



Community Insights

A newsletter from the Nevada Real Estate Division
Office of the Ombudsman for Owners in Common-Interest Communities

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Department of Business & Industry

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Ombudsman's Corner

by Eldon Hardy, Ombudsman

The staff of the Ombudsman's office is grateful for the appreciative comments we've received from those who read the first edition of our newsletter, "Community Insights."

It is our desire to increase communication with individuals that live in Common-Interest Communities. This newsletter is one of the ways we are trying to accomplish this task. The newsletter will be published quarterly and is accessible on our web site at www.red.state.nv.us.

Our main goal is to assist associations in creating great communities in which to live. One of the ways we are considering acknowledging associations that operate in a positive manner is to publish the names of those associations and then highlight the practices utilized. This idea is still in its infancy stage, so we will provide you with the specific details on how your association can be recognized in a future newsletter.

As the Ombudsman, I would like to address some of the more prevalent issues of which we receive large numbers of requests for assistance. Most involve homeowners wanting to know what they can do to exercise their rights in correcting perceived improper actions by Board of Directors or other members.

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Q. What access to records and financial documents do homeowners have?

A. I'm sure everyone realizes there are very few records which are confidential in communities. Nevada Revised Statutes ("NRS") 116.31175 indicates that upon a written request by a unit owner, the association shall make available the books, records and other papers of the association for review during the regular working hours of the association. NRS 116.31177 requires an association to make available and provide copies of the association's financial statement, budgets and reserve study. Certain information is not available for review by homeowners such as: personnel records, information pertaining to another unit owner and the contract between the association and the attorney. Requests must be reasonable and the HOA must be provided a reasonable amount of time to gather the requested information.

Q. Why are homeowners fined and not aware of the reason for the fine?

A. NRS 116.31031 states the executive board may not impose a fine unless a written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing regarding the violation has been provided. The hearing can take place in either a closed executive session or in



a board meeting (provided a written request was made by the homeowner to the association). The most effective way to remove most questions about whether a fine has been assessed properly is for homeowners to read their governing documents of their community. These encompass the CC & R's, by-laws, and rules and regulations. The Ombudsman's office recommends, very strongly, that all owners and tenants educate themselves in these areas. Also, an effort should be made to read the state statutes. These actions will solve most problems and eliminate disputes to a great extent.

The responses provided are not intended as legal advice. If you are seeking a legal opinion, you will need to contact an attorney. You can reach the Ombudsman's office at 702-486-4480 or statewide toll free at 1-877-829-9907.

CERTIFICATION REQUIRED FOR BOARD MEMBERS

Nevada Revised Statutes ("NRS") 116.31034 (9) states, "Each member of the executive board shall, within 90 days after his appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158."

The Nevada Real Estate Division has created a declaration form for each association to use in compliance with the above statute. This form is located on our web site at www.red.state.nv.us; go to Common-Interest Communities, Common-Interest forms, form #602. As indicated above, within 90 days of election or appointment, each board member must certify in writing to the association that they have read their governing documents and chapter 116. The Administrator does require that a copy of the declaration is submitted at the time of the association's annual registration. If you have already registered, we request that you submit a copy for our records now and not wait until your next registration.

FIDUCIARY DUTY

One of the duties of the board members is fiduciary. On that subject, Nevada Revised Statutes ("NRS") 116.3103 (1) states:

"...In the performance of their duties, the officers and members of the executive board are **fiduciaries**. The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule."

This means that board members owe a fiduciary duty to the association. This obligates board members to act with the utmost honesty and loyalty toward the association and in the association's best interests.

In order to understand and perform their fiduciary responsibilities board members should:

1. ACT WITHIN THE AUTHORITY GRANTED BY STATUTE AND THE GOVERNING DOCUMENTS

Board members must make sure that they do not exceed the scope of authority granted to them by statute. Members should consult NRS 116.3102, which lists the powers of an association.

2. AVOID ALL CONFLICTS OF INTEREST

Before running for office, candidates must disclose all conflicts of interest, including any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board. [NRS 116.31034 (5)].

3. ATTEND BOARD MEETINGS

It is very important for board members to attend meetings of the executive board. While this may seem obvious, some boards have found it necessary to encourage attendance by adopting resolutions that require a member to resign after a certain number of unexcused absences.

4. STAY INFORMED/DUTY TO INVESTIGATE/DUTY TO DISCLOSE

Board members must always stay informed of the issues occurring within the association and in legislation. Normally, members of the board rely on their manager to keep them abreast of any new legislation. However, it is also the responsibility of each board member to ensure that he or she is aware of changes that may affect the community.

This information is an excerpt from the brochure entitled "Fiduciary Duty" which can be obtained from our web site at www.red.state.nv.us.

Commission for Common-Interest Communities Adopts Regulations

by Tami DeVries, Legal Administrative Officer, Real Estate Division

At their meeting held on Thursday, January 27, 2005 the Nevada Commission for Common-Interest Communities adopted the regulations known as LCB File No. R129-04. These regulations made various changes to chapter 116 of Nevada Administrative Code ("NAC"). Although the regulations have been adopted, they do not become law until filed with the Secretary of State.

The regulations adopted contain many important provisions relating to the management and governance of common-interest communities. There were also provisions adopted that set forth the initial guidelines that will be followed by the Commission when conducting its business.

You can view the text of the document considered by the Commission by logging onto the Legislative Counsel Bureau's web site at: <http://www.leg.state.nv.us/register/2004Register/R129-04P.pdf> Once the regulations have been filed with the Secretary of State's office and have become effective, the Real Estate Division website will be updated to provide a link to the text of the adopted version of the regulations.

A summary of the matters addressed in the regulations is as follows:

- Providing standards of practice for members of an executive board;
- Establishing fees relating to certificates and approval of courses;
- Establishing the fee to be assessed when a person submits a bad check or draft to the Division;
- Establishing the amount of fees for community association managers background investigations to the actual cost of conducting the investigation;
- Establishing certain requirements for provisional and supervising community managers;
- Revising the requirements for pre-certification education and continuing education for certified community managers;
- Establishing the requirements for the approval of schools;
- Revising the requirements for the approval and offering of courses in continuing education;
- Establishing the requirements for the approval and offering of distance education courses;
- Establishing the requirements for the approval of instructors of such approved courses;
- Setting forth the requirements that a certificate holder must meet to receive a certificate of completion of an approved course;
- Authorizing the Real Estate Division of the Department of Business & Industry to conduct audits of approved courses and instructors of approved courses;
- Revising the standards of practice for community managers;
- Revising the application process for a person wanting to apply for, renew or reinstate a certificate;
- Revising the provisions pertaining to disciplinary actions against a community manager;
- Authorizing the Division to investigate and audit financial accounts related to an association under certain circumstances;
- Authorizing the Division to subsidize proceedings for binding arbitration;
- Setting forth the qualifications and application procedure for a party wishing to have a proceeding for arbitration subsidized;
- Establishing rules of practice and procedure for conducting disciplinary hearings;
- Requiring certain information to be included in a reserve study;
- Requiring an executive board to file electronically, if possible, the results of reserve study with the Division;
- Revising the qualifications required of a person conducting a reserve study; and
- Clarifying the provisions exempting certain associations from the provisions of chapter 116 of NRS.

RESERVE STUDY

It's a Requirement

by Sonya Meriweather, Administrative Officer

In 1999, legislation passed mandating associations to have a reserve study performed by October 1, 2000. "The executive board of a unit-owners' association organized under Nevada Revised Statutes ("NRS") 116.3101 shall cause to be prepared a study of the reserves of the association by October 1, 2000."

NRS 116.31162 (1) states, "The executive board of an association shall:

- (a) Cause to be conducted, at least once every 5 years, a study of the reserves required to repair, replace and restore the major components of the common elements;
- (b) Review the results of that study at least annually to determine if those reserves are sufficient; and
- (c) Make any adjustments it deems necessary to maintain the required reserves."

The results of the study of the reserves required by subsection 1 must be submitted to the Division for the Commission not later than

45 days after the date that the executive board of the associations adopts the results of the study. The Real Estate Division ("Division") has located on its web site a Reserve Study Summary Form for use by associations to submit the findings from the reserve study to the Division for the Commission. You can locate this form and others at www.red.state.nv.us; go to Common-Interest Communities, Common-Interest forms.

To also assist associations, the Division commissioned the Lied Institute for Real Estate Studies, University of Nevada, Las Vegas, College of Business, to create "Reserve Study Guidelines" for Common-Interest Communities. These guidelines were developed to implement NRS 116.31152, to assist common-interest communities to better understand the preparation of the reserve study and to assist buyers in understanding the financial implications of an association's replacement reserve fund. The guidelines can be downloaded from our web site at www.red.state.nv.us; go to Common-Interest Communities, Reserve Study 2003.

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