

A Newsletter from the Common-Interest Communities & Condominium Hotels Program

Community Insights

SUMMER EDITION

Department of Business & Industry, Real Estate Division

OMBUDSMAN'S HUDDLE

Real Estate Division

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The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels was created by the Nevada State Legislature in 1997 to better assist homeowners and board members in understanding their rights and obligations under the law that governs Common-Interest Communities; NRS & NAC 116.

The mission of the Office is to provide a neutral and fair venue to assist homeowners in handling any association disputes that may arise. The Office has multiple ways of accomplishing its mission: the informal conference process, where both parties sit down around a table in an attempt to reach a resolution; facilitating the ADR process, for a disagreement regarding the interpretation, application or enforcement of association governing documents; or by thoroughly investigating alleged violations of law. If investigated, a complaint may rise to the occasion where it will be heard by the CIC Commission for disciplinary action.

Any complaint submitted to the Office regarding a perceived violation of NRS or NAC 116 by a homeowner's association not involving a community manager, must be submitted on Intervention Affidavit Form 530. The complainant must be the aggrieved party and the complaint must be submitted within 1 year of discovery of the alleged violation.

If the complaint is against a homeowner's association and revolves around the interpretation or enforcement of the *governing*

documents, the complainant must file for ADR using Form 520. There is no statutory limitation for filing for ADR, however if a complainant wishes to be subsidized for the costs, the form must be submitted within 1 year of discovery of the alleged violation.

No matter the form used, the goal of the Office of the Ombudsman is to enforce compliance with the law and provide unit owners with a variety of opportunities to have their concerns heard.

Each situation is unique. While at times the issue is as simple as a miscommunication between the parties, in other situations a multitude of factors have muddied the facts, including personalities of the actors and their histories with one another. Each complaint is as worthy as the next and each will be allotted the time and attention that it deserves in this Office.

- Charvez Foger, Ombudsman



Balloon from the Summerlin Council Patriotic Parade in Las Vegas, Wednesday, July 4, 2018.



EDUCATION CORNER

What does a homeowner's association need to know about fines?

NRS 116.3103: (1)(b)(2); (4); (7)

If an association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered, or sent prepaid by U.S. mail to the designated address of each unit, a *schedule of the fines* that may be imposed for those violations.

As listed in the fine schedule, the amount of a fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. It is not sufficient for the association to list generally "all violations" as a sole and single category and then prescribe *one fine amount for all* possible violations. Instead, the schedule must list out categories of fines for each potential type of violation and prescribe a corresponding fine amount that appropriately matches the degree, severity and impact of that category type.

The \$1,000 cap is on the amount that can be charged for violations cited at one hearing. The \$100 cap does not apply to a violation by a unit owner that poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of residents in the common-interest community. In this case, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents.

The executive board may not impose a fine unless, within a reasonable time after discovery of the alleged violation, the person against whom the fine will be imposed has been provided with written notice:

- * Specifying *in detail* the alleged violation (cite language from governing documents),
- * Including a *clear and detailed photograph* whenever possible,
- * Including the *proposed action to cure* the alleged violation, and
- * Including the *amount of the fine* and the date, time

and location for a *hearing* on the alleged violation. An alleged violator must be given reasonable opportunity to attend a hearing before any fine may be imposed.

If a fine is imposed and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a *continuing violation*.

Thereafter, the executive board may impose an additional fine for each 7-day period or portion thereof that the violation *is not cured*. Any such additional fine may be imposed without notice and opportunity to be heard.

NRS 116.310315 If an association has imposed a fine against a unit's owner for violations of the governing documents, the association shall establish a *compliance account* to account for the fine, which must be *separate* from any account established for assessments. Assessment payments cannot be applied to fines and any past due fine must not bear interest.

NRS 116.31175(5) The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, construction penalty or any other sanction. The general record:

- (a) Must contain a general description of the nature of the violation and the type of sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount.
- (b) Must NOT contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or location of the unit.
- (c) Must be maintained in an organized and convenient filing or data system that can be searched and reviewed by unit owners.



QUESTIONS FROM OUR CONSTITUENTS

1. If I, as a unit owner, am allegedly in violation of the governing documents and I am invited to a hearing in front of the association's executive board, what happens if I request an open hearing?

[\[NRS 116.31085\(4\)\]](#)

A unit owner noticed to attend ANY hearing of the association:

- (a) Is entitled to attend all portions of the hearing related to the alleged violation, including the presentation of evidence and the testimony of witnesses;
- (b) Is entitled to due process, which must include the right to counsel, the right to present witnesses, and the right to present information relating to any conflict of interest of any member of the hearing panel; and
- (c) Is NOT entitled to attend hearing deliberations of the executive board.

An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents UNLESS the person who may be sanctioned for the alleged violation requests in writing that an *open hearing* be conducted at an executive board meeting.

If a unit owner requests that their hearing be conducted in an 'open meeting,' they are giving up their right to confidentiality. That unit owner's name will be on the agenda and details of their alleged violation will be captured in both the audio recording and meeting minutes, becoming record of the association.

3. Can the association fine me for the actions of a vendor performing work on my unit? This vendor was caught speeding through the community.

[\[NRS 116.31031\(1&2\)\]](#) & [\[NRS 116.3115\(6\)\]](#)

A fine may NOT be imposed against a unit owner for a violation which involves a vehicle and which is committed

by a person who is delivering goods to, or performing services for the unit.

The executive board may NOT impose a fine against a unit owner for a violation of any provision of the governing documents committed by an invitee unless the unit owner:

- (a) Participated in or authorized the violation;
- (b) Had prior notice of the violation; or
- (c) Had an opportunity to stop the violation and failed to do so.

If an invitee of a unit owner *does* violate any provision of the governing documents, including speeding within the community, the executive board may not prohibit the unit's owner or invitee from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

If *damage* to a unit or other part of the common-interest community is caused by the willful misconduct or gross negligence of any invitee, the association may assess that expense exclusively against the unit involved. This is true UNLESS the damage is caused by a vehicle and once again is committed by a person who is delivering goods to, or performing services for, the unit.

2. I was sent a violation notice for weeds in my front yard four months ago. I pulled the weeds and sent a picture to the association of my yard without the weeds. The association confirmed that the violation was cured. Recently, I was notified that weeds have popped up again and that I am now in continuing violation status. Is that true?

[\[NRS 116.31031\(7\)\]](#)

If a fine is imposed and the violation is *not cured* within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Once a violation has been cured, even it occurs again, the board cannot consider the violation to be 'continuing.'

FILING FOR ADR

HOAs are always in the news. Recently, a California HOA demanded that unit owners leave their garage doors open or else face a \$200 fine, a New Mexico HOA removed a unit owner's unapproved fence while she was away, a Florida HOA fined a unit owner and veteran \$1,000 for hanging the American flag from a flower pot due to health and safety concerns... and there are unfortunately many more examples of misguided actions by associations around the country.

In Nevada, the Office of the Ombudsman sees various complaints, oftentimes revolving around changes made to the exterior of homes.

Pursuant to NRS 116.2111, subject to the provisions of the declaration and other provisions of law, a unit's owner may make any improvements or alterations to his or her unit that do not impair the structural integrity, mechanical systems, or lessen the support of any portion of the common-interest community.

Any improvement or alteration made *that is visible from any other portion of the common-interest community* must be installed, constructed or added in accordance with the *procedures set forth in the governing documents* of the association and must be selected or designed to the maximum extent practicable to be *compatible* with the style of the common-interest community. A unit's owner may not change the exterior appearance of a unit, or any other portion of the common-interest community, without *permission* of the association.

Many associations have architectural guidelines put in place, as well as an Architectural Review Committee (ARC) to review all requests for alteration. An association may have a color pallet that unit owners

must choose from, or landscaping guidelines that must be adhered to. These guidelines must be in writing and are part of the governing documents of the association.

If a unit owner makes changes to the exterior of his or her unit without first following the steps outlined in the governing documents, the unit owner may be subject to fines. Unit owners who disagree with the way the governing documents are being enforced by the executive board have the option of utilizing the Alternative Dispute Resolution (ADR) process through the Division. This process **MUST** be used before commencing a civil action in court (NRS 38.310). If not used, the case may be automatically dismissed by a judge.



North Carolina home fined for the color of their shutters.
Source: <http://abc7news.com/home/whats-wrong-with-this-house-homeowner-fined-thousands-by-hoa/3024010/>

Pursuant to NRS 38.320, the ADR process is initiated by filing a written claim with the Division on [Form 520](#), accompanied by a \$50 filing fee. Upon filing, the claimant shall serve a copy of the claim to the respondent and the respondent shall, within 30 days after the date of service, file a written answer with the Division on [Form 521](#), also accompanied by a \$50 filing fee.

Participating parties are responsible for the cost of mediation, which must not exceed \$500 for 3 hours. This cost may be subsidized by the Division if money is available, subsidy [Form 668](#) was filed with the Division within 1 year of discovery of the alleged violation, and you have not filed for subsidy regarding the unit within the past year (State's fiscal year).

If parties participate in ADR mediation *and an agreement is not obtained*, civil action may be commenced in the proper court with a letter from the Division stating that mediation through the Division was attempted, but unsuccessful.

BEFORE FILING A COMPLAINT, DID YOU KNOW?

Before filing a complaint with the Ombudsman's Office, it is important to know what the law says regarding the process:

NRS 116.760 - filing against an association: officer, employee, agent, board member, declarant or affiliate of the declarant.

A person who is aggrieved by an alleged violation may, **not later than 1 year after the person discovers or reasonably should have discovered the alleged violation**, file with the Division on [Form 530](#) a written affidavit that sets forth the facts constituting the alleged violation.

A person may not file the affidavit unless he or she has provided the respondent by **certified mail, return receipt requested**, with written notice of the alleged violation ahead of time. This notice must:

- (a) Be mailed to the respondent's last known address.
- (b) Specify in reasonable detail the alleged violation, any actual damages suffered by the aggrieved person as a result of the alleged violation, and any corrective action proposed by the aggrieved person. An effort must be made to correct the perceived violation at the association level prior to escalating the complaint to the Division.

The notice must be attached to the affidavit when submitted to the Division, along with evidence that the respondent was given a reasonable opportunity after receiving the written notice to correct the alleged violation (10 business days).

NAC 116A.350 - filing against a community manager.

If a unit owner alleges that a community manager is guilty of misconduct, that unit owner must send the allegations, **in writing, to the community manager** prior to filing a complaint with the Division. Upon receipt, the community manager shall, in good faith, acknowledge and respond in writing to the person making the allegations **within 12 working days**.

If the allegations are not clarified or resolved, a complaint regarding the actions of a community manager can be submitted to the Division on [Form 514a](#). This form must be signed by the person submitting the complaint and include, without limitation:

- (i) The identity of the community manager who is alleged to have violated NRS or NAC 116 and the nature of the alleged violation;
- (ii) All evidence supporting the allegations, including, as appropriate, corroborating statements by other persons or specific information as to persons who may be contacted to provide such corroboration;
- (iii) The name, address and telephone number of the person submitting the complaint; and
- (iv) Documents that evidence an attempt by the person submitting the complaint to resolve the issue with the executive board or the community manager, including, without limitation, any written response of the executive board or the community manager to the allegations of the person submitting the complaint.

OMBUDSMAN INFORMATION - April through June 2018

Total Associations/Units Registered in the State of Nevada	3,258/ 541,939
Complaints Received	78
Alternative Dispute Resolution (ADR) Filings	49
Audits Conducted by the Ombudsman's Office	55
Records Requests Processed	7
Training Sessions	17
Classroom Attendees	342

Main Page: <http://red.nv.gov/>

All forms can be found at:
<http://red.nv.gov/Content/Forms/All/>

Training/ Class calendars can be found at:
http://red.nv.gov/Content/CIC/Program_Training/;
and
<http://red.nv.gov/Content/Education/Calendars/CIC/>

If you have any questions, please email:
CICombudsman@red.nv.gov

GOVERNOR'S CONFERENCE— Hosted by the Nevada Department of Business and Industry

7th Annual
GOVERNOR'S CONFERENCE ON BUSINESS 2018

SAVE THE DATE!
OCTOBER 18, 2018
RIO ALL-SUITE HOTEL AND CASINO

Contact Carrie Foley for information on conference sponsorships:
cfoley@business.nv.gov or (702) 486-2754

REVISED INFORMATIONAL BULLETIN #33

COMPUTING TIME

NRS 116 contains multiple references to a number of days. Some references include a designation of “business days” while a few contain the designation of “calendar days.” The rest of the references refer only to “days.”

Where business days are referred to, Saturday, Sunday and holidays are excluded from the calculation. In all other instances where a number of “days” are used, calendar days should be applied.

The Division intends to treat all references to days in a uniform manner. There is no indication that the Nevada Legislature intended “days”- absent any designation of business days - to mean anything other than calendar days.

For example, NRS 116.31083(2) requires 10 days’ notice of a board meeting. This has always been interpreted to require 10 calendar days’ notice.

In a similar fashion, NRS 116.4109 includes references to both days and business days in the same statute. There is no reason to think the Nevada Legislature intended anything other than what is simply stated: *Resale package documents must be furnished within 10 days of a written request; A statement of demand must be provided within 10 days of a written request; and A statement of demand must remain effective for no less than 15 business days.*

WHAT HAPPENED AT COMMISSION?

NAME	ALLEGATIONS/ VIOLATIONS	DISCIPLINARY ACTIONS / STIPULATIONS
<p>NRED v. Green Valley Country Club Estates Homeowners Association, Michael Hayden, Darla Hayden, Gerard Capra and Charles Damus Case No. 2016-2462 <i>Type of Respondent: Board Directors</i></p>	<p>Board members allowed the association to pay family members of the board’s former president and treasurer (Michael and Darla Hayden). Checks paid to a financial consulting firm, totaling approximately \$17,041.81 from 2013 through 2015, were signed by husband and wife board members to a firm owned by their son. Their daughter also received payments from the association totaling approximately \$2,720 for bookkeeping services. Other members of the board stated that they had no knowledge of the familial relationship between the association’s vendors and board members. The association has no contracts with either vendor, nor does it have minutes or audio from board meetings from 2013 to 2016. The association has no bids for services provided. Respondent Michael Hayden listed himself as the custodian of records in 2013 and 2015. Respondents violated: NRS 116.3103, NRS 116.31175, NRS 116.31083, and NRS 116.31084(2).</p>	<p>Respondents Michael and Darla Hayden agree not to serve as a board member or officer for any CIC located in the state of Nevada for a period of no less than 5 years. The association agrees to hire and maintain a community manager who holds a certificate from the Division for no less than 5 years and agrees not to use its funds for any purpose not expressly permitted in its governing documents. Respondents agree that by entering into this Stipulation and Order, they are waiving their right to a hearing. If the terms and conditions of the Stipulation are not met, the Division may rescind the Order and proceed with prosecuting the Complaint before the Commission.</p>
<p>NRED v. Kristen Gillis Case No. 2017-1743 <i>Type of Respondent: CAM.0001092-SUPR (REVOKED)</i></p>	<p>Gillis permitted her daughter, who is not a community manager, to chair a meeting which was described by the Complainant as being “hostile, unprofessional and unorganized.” Gillis or her family members also owned two companies used as vendors by the association. This relationship was not disclosed. Gillis paid a company affiliated with her son \$425 per month for parking inspections and \$19,000 to a company affiliated with her mother for unspecified services. Gillis failed to respond to a letter from the Division requesting that she provide a response to the allegations. Respondent violated: NRS 116A.630, NAC 116A.320, NRS 116A.640, NAC 116A.345, NAC 116A.355.</p>	<p>The Commission orders as follows: Respondent’s community manager certificate is revoked for a period of no less than ten years and in no event sooner than all fines imposed by the Commission are paid in full; Respondent shall pay an administrative fine to the Division totaling \$12,930.77 (\$1,000 fine & \$1,930.77 for attorney’s fees) within 60 days; Respondent shall pay to Hillcrest Community Association restitution in the amount of \$21,550 within 60 days.</p>
<p>NRED v. Kristen Gillis Case No. 2017-2088 <i>Type of Respondent: CAM.0001092-SUPR (REVOKED)</i></p>	<p>Gillis signed and submitted a change of community manager filing addendum to the Division prior to being hired by the board. Gillis performed community management services for the association without a contract. Gillis failed to act as a fiduciary in her relationship with the association and failed to cooperate with the Division in resolving complaints by failing to provide documents and concealing facts. Gillis exceeded the authority granted to her. Respondent violated: NRS 116A.630, NAC 116A.320, NRS 116A.640, NAC 116A.345, NAC 116A.355, NRS 116A.620, NAC 116A.325.</p>	<p>The Commission orders as follows: Respondent’s community manager certificate is revoked for a period of no less than ten years and in no event sooner than all fines imposed by the Commission are paid in full; Respondent shall pay an administrative fine to the Division totaling \$15,647.77 (\$13,000 fine & \$2,647.77 for attorney’s fees) within 60 days.</p>

The Department of Business and Industry’s Shining Star Award recognizes a Department employee each quarter who exemplifies service, teamwork, achievement, reliability and dependability. This past April, Director C.J. Manthe awarded the inaugural Shining Star Award to Ombudsman Charvez Foger for his excellent work.



Actions/Decisions

Acts of the Commission for Common-Interest Communities and Condominium Hotels are not published in this newsletter 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.

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.

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Nevada Real Estate Division Mission

To protect the public and Nevada's real estate sectors by fairly and effectively regulating real estate professionals through licensure, registration, education and enforcement.

Office of the Ombudsman Mission

To provide a neutral and fair venue to assist homeowners, board members and community managers in handling issues that may arise while living in a common-interest community or condominium hotel.

Community Insights is an official publication of the

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Office of the Ombudsman
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CIC COMMISSION MEETINGS 2018

August 28-29-30, 2018 North
November 6-7-8, 2018 South

For additional details go to:

http://red.nv.gov/Content/Meetings/CIC_Calendar/

Our Office Will Be Closed:

LABOR DAY
Monday, September 3, 2018

