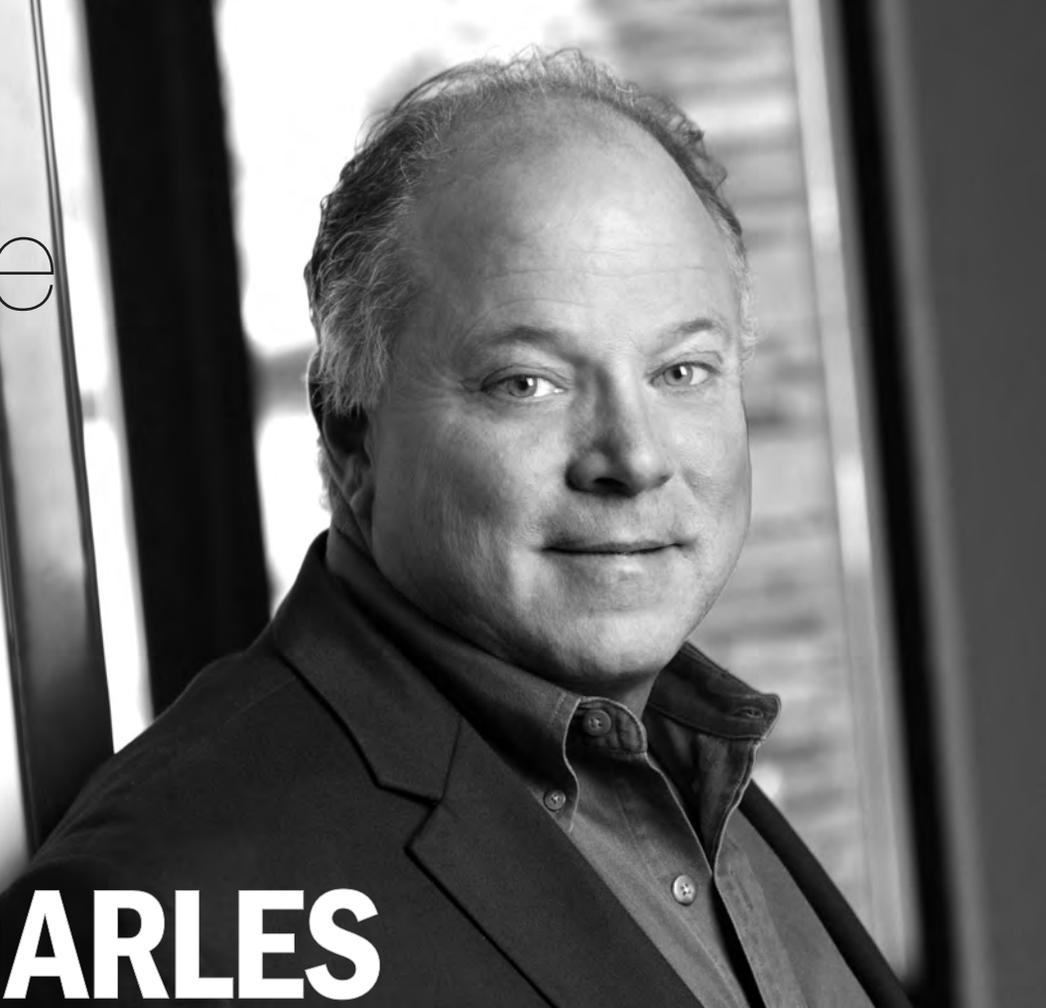
## Vegas Sheets, LLC

Estimated to make nearly \$20 million in capital investment in the next five years in Southern Nevada, Vegas Sheets, LLC plans to lease 100,000 square feet of manufacturing space in Henderson. The company is focused on creating a presence in Nevada, providing short-run, high graphics corrugated packaging to businesses. The facility is projected to have a service radius of 500 miles, servicing all the western states and east to Colorado and Texas. Vegas Sheets will bring 69 jobs to the region with an average hourly wage of \$25.35 over the first 24 months of operation.

# Face to Face

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## > DR. CHARLES

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Type of Business: Cosmetic & Reconstructive Plastic Surgery, Medical Spa Services, The Skin Clinic | Hails from: Whittier, California  
22 years with company in Nevada | Based in: Reno and Truckee

### How did you first get into your profession?

I became passionate about my field after hearing about it in medical school. A lecture was given by “Doc Hollywood” or Dr. Steven-Hoefflin. I knew that it was for me.

### What is your pet peeve?

My pet peeve is any type of violation of integrity. People who are honest, hard-working and do what they say are my kind of folks.

### What do you want your legacy to be?

I want my legacy to be that I helped anyone in need, regardless of status, color, beliefs or anything else. I would like to be remembered for caring for my patients equally and with absolute dedication.

### When you were a kid, what did you want to be?

I wanted to be a professional football player. As I matured, reality set in and it was obvious I was not an elite athlete. I did make my Alma Mater’s College Hall of Fame in football, but ultimately I am very pleased at the path I have taken.

### What business advice would you give someone just starting in your industry?

I give it often; do good work, be kind, be compassionate and don’t be afraid to be yourself. Be an excellent colleague. Cheer others on and help them to do well also!

### If you could have coined a single phrase of wisdom, what would it be?

One of my favorite quotes by Abigail Van Buren: “The best index to a person’s character is how he treats

people who can’t do him any good, and how he treats people who fight back.”

### What was the toughest lesson you’ve learned in your career?

Not everyone has the same motives or intentions that I do. I’ve tried to surround myself with people who reflect my core value system. I have a strong Christian faith and I’m proud of it.

### What is your motto?

Never tire of doing the right thing!

### What is your favorite thing about living in Nevada?

The loving nature of Nevada’s people, both long time locals and adopted Nevadans like me all love our community, love our quality of life here and love to share our good fortune with those looking to make Northern Nevada a home.

# BUILDING NEVADA



Jeff  
**Jenkins**

Nevada State Bank

**Nevada  
Business**  
THE DECISION MAKER'S magazine

*Photo By Chris Tucker*

# FINANCIAL FOUNDATIONS

## FUNDING COMMERCIAL REAL ESTATE IN NEVADA

*By Jennifer Rachel Baumer*

**NEVADA'S** commercial real estate industry is growing again. New projects are underway, both sales of existing buildings and those under construction.

"We're definitely seeing a large increase in our loan volume over the last several months," said Debra Alexandre, president, Nevada State Development Corp. "It's looking much better than it has since the recovery began. We're starting to see a lot more ground-up construction loans, where during the recession and the beginning of the recovery we really weren't seeing any."

Today, nearly 50 percent of new loan volume is construction or major improvements loans. Owner-occupied buildings, whether built or purchased, are growing in number with probably more than 50 percent of financing involved with owner-occupied real estate, according to Scott Aney, senior vice president and commercial banking services manager, City National Bank.

As Nevada experiences a growth spurt in commercial real estate projects, there are

many ways to finance those projects and many willing lenders.

### Best Practices in Finding Financing

Projects begin with financing and financing begins with people.

Start with market research, said Bradley Beal, president/CEO, One Nevada Credit Union. "Talk to several lenders and call around. Maybe talk to some commercial real estate brokers, they have some good ideas about who's lending and how to go about achieving financing." Shop around, compare pricing, terms and conditions of loans.

For Nevada State Bank, the process starts with an initial meeting between borrower and bank representative. The bank needs specific information in order to structure financing.

"We're looking for a well-located project with supportable market demand and we look at [the borrower] financially, is he an experienced developer or an investor with

a good reputation in the market and someone we've done business with before," said Jeff Jenkins, executive vice president, statewide real estate lending manager, Nevada State Bank.

"Most people start with their individual bank," said Alexandre. "But there are plenty of options out there." Nevada State Development Corp is a certified development company chartered by the Small Business Administration (SBA) to package, process and service SBA loans. Borrowers looking at such loans need to understand their businesses thoroughly and have up-to-date financial information.

For general small business loans there are standard, conventional bank products. SBA offers several products banks can use for small businesses in addition to SBA 504, which provides financing at below market rates and is popular for owner-occupied projects. For borrowers not looking for real estate or long-term fixed assets, SBA can guarantee a bank loan through the 7A program.

That's the tip of the financing iceberg.

Financing for owner-occupied buildings is generally traditional financing with high advance rates and aggressive financing.

"We underwrite the business and the business itself should have a history of profitability in the amount to make rent payments, and has to have market value to sustain it," said Aney. The loan needs to not be above 80 percent of what the value is, but primarily the bank looks at the strength of the company.

"What's different today than it was three or four years ago is that we're seeing consistent profitability of operating companies and businesses," said Aney.

Investor real estate is also popular, where individuals invest in construction projects or occupied buildings where tenants generate income for them.

Construction loans differ from loans for existing buildings in how they're financed and what kind of lender finances what kind of project.

"Construction loans require a greater due diligence with respect to that developer and how will they complete a project, are they a seasoned developer, is the type of project they're trying to build one they have a reputation of being able to build on time and within budget. We need a detailed market analysis that proves the viability of the proposed project," said Jenkins.

Financing decisions for existing properties rely heavily on the historical leasing or operating data of the property, coupled with market performance and the amount of demand for the type of property. Banks consider whether the borrower has a good professional team of accountants and attorneys in place. With construction projects, lenders also look at the contractors financial position and determine if the borrower can support the size of the loan they're seeking.

"And it may seem obvious," Aney said, "but the more extra liquidity you have, the greater the chances of success."



Debra  
**Alexandre**

Nevada State  
Development Corp.

Traditional commercial banks lend off existing programs, said Kyle Nagy, founder/director, CommCap Advisors. "A commercial mortgage lending firm represents several different types of lender, several different programs, in-state and out-of-state lending sources like life insurance companies, commercial mortgage bank security lenders, pension funds and also regional and national banks."

Life insurance companies can become involved in conduit financing, aligning their portfolios with real estate brokers who can help them house their cash in long-term assets that match the insurance company's long-term policies. Conduit financing mostly dried up in Nevada during the downturn and is only just returning.

So what's the best commercial real estate financing?

"Individual buyers have their own specific circumstances. The best thing for them is to try to match up their lender's terms and conditions, and provisions of the loan to their own personal preferences," said Beal.

For example, many borrowers prefer to have no prepayment penalty so, if they want to sell the property within two or three years of purchase, they can, without penalty.

But lenders who don't have prepayment penalty clauses may require personal guarantees (recourse loans). Borrowers need to decide whether not having a prepayment penalty or not having a recourse is more important to them.



Scott  
**Aney**

City National Bank

"If the property is stabilized, performing, then the majority of borrowers today prefer non-recourse, long term, fixed-rate institutional loans," said Nagy.

Non-recourse loans don't require personal guarantees and the loans are long term, typically more than 10 years. Most local banks are likely to have three, five or seven year loans, or sometimes 10 years, said Nagy. Most borrowers also prefer fixed-rate for the entire loan, with the rate locked at application.

## Bank Requirements

Lenders differ in their requirements for background and financial information and place their own emphasis on what's more important: person or project. Some are driven by historic performance of business or borrower, others by performance to date of the property the borrower wants to finance.

Long-term fixed-rate non-recourse loans, Nagy mentioned, mean the majority of financing CommCap finds for borrowers is for stabilized properties. A 90,000-square-foot shopping center that's 90 percent leased with a stable occupancy and good location would be a strong contender for financing. "We're looking for good collateral, a good borrower and a stabilized property," said Nagy.

"We look at whether the property is generating sufficient cash flow to cover the operating expenses and the debt service and how much additional cash flow [they have]. We like to see a little bit of margin above the debt service and operating expenses," said Beal. "We also like to put in a little allowance for vacancy if it's a multi-tenant property."

So when One Nevada considers lending for existing properties, criteria includes how easily the property can be kept occupied, whether the location is good for tenants and business owners find it attractive or if it will be difficult to keep filled.

Construction loans require expertise on the side of the lender, the borrower, the developer and the construction companies involved. It's a riskier proposition because it's harder to anticipate occupancy before

the building is complete unless it will be owner-occupied.

## Post-Recession Financing

Just because there are pathways to financing doesn't mean a project will get financed. After the free-flowing financing that proceeded the recession many wonder, how hard is it to actually get a loan?

In reality, while there may have been some speculative lending prior to the recession in commercial real estate, most of the lending that made the news was residential. Lenders working in commercial real estate didn't change their practices before or during the recession.

"We haven't changed that much," said Stan Wilmoth, president, Heritage Bank of Nevada. "If [the borrower] has a good plan and good tenants, we've been making loans all along, 2005 through today. We didn't slow down more than the economy slowed down."

Underwriting didn't change with the recession; borrowers did. "The Great Recession took a toll on the profitability of the borrowers. So the banks didn't change the way they lent, but the ability of the borrowers changed. It's easier and there are more opportunities to borrow today – the bank is saying yes to a larger percentage of applications than it did four years ago," said Aney.

"The commercial financing market right now is very, very competitive," said Beal. "Projects that are credit worthy will very likely have multiple lenders willing to extend credit on them. I would say it's much easier [to get financing] given the market's recovery and rebound and the recovery of real estate values."

## What's Beyond the Basics?

For one, there's hard money lenders. Though many left Nevada during the recession, some are now returning.

"These are lenders that require high interest rates, usually north of 8 percent, some in

the 10, 11, 12 percent range. These are really bridge loans for the short term," said Nagy.

Borrowers who want to finance an unstabilized project or one that may become unstabilized, borrowers with credit issues like foreclosures or bankruptcies that make it harder to obtain financing from a traditional lender or borrowers who need to move faster to close than a traditional lender can move may choose to work with a hard money lender.

Issues like insufficient cash flow and poor credit history can make obtaining financing challenging, "I will say, on the front end, all lenders try their best to make a loan work before rejecting it," said Alexandre.

If lenders all say no, what options does a borrower have left? For borrowers with credit adversely effected by the recession, time is the healer, said Wilmoth. Limited solutions in addition to time include SBA 504 or 7A.

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“We’re one of the largest 504 lenders in the state and we like that product because it gives customers different solutions to different problems,” said Wilmoth.

If lenders do say no, “It might not be an overall decline,” said Alexandre. “A lender may tell someone what they’re looking for may be a little more than they can afford and they may want to scale down their project a little bit.”

Financing hasn’t returned to the free flow of capital that existed prior to the recession, Nagy said. “It’s still tighter than it was, but that was also a historical level of capital to marketplace. During the lending frenzy, money was inexpensive, there were too many lenders and it was an unsustainable path we were on prior to the recession.”

## Keys to Success

When it comes to securing a loan, “a lot of it has to do with property type, loan to value,



Kyle Nagy  
CommCap Advisors

occupancy, performance – it’s not necessarily the individual. In a non-recourse loan that’s real estate, the only collateral is property,” explained Nagy. Recourse bank loans have the property as collateral and can seek repayment from the individual borrower.

With non-recourse institutional loans, the successfully financed project is one that performs well in the marketplace, has reasonable loan-to-value, reasonable price per square foot and favorable occupancy. Determining the ability to finance the project, the banker looks at the property and then, if those items match up, requests information

from the borrower about anything that will reflect negatively on the property like foreclosures or bankruptcies.

“In our financing world, you look at the property first and the borrower second,” said Nagy. Banks are the opposite: they start with financials, tax returns, contingent liabilities and collateral available to pledge.

“Our loan volume in dollars is up significantly and that is really a reflection of property values coming back,” said Alexandre. “Higher values and higher prices mean higher dollar loan amounts. Overall, this is the best year we’ve seen since prior to the recession.”

“We have not been this excited about the Las Vegas economy in a long time,” added Aney. “This year has been a good year, it’s what we expected. There’s been a lot of growth opportunities and it’s great to see cranes in the sky again.”



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Business Services Representative

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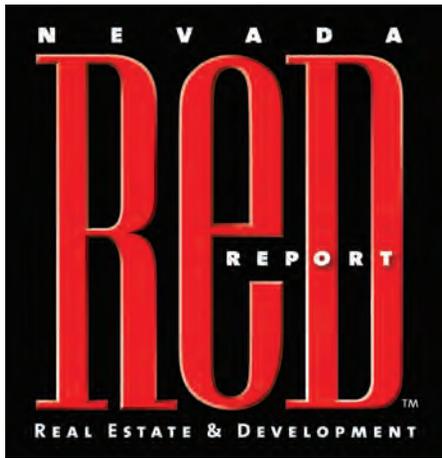
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E

### Sale, Office

**ADDRESS** 1750 E. Sahara Ave., 89104  
**BUYER** Laborers International Union North America, Local 872 (LIUNA, Inc.)  
**SELLER** Greater Las Vegas Association of Realtors (GLVAR)  
**DETAILS** 25,952 SF; \$2,750,000  
**APN** 162-02-812-001  
**BUYER'S REP** Peter Guzman  
**SELLER'S REP** David Scherer and Michael Hsu of Newmark Knight Frank

### Lease, Industrial

**ADDRESS** 2930 Marco St., 89115  
**TENANT** Red Rock Recycling  
**LANDLORD** 2930 Marco St, LLC  
**DETAILS** 31,500 SF; \$1,398,632 for 5 years  
**TENANT'S REP** Bryan Houser of Albright Callister & Associates  
**LANDLORD'S REP** Dean Willmore, SIOR of Colliers International

H

### Sale, Industrial

**ADDRESS** 1850 – 1860 Whitney Mesa Dr., 89014  
**BUYER** Kohler Clifford G. & Louise J. Family Trust  
**SELLER** Whitney Mesa Industrial, LLC  
**DETAILS** 41,445 SF; \$4,315,000  
**APN** 161-32-714-000  
**SELLER'S REP** Garrett Toft of CBRE

N

### Lease, Retail

**ADDRESS** 4404 – 4530 N. Rancho Dr. Ste. F1 & F2, 89130  
**TENANT** Planet Fitness  
**LANDLORD** 4343 North Rancho Drive, LLC

**DETAILS** 18,000 SF; \$2,451,600 for 12 years  
**LANDLORD'S REP** Liz Clare, CCIM and Jacqueline Young of Avison Young

### Lease, Industrial

**ADDRESS** 4700 Mitchell St., 89081  
**TENANT** GIST Specialties  
**LANDLORD** GSC Industries, LLC  
**DETAILS** 30,000 SF; \$115,200 for 1 year  
**TENANT'S REP** Eric Larkin, CCIM of NAI Vegas  
**LANDLORD'S REP** Bryan Houser of Albright Callister & Associates

NW

### Sale, Retail

**ADDRESS** 7591 – 7595 W. Washington Ave., 89128  
**BUYER** Summerlin Investments Group, LLC  
**SELLER** PWREO Buffalo & Washington, LLC  
**DETAILS** 16,126 SF; \$5,097,000  
**APN** 138-27-301-015  
**SELLER'S REP** Joe Bonifatto of Colliers International

S

### Sale, Land

**ADDRESS** NWC of Las Vegas Blvd. & Starr Ave., 89183  
**BUYER** Riverview Henderson Development  
**SELLER** Southern Highlands Investment Partners  
**DETAILS** 47 acres; \$24,500,000  
**APN** 177-32-701-007  
**BUYER'S REP** Antone Brazill, CCIM of NAI Vegas

SW

### Sale, Office

**ADDRESS** 5410 Cameron St., 89118  
**BUYER** Diamond Creek Holdings, LLC Series 12  
**SELLER** Leumi B, LLC  
**DETAILS** 50,400 SF; \$4,150,000  
**APN** 162-30-302-008  
**SELLER'S REP** Mark Musser of NAI Vegas

### Sale, Retail

**ADDRESS** 3864 W. Sahara Ave., 89102  
**BUYER** 3864 W Sahara Avenue, LLC  
**SELLER** Robert G. Weiss, etal  
**DETAILS** 47,625 SF; \$5.3 million  
**APN** 162-06-813-001  
**BUYER'S REP** Joseph Anderson of The Equity Group

**SELLER'S REP** Ray Germain and Candace Bare of Marcus & Millichap

### Sale, Retail

**ADDRESS** 4115, 4145, 4165, 4175 & 4195 S. Grand Canyon Dr., 89147  
**BUYER** Grand Canyon Center LP  
**SELLER** Grand Flam Shops Capital Management  
**DETAILS** 64,698 SF; \$16,650,000  
**APN** 163-19-112-006  
**SELLER'S REP** Rob Ippolito and Michael Zobrist of Newmark Knight Frank

### Sale, Industrial

**ADDRESS** 5950 S. Durango Dr., 89113  
**BUYER** Real Estate Holding Company of Nevada, LLC  
**SELLER** The Center for Interventional Pain Therapies in Las Vegas, LLC  
**DETAILS** 13,000 SF; \$6.5 million  
**APN** 163-33-212-004  
**SELLER'S REP** Mike Young, CCIM and David Livingston of IREPLV

### Sale, Industrial

**ADDRESS** 5410 Cameron St., 89118  
**BUYER** Diamond Creek Holdings, LLC Series 12  
**SELLER** Leumi B, LLC  
**DETAILS** 50,400 SF; \$4,150,000  
**APN** 162-30-302-008  
**SELLER'S REP** Mark Musser of NAI Vegas

### Sale, Multi-Family

**ADDRESS** 4485 Pennwood Ave., 89102  
**BUYER** Tablerock Capital  
**SELLER** Pennwood Partners  
**DETAILS** 232 units; \$68,966 per unit  
**APN** 162-07-301-004  
**REP (BOTH)** Thomas Olivetti of Colliers International

### Sale, Land

**ADDRESS** SWC of Durango Dr. & Oquendo Rd., 89148  
**BUYER** Thanhnhhi Trust  
**SELLER** Durango Oquendo, LLC  
**DETAILS** 4.18 acres; \$3,190,000  
**APN** 163-601-008  
**BUYER'S REP** Simply Vegas  
**SELLER'S REP** Michael Brazill and Edward Bassford of Sun Commercial Real Estate

### Loan, Multi-Family

**ADDRESS** 9599 W. Charleston Blvd., 89117  
**LOAN OFFICER** Andrew Behrens and Jesse Weber of CBRE Capital Markets  
**DETAILS** CBRE Capital Markets' debt and structured finance team arranged \$44.6 million in acquisition financing for The Palms at Peccole Ranch Apartment Homes, a 404-unit apartment master-planned community. It was secured as

a 10-year floating-rate Fannie Mae loan on behalf of DiNapoli Capital Partners.

WC

**Sale, Office**

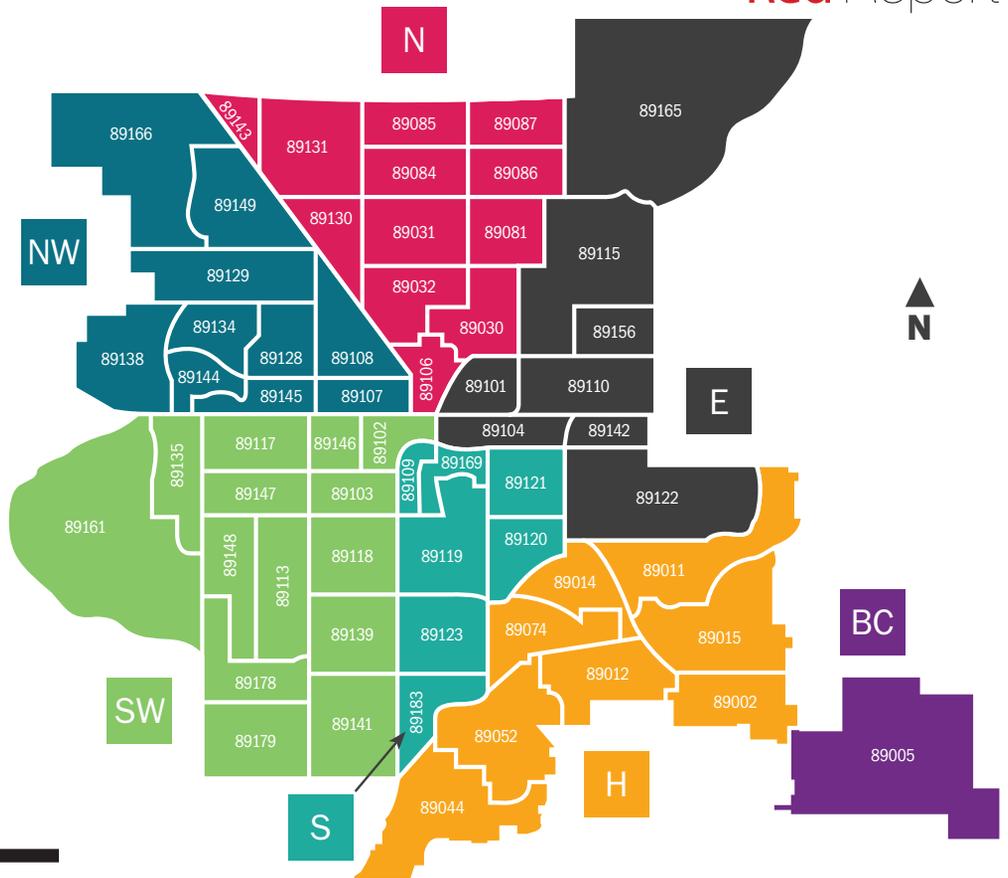
**ADDRESS** 85 Keystone Ave., 89503  
**BUYER** Silverhorn Properties, LLC  
**SELLER** By Beck, LLC  
**DETAILS** 13,778 SF; \$1,072,500  
**APN** 163-150-04

**Sale, Retail**

**ADDRESS** 9732 S. Virginia St., 89511  
**BUYER** Scandia Realty Group, LLP  
**SELLER** Piper M Trust  
**DETAILS** 15,549 SF; \$3 million  
**APN** 163-150-04

**Sale, Retail**

**ADDRESS** 1201 Stardust St., 89503  
**BUYER** Bajwa Properties, LLC  
**SELLER** IStar Bowling Centers II LP  
**DETAILS** 31,792 SF; \$1,304,350  
**APN** 006-166-04



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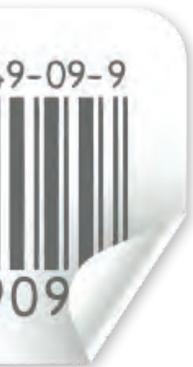
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Mike Montandon, Broker

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# RETAIL SUMMARY

SECOND QUARTER 2017

## RETAIL SECOND QUARTER

TOTAL MARKET	SOUTHERN	NORTHERN*
Total Square feet	44,348,684	32,908,852
Vacant Square Feet	4,807,575	2,645,488
Percent Vacant	10.8%	8.00%
New Construction	34,000	12,600
Net Absorption	9,254	302,468
Average Lease sf/mo (nnn)	\$1.00	\$1.29
Under Construction	374,943	376,572
Planned	821,550	0

### POWER CENTERS

Total Square Feet	10,083,608	4,086,985
Vacant Square Feet	697,357	603,481
Percent Vacant	6.9%	14.80%
New Construction	0	0
Net Absorption	16,285	14,470
Average Lease SF/MO (NNN)	\$1.39	\$1.25
Under Construction	0	0
Planned	466,000	0

### COMMUNITY CENTERS

Total Square Feet	18,741,704	13,120,687
Vacant Square Feet	2,403,440	533,187
Percent Vacant	12.8%	4.10%
New Construction	34,000	11,400
Net Absorption	-46,897	175,431
Average Lease SF/MO (NNN)	\$0.71	\$1.22
Under Construction	250,000	6,810
Planned	0	0

### NEIGHBORHOOD CENTERS

Total Square Feet	15,523,372	14,068,858
Vacant Square Feet	1,706,778	1,402,293
Percent Vacant	11.0%	10.00%
New Construction	0	1,200
Net Absorption	39,866	169,223
Average Lease SF/MO (NNN)	\$1.09	\$1.30
Under Construction	124,943	291,761
Planned	355,550	0

## NEXT MONTH: INDUSTRIAL

### ABBREVIATION KEY

MGFS:	Modified Gross Full-Service
SF/MO:	Square Foot Per Month
NNN:	Net Net Net

\* All numbers exclude regional malls

Southern Nevada analysis and statistics compiled by RCG Economics, Northern Nevada analysis and statistics compiled by Dickson Commercial Group.

### SOUTHERN NEVADA

After a small first quarter increase of 0.3 points from 10.5 percent vacancy in the Las Vegas retail market held firm at 10.8 percent in Q2. The Valley's anchored retail market is generally stabilized, though there remains room for improvement. Some submarkets have fared better than others, such as the Northeast with a 5.8 percent vacancy rate. At the other end of the spectrum is the Downtown submarket with 22.2 percent vacancy.

Net absorption in Q2 was improved at 9,254 square feet, though this did little to make up for Q1's losses of -110,806 square feet. Still, the year-over-year total remained positive at 180,762 square feet.

Development in the anchored retail market continues to pick up with one completion in Q2: Green Valley Crossing Phase 2, a 34,000 square feet community center. Space under construction has increased from Q1 to 374,943 square feet, with planned space at 821,550 square feet, bringing the total forward-supply to well over one million square feet.

The 374,943 square feet of under-construction space is in two projects: Mountain's Edge Marketplace, a 250,000 square feet Community Center and Smith's at Skye Canyon, a 124,943 square feet neighborhood center. The 821,550 square feet of planned Anchored space is in four projects: St. Rose Square (466,000 square feet), Cadence Village Center (153,000 square feet) in Henderson, DC's Plaza (72,550 square feet) and Silverado Promenade (130,000 square feet).

### NORTHERN NEVADA

Having dropped a total of 0.9 percent vacancy since the end of Q1 and a total of 1.6 percent over the last year to end Q2 at 8.0 percent, the Reno/Sparks retail market continues to gain a modest but ever increasing traction in the national marketplace. The drop in vacancy over this last quarter was largely due to three major lease signings totaling just under 100,000 square feet of big box retailers in Sparks. Q2 absorbed 302,468 net square feet, 213,735 square feet more than that of Q1, and an average lease rate of approximately \$1.30 per square foot in all retail sectors. However, lease rates vary drastically depending on the submarket and the age of construction.

The general retail sector remains the most active with an average vacancy rate of 4.1 percent. Shopping centers are not far behind with a drop in the vacancy rate of 1.2% in Q2. A total vacancy of 10 percent and 170,000 absorbed this quarter. Power center vacancy remains the highest in the Northern Nevada market with 14.8 percent vacancy and only 14,470 square feet absorbed in Q2.

Retail development in Northern Nevada has seen a slight increase since the start of 2017 with just under 25,000 square feet of new construction delivered. As of this quarter, just under 100,000 square feet is under construction.

As developers continue to redevelop blighted properties and new construction continues across the Nevada market, there will be a gradual rise in lease rates. 🌟

The “advance” estimate for U.S. real gross domestic product (GDP) for the second quarter of 2017 grew at a 2.6 percent annualized rate. Real GDP for the first quarter was revised downward to a 1.2 percent pace. Residential investment exhibited the largest decrease among the real GDP components for the second quarter, while consumer spending and business investment rebounded robustly. The unemployment rate edged down to 4.3 percent, a 16-year-low level. June retail sales experienced a weaker-than-expected 2.8 percent year-over-year gain, although consumer confidence stayed at a favorable level. The Federal Reserve will probably raise the interest rate once more in 2017 and will start to shrink its \$4.5 trillion balance sheet this year, which could promote hikes in mid- and long-term interest rates.

Nevada posted positive signals in its economic activity based on the most recent data. Seasonally adjusted statewide employment gained 10,600 jobs in June. The trade, transportation and utilities sector created the largest number, 4,200 jobs. Taxable sales in May continued to post a strong 9.2 percent year-over-year increase, which reflected both a sturdy gain in Clark County and a huge surge in Storey County. Legalized recreational marijuana sales are expected to bring additional gains to taxable sales going forward. May gasoline sales (in gallons) increased by 4.0 percent year-over-year.

For Clark County, somewhat muted positive signals emerged with the latest data. The unemployment rate ticked down to 4.9 percent. June visitor volume for Clark County declined by 1.9 percent year-over-year, and the hotel/motel occupancy rate was also down slightly by 0.9 percent from a year ago. Nonetheless, total McCarran passengers was the fourth highest on record, up by 1.5 percent year-over-year during the same period. May taxable sales and gasoline sales climbed 5.7 and 3.7 percent, respectively, compared to a year earlier. Residential housing permits and commercial permits in February decreased substantially by 58.2 and 32.6 percent, respectively, year-over-year.

Washoe County experienced highly positive signals in its economic activity. The unemployment rate fell to 4.0 percent in June. Taxable sales for Washoe and Storey Counties in May increased dramatically by 25.3 percent from last year, thanks to increased activity at TRIC. June gaming revenue and air passengers rose by 1.7 and 8.5 percent, respectively, year-over-year. Residential housing permits in June significantly exceeded their level from last year by 161.0 percent, which reflected a continuing upsurge in multi-family units in Sparks and Reno.

**Stephen M. Miller**, Director  
**Jinju Lee**, Economic Analyst  
 UNLV Center for Business  
 and Economic Research

*The views expressed are those of the authors and do not necessarily represent those of the University of Nevada, Las Vegas or the Nevada System of Higher Education.*

### NEVADA

	DATE	UNITS	DATA			GROWTH		COMMENTS
			LATEST	PREVIOUS	YEAR AGO	RECENT	YEAR AGO	
Employment	2017M06	000s, SA	1342.1	1331.5	1293.4	0.8%	3.8%	Up Over Year Ago
Unemployment Rate*	2017M06	%, SA	4.7	4.7	5.7	0.0%	-1.0%	Unchanged From Month Ago
Taxable Sales	2017M05	\$billion	4.820	4.559	4.413	5.7%	9.2%	Strong Year-Over-Year
Gaming Revenue	2017M06	\$million	895.43	991.60	887.46	-9.7%	0.9%	Increase
Passengers	2017M06	million persons	4.581	4.542	4.502	0.9%	1.8%	Up Over Year Ago
Gasoline Sales	2017M05	million gallons	104.54	99.46	100.56	5.1%	4.0%	Up Over Year Ago

### CLARK COUNTY

Employment	2017M06	000s, SA	979.0	974.3	947.3	0.5%	3.3%	Up Over Year Ago
Unemployment Rate*	2017M06	%, Smoothed SA	4.9	5.0	5.9	-0.1%	-1.0%	Reduced
Taxable Sales	2017M05	\$billion	3.470	3.314	3.283	4.7%	5.7%	Up Over Year Ago
Gaming Revenue	2017M06	\$million	764.32	860.71	761.67	-11.2%	0.3%	Up Over Year Ago
Residential Permits	2017M02	units permitted	803	970	1923	-17.2%	-58.2%	Significant Decrease
Commercial Permits	2017M02	permits	29	32	43	-9.4%	-32.6%	Low and Volatile
Passengers	2017M06	million persons	4.198	4.208	4.134	-0.2%	1.5%	Up Over Year Ago
Gasoline Sales	2017M05	million gallons	71.94	69.21	69.38	3.9%	3.7%	Up Over Year Ago
Visitor Volume	2017M06	million persons	3.886	3.882	3.962	0.1%	-1.9%	Down From Year Ago

### WASHOE COUNTY

Employment **	2017M06	000s, SA	226.4	224.8	218.5	0.7%	3.6%	Up Over Year Ago
Unemployment Rate*	2017M06	%, Smoothed SA	4.0	4.1	5.1	-0.1%	-1.1%	Reduced
Taxable Sales	2017M05	\$billion	0.818	0.765	0.653	6.9%	25.3%	Up Strongly
Gaming Revenue	2017M06	\$million	67.10	68.25	65.95	-1.7%	1.7%	Up Over Year Ago
Residential Permits	2017M06	units permitted	488	549	187	-11.1%	161.0%	Up Significantly From Year Ago
Commercial Permits	2017M06	permits	31	47	30	-34.0%	3.3%	Low and Volatile
Passengers	2017M06	million persons	0.368	0.318	0.339	15.6%	8.5%	Up Over Year Ago
Gasoline Sales	2017M05	million gallons	15.45	14.65	14.81	5.5%	4.4%	Up Over Year Ago
Visitor Volume	2017M05	million persons	0.415	0.411	0.393	1.0%	5.8%	Up Over Year Ago

### UNITED STATES

Employment	2017M07	million, SA	146.615	146.406	144.457	0.1%	1.5%	Up Over Year Ago
Unemployment Rate	2017M07	%, SA	4.3	4.4	4.9	-0.1%	-0.6%	Reduced
Consumer Price Index	2017M06	82-84=100, SA	243.8	243.8	239.8	-0.0%	1.6%	Up Over Year Ago
Core CPI	2017M06	82-84=100, SA	251.6	251.3	247.4	0.1%	1.7%	Up Over Year Ago
Employment Cost Index	2017Q2	05.12=100, SA	129.0	128.3	126.0	0.5%	2.4%	Increased
Productivity Index	2017Q1	2009=100, SA	107.2	107.5	106.0	-0.3%	1.2%	Up Over Year Ago
Retail Sales Growth	2017M06	\$billion, SA	473.5	474.2	460.4	-0.2%	2.8%	Up Over Year Ago
Auto and Truck Sales	2017M06	million, SA	16.41	16.58	16.77	-1.0%	-2.1%	Decreased
Housing Starts	2017M06	million, SA	1.215	1.122	1.190	8.3%	2.1%	Increased
Real GDP Growth***	2017Q2	2009\$billion, SA	17010.7	16903.2	16663.5	2.6%	2.1%	Robust Rebound
U.S. Dollar	2017M07	97.01=100	120.735	122.266	121.967	-1.3%	-1.0%	Down From Year Ago
Trade Balance	2017M06	\$billion, SA	-43.642	-46.391	-43.835	-5.9%	-0.4%	Year-Over-Year Deficit Decrease
S and P 500	2017M07	monthly close	2470.30	2423.41	2173.60	1.9%	13.7%	Up Strongly From Year Ago
Real Short-term Rates*	2017M07	%, NSA	-1.53	-1.62	-2.4	0.1%	0.9%	Up Over Year Ago
Treasury Yield Spread	2017M07	%, NSA	1.25	1.21	1.20	0.04%	0.05%	Slight Increase

\*Growth data represent change in the percentage rate, \*\*Reflects the Reno-Sparks MSA which includes Washoe and Storey Counties, \*\*\*Recent growth is an annualized rate

Sources: Nevada Department of Taxation; Nevada Department of Employment, Training, and Rehabilitation; UNR Bureau of Business and Economic Research; UNLV Center for Business and Economic Research; McCarran International Airport; Reno/Tahoe International Airport; Las Vegas Convention and Visitors Authority; Reno-Sparks Convention and Visitors Authority; U.S. Department of Commerce; U.S. Bureau of Labor Statistics; U.S. Census Bureau; U.S. Federal Reserve System.

Note: NSA = Not Seasonally Adjusted, SA = Seasonally Adjusted

***“Now, Discover Your Strengths”***  
 by Marcus Buckingham & Donald O. Clifton, Ph.D.

“It’s important to know who you are and what your strengths are as a business leader. This book helps develop that understanding so you can focus on building those skills, while mitigating weaknesses.”

**Daniel Pearce** | GM Marvel's Avengers S.T.A.T.I.O.N. at Treasure Island

***“Leadership: Thinking, Being, Doing”***  
 by Lee Thayer

“Understanding that leadership can’t be taught, this book is filled with thought-provoking concepts that help leaders compose successful organizations.”

**Carole Fisher** | President & CEO Nathan Adelson Hospice

***“Good to Great: Why Some Companies Make the Leap ... and Others Don’t”***  
 by Jim Collins

“Putting patients and people first will ultimately lead to a business’ success.”

**Constantine George, M.D.**  
 Medical Director and Founder Epitomedical



## What business book would you recommend to others?



**Hash Kakar** | District Manager Wells Fargo Great Basin

***“The Power of Habit”***  
 by Charles Duhigg

“Sometimes we have to change to adapt to certain situations. Change is not always fast or easy. But with effort, focus, and time any habit can be reshaped and we can change.”

**Nancy R. Ayala** | Franchise Partner Blo Blow Dry Bar

***“Girl Code”***  
 by Cara Alwill Leyba

“I love to see women supporting each other. ‘Girl Code’ inspires female entrepreneurs to be fierce and is filled with insight from the author and amazing team of women who run the world in stilettos.”

**Joel Henriod** | Las Vegas Managing Partner, Lewis Roca Rothgerber Christie

***“What Works: Gender Equality by Design”***  
 by Iris Bohnet, Ph.D.

“This book illuminates underlying causes of gender inequality and delivers practical solutions. Bohnet provides workable advice for overcoming those biases with easy-to-implement action steps at both the institutional and interpersonal levels.”

# Connecting Communities For Over 50 Years

Fifty-two years ago, when conventional utility companies would not serve the desert valley, the residents of rural southwest Nevada throttled up their frontier spirit and formed their own energy cooperative: Valley Electric Association. In 2015, Valley Communications Association was founded to address the lack of another essential utility in our region: high-speed Internet. Since inception, VCA has connected over 6,500 households with broadband Internet access. VEA's member-owners trust us to deliver reliable, affordable electricity to their homes. Now they can trust us to do the same with high-speed broadband and expanded digital services.

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