

Community Insights

WINTER
2022

A NEWSLETTER FROM THE COMMON-
INTEREST COMMUNITIES AND
CONDOMINIUM HOTELS PROGRAM

DEPARTMENT OF BUSINESS & INDUSTRY
REAL ESTATE DIVISION





In this issue

A Message from the Ombudsman **1**

Redistricting and You **2**

New Hires to the Ombudsman's Office **4**

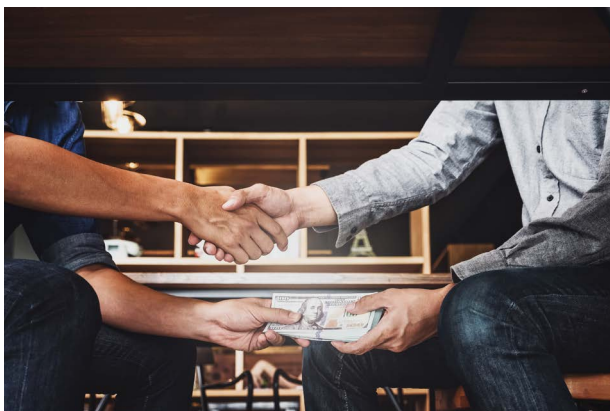
Test Your Knowledge: Definitions **5**

Questions from our Constituents **6**

Understanding Conflicts of Interest **7**

What Happened at Commission? **9**

Ombudsman Office Statistics **11**



A Message From the Ombudsman

We all know the saying, “you have some pretty big shoes to fill.” Believe me, I know I do, and I am up to the task! Being appointed to fill the position that oversees an industry with over half a million constituents is no small undertaking. From day one I came prepared to hit the ground running, and since September, my focus has been on learning the duties of the Ombudsman and the overall structure of the CICCH program.

To gain a better understanding of my role, I fortunately had the opportunity to work closely with previous Ombudsman and current Deputy Administrator Charvez Foger, learning the daily, weekly, and monthly activities of this position. As many of you know, the Ombudsman has in the past attended numerous industry functions, and I too will continue attending such events in an effort to meet and learn about the different organizations and people that comprise our very unique and specific industry. I will continue to focus on building and fostering the CICCH education program, as I believe educating unit owners, board members, and stakeholders alike will cultivate common-interest communities that people want to live in and are proud to be a part of.

In the spirit of remaining educated and informed, I would like to take this moment to remind everyone of the legislative bills becoming effective in January of 2022, mainly: AB 237, pertaining to resale packages and the percent increase for opening or closing a file; and SB 186, requiring common-interest communities with 150 or more units to establish and maintain a secure Internet website or

electronic portal for unit owners to access.

For those who have already established such a website, it is recommended that non-confidential records of the association be made available electronically through this portal. This should limit the need for individuals to physically come into an office to review records, an especially important option as Covid-19 remains an obstacle to conducting in-person business as usual. Also pertaining to SB 186, the Administrator’s guidance that the Division will pause enforcement of section 1.7 of S.B. 186 for 120 days or until certification of the revised statute stands until the amendment is certified, which should take place in the coming month(s). Associations can anticipate that certified language will read that email is the default method for communication, not physical mail.

With this new year, the Ombudsman’s Office will build and promote every tool and resource available to those who engage with us regarding NRS 116. Our goal is to proactively help associations with education before they find themselves in a situation where complaints of wrongdoing are being filed. We have many free resources which can be found on https://red.nv.gov/Content/CIC/Program_Training/. I also look forward to assisting constituents through mediation, bridging any gaps in understanding between disputing parties. In 2022 I will work hard to ensure that all the different branches within the Real Estate Division work cohesively to continue to make our program a successful one for unit owners, board members, and community managers alike.

- OMBUDSMAN JASON O. WYATT

Redistricting and You

Numerical information was captured from Nevada's Legislative Counsel Bureau site and census.gov. Infographics are courtesy of the [Research Division of the Legislative Council Bureau](#).



2020 Federal Census results are in! Every ten years following the U.S. census, the Nevada State Legislature is responsible for redistricting and reapportioning districts for: the U.S. House of Representatives; State Senate; State Assembly; and Nevada System of Higher Education Board of Regents.

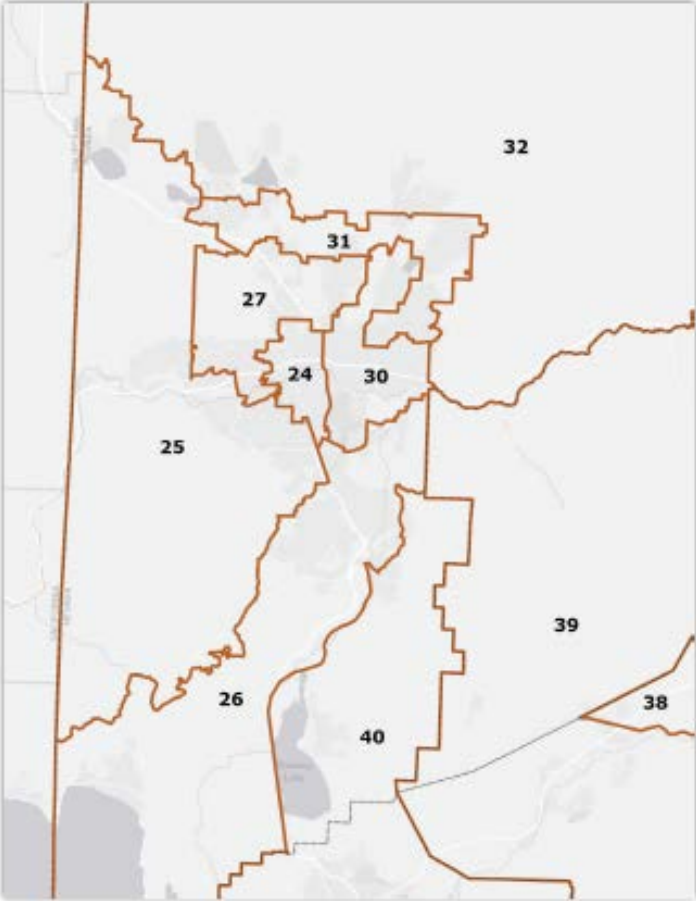
Boundaries are adjusted to ensure that districts are equally populated. In states like Nevada, with consistent population growth, redistricting is crucial to meet the goal of ensuring an equal distribution of voters. “Redistricting” is the act of redrawing the boundaries for election districts. “Reapportionment” is the allocation of a given number of elected members among established political subdivisions to ensure proper representation. Currently, Nevada has four Congressional Districts (CDs), 21 Senate districts (15 of which are in Clark County) and 42 Assembly districts (30 of which are in Clark County). CD1 covers Las Vegas, CD2 covers Northern Nevada, CD3 covers Southern Clark County, and CD4 covers Northern Clark County and central Nevada.

So what exactly did the census reveal? It seems to have confirmed what we have all been observing as of late. Over the last ten years, Nevada’s state population increased by 404,000, or roughly 15%. That’s the fifth highest increase among all states, behind Utah, Idaho, Texas and North Dakota, in that order. Five counties saw population growth of 10% or more, including Nye (17.4%), Clark (16.1%), Washoe (15.4%), Lyon (14%) and Elko (10%). Seven counties lost population, the top three being Lincoln (-16.8%), White Pine (-9.5%) and Esmeralda (-6.9%). Urban residents now represent more than 86% of all Nevada residents.

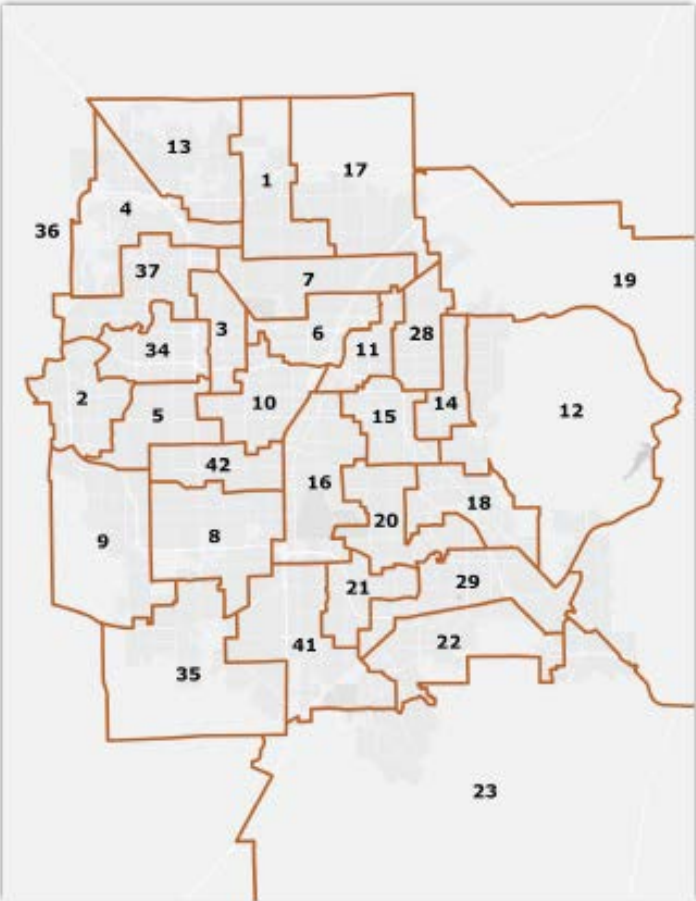
Demographically, Nevada is the third most diverse state in the country, behind only Hawaii and California. Clark County ranks in the top 1% of all counties in terms of diversity nation-wide. For a complete overview of Nevada’s 2020 census results, you can view the [Reapportionment and Redistricting in Nevada: 2020 United States Census Data](#) publication. You can also view Nevada’s interactive [Demographic Maps](#).

Why do these numbers matter? In the United States, The Voting Rights Act attempts to protect the electing power and ultimate representation of

Assembly Districts in Northern Nevada



Assembly Districts in Southern Nevada



minority populations. To prevent the “dilution” of minority votes, local districts in each state must be drawn in a way that does not disadvantage minority groups. The goal is to prevent the practice of either concentrating minority populations as super majorities in one or more districts, ultimately minimizing the number of seats they can win overall, or spreading minority populations so thin over multiple districts that their voting strength is severely weakened. Taking all of this into account, the Legislature has the important task of reassessing and carving out new district lines while simultaneously preserving existing cities, suburbs, communities, and district identities.

What does all this mean to you? Redistricting is important because it determines which candidates appear on your ballot, where you can vote, and which elected officials you can hold accountable. When constituents call the Real Estate Division demanding that laws be changed, we refer you back to your legislator. That is the person tasked with hearing your concerns and potentially taking up your cause. It is legislators that have the power to get laws changed, not any state personnel tasked simply with enforcing and teaching chapters of law as they currently exist.

Census data is also used to justify the allocation of monies. If a certain area statistically has

more youth, they may get more money for schools. Conversely, perhaps an area with an older demographic will have monies allocated to medical facilities. Influxes in population further justify new roads and other infrastructure required to support growth.

Equipped with this new census data, Nevada can make informed decisions regarding the population within its boundaries. With such a diverse and ever-changing population, Nevada has become an important snapshot of the country as a whole, only continuing to increase our recognition and role in future elections, particularly on the national stage.

New Hires to the Ombudsman's Office

COMPLIANCE/AUDIT INVESTIGATOR II




Arija Ivie was hired by the Ombudsman's Office as a Compliance/Audit Investigator II in June of 2021. Arija is a Las Vegas native, earning her Bachelor's degree in Sociology from the University of Nevada, Las Vegas in 2007. In 2011, Arija started her career in public service with the State of Arizona Department of Economic Security. In 2013, she was promoted to the State of Arizona Child Protective Services. Upon returning to Las Vegas in 2014, Arija was hired as a Family Services Specialist with the Nevada Division of Welfare and Supportive Services (DWSS), where in 2016, she was promoted to Welfare's Investigation and Recovery unit as a Compliance Investigator. During her tenure in the DWSS, she specialized in welfare fraud and worked in conjunction with the Child Support Division and Office of the Attorney General to manage and resolve difficult cases. Arija is eager to apply this knowledge and experience as she begins a new chapter in her investigative career for the Real Estate Division, and she is excited to embrace the opportunity to make an impact in her local community serving in this new capacity.

ADMINISTRATIVE ASSISTANT II



In June 2021, Vanessa Ward was hired by the Ombudsman's Office as an Administrative Assistant II. Prior to joining the office, Vanessa served in numerous government roles, including as an Evidence Technician and Investigative Specialist with the Las Vegas Metropolitan Police Department, a Family Services Specialist with Clark County, and a Department Secretary in Boulder City, Nevada. In addition to her professional experience, Vanessa holds a Bachelor of Arts degree in Criminal Justice from the University of Nevada, Las Vegas. With her decades of experience in these various local, federal, and state agencies, Vanessa hopes to bring to her new role a wealth of skills and abilities. Vanessa feels that joining the CIC Compliance section will be a wonderful fit, as she will have an opportunity to learn more about Nevada law pertaining to common-interest communities, while simultaneously using her background to track, audit and report potential violations of law. Vanessa is extremely excited to understand this industry, and is eager to grow in her position within the Division.



The Real Estate Division is Hiring! If you or someone you know is interested in working for the State, applications can be received through <https://careers.nv.gov/>. Be sure to filter by location, and then "Business and Industry" under "Agency" if interested in jobs located within the Nevada State Business Center.

TEST YOUR KNOWLEDGE

Match the Title to its Definition



Definition

1. A unit's owner elected to the board of directors to act on behalf of the association.
2. Pursuant to the association's governing documents, a body designated by the board of directors to exercise the powers of the board in the management of the business and affairs of the association.
3. A person who holds a certificate or temporary certificate and who provides for or otherwise engages in the management of a common-interest community.
4. Any person or group of persons who, as part of a common promotional plan, offer to dispose of their interest in a unit.
5. An individual authorized to perform clerical duties on behalf of the association, such as preparing a meeting agenda, taking meeting minutes, sending mailings, processing paperwork, maintaining files, etc.
6. An individual, not required to be a unit owner unless the governing documents provide otherwise, who carries out their specific duties on the executive board for the term and in the manner prescribed by the association's bylaws.
7. A person appointed to assist owners in common-interest communities and condominium hotels to understand their rights and responsibilities as set forth in chapter 116 of NRS and the governing documents of their associations.
8. An association that has entered into a management agreement with a community manager.
9. Real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of the common expenses.
10. An organization comprised exclusively of units' owners.

Title

- A. DECLARANT
- B. BOARD DIRECTOR
- C. BOARD OFFICER
- D. COMMITTEE
- E. COMMUNITY MANAGER
- F. UNLICENSED EMPLOYEE
- G. CLIENT
- H. OMBUDSMAN
- I. ASSOCIATION
- J. COMMON-INTEREST COMMUNITY

ANSWER KEY

10. I
9. J

8. G
7. H

6. C
5. F

4. A
3. E

2. D
1. B

Questions from our Constituents

Q1. A homeowner in my community is claiming that the flag being flown from their home, which looks nothing like the U.S. flag, is their personal version of the country's flag, and is constitutionally protected. For the purpose of enforcement of an association's governing documents, how exactly is the U.S. flag defined?

United States Code, Title 4 specifically defines the U.S. flag by design. The language states that the "flag of the United States shall have thirteen horizontal stripes, alternating red and white, and a union consisting of white stars on a field of blue." The dimensions and locations of the constituent parts of the flag are further defined in section 2. A flag must meet the description in the federal code to be considered a flag of the United States.

Q2. My association's executive board just renewed a management contract without first soliciting any bids. Isn't this a violation of law?

The primary provision of law addressing bids is NRS 116.31086, which states that "if an association solicits bids... [it] must, whenever reasonably possible, solicit at least three bids" once the cost of the contract meets certain percentage thresholds based on the size of the community. The word "if" cannot be ignored, therefore if no bids are solicited, the Division cannot state that a violation of law took place. That being said, the solicitation of bids is of course best practice (NAC 116.405(8)(d)) and recommended for any corporation. It has been alleged that not soliciting bids could result in a breach of fiduciary duty, as officers and members of the executive board must act on an informed basis and in the best interest of the association when taking action on behalf of the units' owners. If an executive board is indeed acting on information which justifies their position that the solicitation of bids is unnecessary, they should ensure that a proper and thorough discussion of the matter takes place prior to casting their vote at an executive board meeting held pursuant to NRS 116.31083. The goal is to allow any unit owner listening to the meeting to clearly understand why the decision not to solicit bids was made, and show that the board is complying with their fiduciary duty to the community.

Q3. Can electronic signatures be used to withdraw money from the association's operating account?

Except for the situations described in NRS 116.31153(3), regarding money in the operating account being withdrawn without any signatures, two signatures are required to withdraw money from either the reserve or operating accounts.

When withdrawing money in the operating account, **those two signatures may be electronic if:**

- a) The electronic transfer of money is made pursuant to a written agreement entered into between the association and the financial institution where the operating account of the association is maintained;
- b) The executive board has expressly authorized the electronic transfer of money; and
- c) The association has established internal accounting controls which comply with generally accepted accounting principles to safeguard the assets of the association (NRS 116.31153(4)).

Pursuant to NRS 116A.630, the community manager has a responsibility to maintain internal accounting controls, including, without limitation, segregation of incompatible accounting functions. The community manager shall at all times ensure that:

- a) The financial transactions of a client are current, accurate and properly documented; and
- b) There are established policies and procedures that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation:
 - (1) Proper maintenance of accounting records;
 - (2) Documentation of the authorization for any purchase orders, expenditures or disbursements;
 - (3) Verification of the integrity of the data used in business decisions;
 - (4) Facilitation of fraud detection and prevention; and
 - (5) Compliance with all applicable laws and regulations governing financial records.



Understanding Conflicts of Interest

When a unit owner is elected to serve as a member of the association's executive board, they are taking on a significant responsibility. They become fiduciaries of the association, subject to conflict of interest rules governing officers and directors of a nonprofit corporation, with a duty of care and loyalty to place units owners' interests above their own (NRS 116.3103).

Beginning at the time of candidacy, those seeking to serve on the board must make a good faith effort to disclose any financial, business, professional, or personal relationship/interest that would result, or appear to result, in a potential conflict of interest if they were to serve (NRS 116.31034(9)(a)). This disclosure, sent with the ballot, allows unit owners to make an informed decision when determining who to elect to the board as their representative. This disclosure further allows the current executive board to determine whether or not a candidate would in fact "stand to gain" if they were to serve.

Pursuant to NRS 116.31034(10)(a)(2), a unit owner

cannot be a candidate on the ballot or serve on the board if they stand to gain any personal profit or compensation of any kind from a matter which would come before the executive board. Specifically, the law states that individuals serving on the board cannot have a contract to provide financing, goods or services to the association, or otherwise accept commission, personal profit or compensation of any kind from the association for providing financing, goods or services (NRS 116.31187). Similarly, those serving must act in good faith and honesty and cannot solicit or accept any form of compensation, gratuity or other remuneration that would improperly influence or would appear to a reasonable person to improperly influence their decisions (NRS 116.31185). In short, they cannot be involved in self-dealing and/or bribery in exchange for their vote.

Board members further cannot put the interests of those closest to them above those of the association. NRS 116.31034(10) states that a person may not be a candidate for or member of the board if they reside with, are married to, domestic partners with,



or related by blood, adoption or marriage within the third degree of consanguinity or affinity to another person who is also a member of the board or the community manager for the association. While there is an exception to this rule when there are not enough owners in the community willing to serve, having two or more board members from the same family or household serving together could create a voting block and a potentially dangerous concentration of power when it comes time to make decisions for the association.

Attempting to serve as a check on any such imbalance of influence on the board, the law states that association rules must always be uniformly enforced under the same or similar circumstances against all units' owners, and also provides that board members disclose, prior to voting, when a member of their household or relative stands to gain personal profit or compensation from

a matter before them (NRS 116.31084). Again, disclosures allow individuals to act on a more informed basis and allow for transparency regarding potential self-dealing.

Overall, board members must maintain a separation of personal interests from those of the association. This can sometimes be difficult, as they are in fact a member of the association themselves. They shall not be deemed to have a conflict of interest resulting in a potential to gain solely because they are the owner of a unit in the community. A decision made which benefits them as a unit owner in a manner that is equal to any other unit owner, is not considered to be a personal gain.

While it may not always be easy to determine what constitutes a conflict of interest for a member of the association's executive board, disclosures are a good place to start. Depending on the complexity

of the matter, disclosures may prompt a discussion of the board, resulting in a decision of whether or not the director must abstain from that vote to maintain their fiduciary duty to the community.

It is imperative that board members not take advantage of their roles. They cannot be arbitrary or capricious when enforcing the association's governing documents and must act as stewards for safeguarding the long-term value of the community through their financial decisions. They should act on an informed basis and their duty of loyalty requires them to maintain confidentiality with regard to all decisions and information with which they have been entrusted. In their positions of power, whenever torn by competing interests between that of self and the association, the interests of the association must prevail.

What happened at Commission?

ALLEGATIONS/STIPULATIONS

Stipulations occur when both the respondent and the Division have agreed to conditions reviewed and accepted by both sides. A stipulation may or may not be an admission of guilt.

ACTIONS/DECISIONS

Acts of the Commission for Common-Interest Communities and Condominium Hotels are not published until after the 30-day period allowed for filing under Judicial Review. If a stay on discipline is issued by the court, the matter is not published until the final outcome of the review.

NRED V. CINDY MANNING

CASE NUMBER 2020-350

TYPE OF RESPONDENT Community Manager

ALLEGATIONS/VIOLATIONS

The Commission concluded that the respondent violated: NAC 116A.345(2)(a) and NRS 116.640(2)(a) by failing to timely comply with a request from the Division to provide documents related to a case; NRS 116A.630(1)(b) by failing to timely file an addendum with the Division; NAC 116A.340 by failing to give written notice of a change of address within 10 days; and the Administrator's order to timely pay a fine issued pursuant to NAC 116A.350(4)(b)(1).

DISCIPLINARY ACTIONS

Respondent shall pay to the Division a total of \$3,162.49, consisting of a fine in the amount of \$1,000, plus the Division's fees and costs in the amount of \$2,162.49. This amount shall be payable to the Division within 60 days of the date of the Order.

NRED V. DEBORAH ANDERSON

CASE NUMBER 2020-269

TYPE OF RESPONDENT Community Manager

ALLEGATIONS/VIOLATIONS

The Commission concluded that the respondent violated: NRS 116A.630(6)(a) by failing to ensure the financial transactions of the client are current, accurate, and properly documented; NRS 116A.630(1)(b) by representing on a form prescribed by the Division that a site inspection had been conducted in connection with a reserve study, when no such site visit had been performed; NRS 116A.620 by managing under an agreement that did not include a complete schedule of fees, costs, expenses and charges to be imposed; NRS 116.31153(1) and NRS 116A.640(5) by transferring \$189,800 from the reserve account without providing any record establishing that the transfers were done at the direction of the board; and NAC 116A.355 by committing unprofessional conduct and/or professional incompetence by failing to act in the best interest of the association.

DISCIPLINARY ACTIONS

Settlement—Respondents Jackson and Dominguez have since hired a community manager and agree to attend 12 hours of classes offered or approved by the Division within 12 months. Respondent Dominguez shall reimburse the association the sum of \$6,300 for improperly waived assessments within 45 days. Respondents agree that if the terms

What happened at Commission?

CONTINUED

NRED V. DEBORAH ANDERSON CONTINUED

and conditions of the stipulation and order are not met, the Division may proceed with prosecuting the complaint before the commission.

NRED V. DENISE VARGAS

CASE NUMBER 2019-817 **TYPE OF RESPONDENT** Community Manager

ALLEGATIONS/VIOLATIONS

The Commission concluded that the respondent violated: NRS 116A.630 by failing to act as a fiduciary to the association by permitting a board member (also an unlicensed contractor) to perform association work; NRS 116.31153(1) by permitting this board member to sign checks to himself from the association's reserve account; NRS 116A.630(15) by failing to maintain internal accounting controls, including, without limitation, segregation of incompatible accounting functions; and NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a) and (b)) by committing professional incompetence by demonstrating a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to the Association and by failing to exercise reasonable skill and care with respect to a duty owed to the Association.

DISCIPLINARY ACTIONS

Respondent shall pay to the Division a total of \$47,790.40, consisting of a fine in the amount of \$45,000 and the Division's attorney fees and costs in the amount of \$2,790.40. The Amount Due shall be payable to the Division within 90 days of the date of the Order. Any certificates issued by the Division are revoked for a period of five years, or until such time that the respondent has fully paid the amount due, whichever period is longer.

NRED V. SRDJAN PANTIC

CASE NUMBER 2019-836 **TYPE OF RESPONDENT** Board Member

ALLEGATIONS/VIOLATIONS

The Commission concluded that the respondent violated: NRS 116.31187(l)(b) by receiving personal profit or compensation by performing services to the association while serving on the board; NRS 116.3103 through NAC 116.405(2) by failing to act in good faith and in the honest belief that his actions are in the best interests of the association by acting for reasons of self-interest and gain; and NRS 116.3103 through NAC 116.405(5)(a) by impeding or otherwise interfering with the Division's investigation by failing to provide requested documents during an investigation.

DISCIPLINARY ACTIONS

Respondent has requested a rehearing.

REMINDER

For those associations with elections coming up, the Ombudsman's Office has posted an [election process flowchart](#), as well as a sample [Candidate Nomination Form](#) on its [Cheat Sheets and Templates page](#).

Ombudsman Information

October through December 2021

Total Associations Registered in the State of Nevada	3,529
Complaints Received	50
Alternative Dispute Resolution (ADR) Filings	72
Associations Reviewed for Possible Audit	60
Training Sessions Conducted	13
Classroom Attendees	236

UPCOMING COMMISSION MEETINGS

- **MARCH 1-3**
- **MAY 31 - JUNE 2**
- **SEPTEMBER 13-15**
- **DECEMBER 6-8**

Further details located on the [CICCH Commission Calendar](#).

UPCOMING HOLIDAYS

FEBRUARY 21 / WASHINGTON'S BIRTHDAY

MAY 30 / MEMORIAL DAY

STATE OF NEVADA DEPARTMENT OF BUSINESS & INDUSTRY

Terry Reynolds
Director

REAL ESTATE DIVISION

Sharath Chandra
ADMINISTRATOR

COMMON-INTEREST COMMUNITIES & CONDOMINIUM HOTELS Office of the Ombudsman

Jason O. Wyatt
OMBUDSMAN

Monique Williamson
EDUCATION & INFORMATION OFFICER
EDITOR

COMMISSION FOR COMMON- INTEREST COMMUNITIES & CONDOMINIUM HOTELS

Michael Burke, Esq., Chairman
ATTORNEY MEMBER

Charles Niggemeyer, Vice-Chairman
HOMEOWNER MEMBER

Richard Layton, Secretary
CERTIFIED PUBLIC ACCOUNTANT MEMBER

Phyllis Tomasso, Commissioner
HOMEOWNER MEMBER

James Bruner, Commissioner
DEVELOPER MEMBER

Tonya Gale, Commissioner
COMMUNITY MANAGER MEMBER

Patricia Morse Jarman, Commissioner
HOMEOWNER MEMBER

NEVADA STATE BUSINESS CENTER
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN
3300 W. SAHARA AVE. SUITE 325
LAS VEGAS, NV 89102

PHONE: 702-486-4480

FAX: 702-486-4520

EMAIL: CICOMBUDSMAN@RED.NV.GOV