Policy on Employee vs. Independent Contractor
Adopted September 11, 2012

Over the years, members of our Association have questioned whether our "road crew" should be treated as "independent contractors" rather than as employees. Usually this is in regard to trying to save the homeowners' money. **The Board of the VCHPOA has determined that they are and will be treated as employees as the correct legal position**. Following are some of the reasons taken into consideration by the Board.

There are a number of factors to be considered in this determination. To be an independent contractor one usually needs a "significant investment", usually gets "unreimbursed expense checks", one has the potential to make a profit or loss, and services are available to the general public. In reviewing all, none of these conditions are met. The VCHPOA accepts the determination that our road crew workers are "employees" and not "independent contractors." They don't have a personal investment in tools, they usually do not get "unreimbursed checks", they do not have the ability to make a profit or loss, their services are not open to the public, and they have been getting payroll checks for many years.

The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. We clearly as an Association have and desire the right to control the result of the work and how it is done. We have developed a "Road Plan", have a Road Manager, and the Board often debates and decides on issues that relate to the results of the work and how it will be done. Just the debates on mag chloride are a good example of this. Our governing documents also make this very clear that this is a primary responsibility and mission of the Association. This would again seem to say that the workers are not "independent contractors".

Perhaps the strongest argument that our workers are employees is the historical precedent. Once we started to pay them as employees, we established a recognition that they are not independent contractors. We would be hard pressed to get this reversed, particularly since this has happened for a number of years.

Major changes in this part of IRS law were made in 1977. The general rule is that if one fails in any one area in proper classification, the person must be treated as an employee. A misclassification can be very expensive to the Association. As a result, **we adopt the policy that we must keep our road crew as employees**. The actions now to try to get this reversed would be very expensive to the Association in legal fees and there is no guarantee that we would prevail. In fact, the probability of failure would be very high. The procedures to get a change of classification are also very cumbersome and would add to our costs. Still with little chance of success.

Finally the Board in the past was informed by our legal counsel that we must treat the road crew as employees in order to be compliant with NRS statutes, Internal Revenue Codes and also be consistent with Workman's Compensation Insurance requirements. This should not preclude a revision of this position in the event that major changes are made in the future that would substantially change the regulations in the IRS codes or NRS.

This policy also does not apply to the VCHPOA accountant/bookkeeper who does qualify as an "independent contractor" at this time.