

# Community Insights

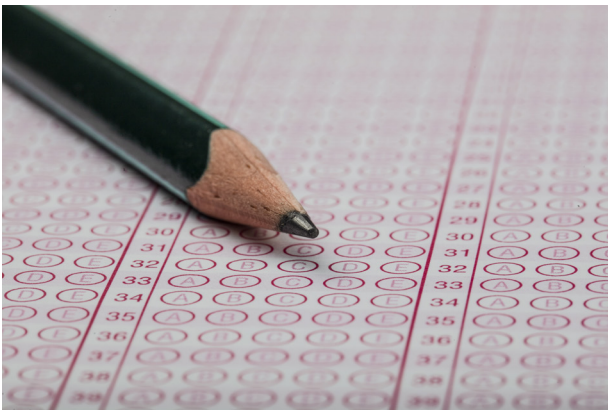
FALL  
2020

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

DEPARTMENT OF BUSINESS & INDUSTRY  
REAL ESTATE DIVISION







# In this issue

---

Ombudsman's Huddle ..... **1**

Mailing in Your Annual Fee ..... **2**

New CCICCH Commissioner Phyllis Tomasso ..... **2**

The Foreclosure Process ..... **3**

Home Sales During the Pandemic ..... **5**

Pop Quiz: Are You a Good Member of the Board? ... **6**

Working from Home in a CIC ..... **7**

Questions from Our Constituents ..... **9**

What Happened at Commission? ..... **10**

Ombudsman Office Statistics ..... **11**



# Ombudsman's Huddle

**A**s Nevada eagerly prepares to resume 'business as usual,' or at least reinstate some of the practices that were in place prior to the pandemic, we ask that associations continue to follow the governor's emergency directives regarding the reopening process. This guidance can be found directly on the governor's main Emergency Orders page. It is especially important to pay attention to directive expiration dates, as well as any extensions which may have been provided. Most recently, it is important to note that the governor has eased restrictions on venue capacities and large gatherings.

I also ask that community managers and board directors continue to seek guidance and advice from hired experts. While many in the industry would like NRS 116 to have all the answers, statutes are not created to anticipate unique circumstances. NRED staff are simply not able to answer many of the pandemic-specific situations and dilemmas that have arisen due to Nevada's COVID-19 response.

Once again, I am advising that associations err on the side of caution whenever possible. Keeping our constituents safe is of our utmost concern, and we appreciate all of the efforts the CIC industry has made to ensure that there has been no major disruption to business during this time.

**- OMBUDSMAN CHARVEZ FOGER**



# Mailing in Your Annual Fee

**W**ith the continued closure of the Nevada State Business Center, many forms and payments that were typically accepted by walk-in or drop-off, have now only been accepted by mail. This has led to an enormous increase in the amount of paperwork to be processed each day by our mail team.

As such, the Ombudsman's Office is asking associations to give our staff sufficient time to process this mail and not wait until the last minute, or end of the month, to submit annual association registration forms and payments. Remember, payments must be IN THE OFFICE by the last day of the month ([Policy 01-2](#)).

NRS 116.31155 outlines the consequences for associations if required annual registration payments are not received timely, stating that the Division shall impose an administrative penalty equaling 10% of the amount of the fees owed or \$500, whichever amount is

less. Additionally, the amount of unpaid fees owed bears interest at the rate set forth in NRS 99.040 (a rate equal to the prime rate at the largest bank in Nevada, plus 2%), from the date the fees are due until the date the fees are paid in full.

As a reminder, if an association is subject to the governing documents of a master association, the master association shall pay the registration fees required, unless the governing documents of the master association provide otherwise.

Once again, we thank you for being understanding and flexible with us during this time, and appreciate any attempts made to proactively submit registrations at least 5 business days in advance of the due date in order to give the office sufficient time for receipt and internal processing.

## NEW CCICCH COMMISSIONER PHYLLIS TOMASSO



*"I am truly honored to be a part of continuing to keep Nevada the 'Gold Standard' for HOAs."*

Eastman Kodak in Rochester, New York. Over several years, she worked with Union Carbide chemical corporation,

Please welcome the newly appointed homeowner member of the Common-Interest CICCH Commission: Phyllis Tomasso.

Ms. Tomasso originally hails from the western part of New York State. After graduating from college with a BA in Mathematics and Physics, she began a career in Computer System Design with

the University of South Carolina, and American Industries & Resources Corporation in Ohio.

While living in Ohio, Ms. Tomasso took on the additional duty of acting as a property manager, overseeing 100 rental units. She continued as a property manager for 20 years, gaining experience working with residents in communal properties, and learning the importance of "giving people a sense of belonging to a community while remaining open to the many points of view among various residents."

As a property manager, she states "it is of the utmost importance to give current residents a desire to care for that community, while hopefully inspiring future residents to gain that

same feeling."

In 1995, Ms. Tomasso moved to Las Vegas, where she was introduced to the concept of homeowner associations. It did not take her long to recognize the benefits an association offers homeowners.

Always active in the communities in which she resided, Ms. Tomasso quickly and naturally transitioned from observing, to serving on her HOA boards. She has served as both a director and vice president, and has been impressed with the remarkable job Nevada has done of "creating a strong foundation for associations, setting a precedent of protecting their future and integrity."

# The Foreclosure Process

Now that the foreclosure moratorium has ended, it is important for anyone serving on their association's executive board of directors to refresh their memories regarding the collection process within Common-Interest Communities. Mike Randolph with HOA Collections LLC created the quick guide below:

## STEP 1

---



**Familiarize yourself with the law regarding foreclosure (NRS 116.3116–116.3117) and your governing documents (declaration of CC&Rs and collection policy).**

## STEP 2

---



**Make sure that your annual budget mailer sent out pursuant to NRS 116.31151 is set to contain the:**

- Service member protection notice and response form required by NRS 116.31625;
- Federal, state, and tribal worker protection notice and response form required by NRS 116.31627; and
- Association's collection policy.

## STEP 3

---



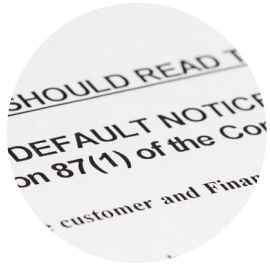
**Understand the initial steps.**

- NRS 116.31162(4) requires that a pre-collection notice be sent “not earlier than 60 days after the obligation becomes past due.”
- This notice contains: a schedule of fees that may be charged if the unit owner fails to pay the past due obligation, a proposed repayment plan, and a notice of the right to contest the past due obligation at a hearing, including procedures for requesting such a hearing.
- If the homeowner does not: pay in full; enter into a payment plan/ make a payment within 10 days; or request a hearing to contest the amount with the board, there is a 30-day waiting period before the next step can be taken.
- If your collection policy states that a Notice of Intent to Lien will be sent prior to recording the lien, that must be done within the appropriate deadline as outlined in the policy.



### STEP 3 (CONTINUED)

---



- Next is the recording and mailing of the Notice of Delinquent Assessment Lien, which must be mailed by certified or registered mail, return receipt requested, to the address of the owner, if known, and the address of the unit.
- Follow up demands and a notice of intent to file a Notice of Default can be sent at this time. Again, look at your collection policy to determine if they are required.
- 30 days after the Notice of Delinquent Assessment Lien has been mailed, the association may record and mail a Notice of Default and Election to Sell to satisfy the lien.
- This notice has a 90-day redemption window starting the first day following the mailing (certified mail, receipt requested) of the Notice to the owner, their successor in interest, the unit, the holders of all recorded security interests, and any person who has requested notice pursuant to NRS 116.31168.
- Authorization to publish must be placed on the agenda and voted on in a meeting of the Board of Directors, and if approved, signed by the appropriate board member and returned to the agency handling the foreclosure.

### STEP 4

---



#### Understand the sale.

- After the expiration of the 90-day period, before selling the unit, the Notice of Sale must be recorded, posted in 3 public places in the county and at the unit, mailed by certified mail to everyone included in the mailing of the Notice of Default, and mailed to the Ombudsman. It must be published for three consecutive weeks in a newspaper of general circulation in the county.
- The sale must be held between the hours of 9 a.m. and 5 p.m. at a public location designated by the county, or at the county courthouse, depending on the county.
- The sale may be postponed up to three times by oral proclamation to another date at the same location and same time as originally noticed.
- The sale is to the highest cash bidder.
- The purchaser will receive a certificate of sale which is to be recorded including a statement that the sale is subject to a 60-day right of redemption by the defaulting owner, a junior lien holder, or their successors in interest.
- If the security interest holder satisfies the amounts that are prior to the security interest not less than five days before the sale, the security interest is not extinguished, and a record of such satisfaction must be recorded before the sale may take place. It must be announced at the sale that the satisfaction has been tendered.
- After the 60-day redemption period has expired, the purchaser receives a deed to the property.



# Home Sales During the Pandemic

According to the National Association of Realtors, existing-home sales in the Western portion of the country increased 30.5% in July 2020, a 7.8% increase from just one year ago.

With residential real estate proving itself to be a booming industry during the Covid-19 pandemic, it is once again important for unit owners within Nevada common-interest communities to familiarize themselves with the intricacies of the resale package (NRS 116.4109).

Important areas to remember are as follows:

- Costs of the resale package are charged to the seller of the unit.
- The association shall furnish a resale package within 10 calendar days of receipt of written request.
- Resale packages remain effective for 90 calendar days.
- Provided **in electronic format at no fee** are copies of the: declaration of CC&Rs; bylaws; rules & regulations; information statement required by NRS 116.41095; current operating budget; current year-to-date financial statement; reserve summary; and estimate of the total annual assessment/funding plan necessary to cover future reserve costs.
- Pursuant to NAC 116.465, a certificate is provided

for a fee **not to exceed \$160**. This includes a statement of: any unsatisfied judgments or pending legal actions against the association; transfer fees, transaction fees, **or any other fees associated with the resale of a unit in that community**; all current and expected fees for the unit (including assessments, fine amounts, collection policy, etc.).

- A statement of demand is provided at a fee **not to exceed \$165**. This includes the amount of monthly assessment needed for common expenses and any unpaid obligation of any kind currently due from the selling unit's owner.
  - The demand remains effective for the period specified in the demand, which must not be less than 15 business days after the date of delivery.
  - The association shall furnish a statement of demand to the person who requested the statement and can provide a copy to any other interested party, whether the seller or prospective purchaser of the unit.
- Aside from expediting fees, the association may not charge any other fees for *preparing or furnishing* required documents.



Separate from the costs of *furnishing* the resale package, and **subject to the declaration**, pursuant to NRS 116.3102(1)(o) the association may also charge a fee for *opening or closing a file* for each unit.

- 1) Such a fee must **not exceed \$350** and must:
- 2) Be based on the actual cost the association incurs to open or close any file.
- 3) Not be charged to both the seller and the purchaser of a unit.
- 4) Be disclosed as part of the certificate described above.

## POP QUIZ

# Are You a Good Member of the Board?

---

Although often a thankless duty, serving on an association board is extremely important. If you are currently serving your community as an executive board director or officer, please take a minute to ask yourself the following questions:

1. Have I familiarized myself with NRS and NAC 116?  
 YES  NO

---

2. Have I read my association's governing documents, including the declaration of CC&Rs, bylaws, rules/regulations?  
 YES  NO

---

3. Do I understand my role on the board or the duties which may have been delegated to the community manager as outlined in the current management agreement?  
 YES  NO

---

4. Am I familiar with all contracts to which the association is a party? Do I maintain cordial relationships with all hired vendors, when required as part of my outlined duties, to ensure continued maintenance and upkeep of the community?  
 YES  NO

---

5. Have I reviewed the reserve study in order to understand which projects may be upcoming and the funding necessary?  
 YES  NO

---

6. Have I reviewed the association's current financial statements and made myself aware of the current schedule of revenues and expenses for the operating and reserve account, compared to the budget for those accounts?  
 YES  NO

7. Do I conduct business of the association appropriately, via at least a quorum of the board, at a board meeting?  
 YES  NO

---

8. Do I actively participate and hold appropriate discussions during board meetings while remaining respectful of other board members and unit owners present, as well as the community manager?  
 YES  NO

---

9. Do I keep specific unit owner information confidential at all times and keep association matters off of social media sites, only communicating community information through official publications?  
 YES  NO

---

10. When attending violation hearings, am I fair and unbiased, willing to listen to the alleged violator and ready to apply any consequences stated in the governing documents uniformly to similar situations?  
 YES  NO

If you answered "yes" to the questions above, then congratulations! You are well on your way to being a productive and beneficial member of your executive board and representative for your community. We ask that you be thoughtful with this position and continue to take steps towards best understanding your roles and responsibilities moving forward.





# Working from Home in a CIC

**W**hen residing in a common-interest community (CIC), you are bound by the covenants, conditions and restrictions (CC&Rs) contained in the community's declaration. Pursuant to NRS 116.2105(1), the declaration must contain any restrictions on use and occupancy of the units.

Most CICs in Nevada are restricted specifically to residential use. Pursuant to NRS 116.083, residential use means "use as a dwelling or for personal, family or household purposes by ordinary customers, whether rented to particular persons or not, but does not include spaces or units primarily used to derive commercial income from, or provide service to the public."

While this may seem clear, recent occurrences have made the separation of residential

home life, and the jobs from which residents derive their primary source of income, nearly impossible. Those who transitioned from their businesses to home are now finding themselves having to adjust to conducting many of their work tasks in this new environment, while simultaneously making sure not to become a burden on their neighbors. Accordingly, associations have had to grapple with the question of whether or not certain work functions could be seen as potentially violating their community's declaration.

It is obvious that some work-from-home jobs are less invasive to the community than others. Teaching students remotely from home, for example, is very different from running a home daycare. Why? One may potentially be done without the

neighbors even knowing, while the other will most likely bring additional traffic and noise into the community. The question then arises of how the board should treat each of these types of violations.

Unit owners must understand that the board is constantly walking a fine line between being too obtrusive into homeowners' lives and properly addressing other homeowners' complaints. The board cannot simply ignore a resident who complains that their neighbor is engaged in some sort of behavior in opposition to the CC&Rs, especially when the behavior creates a "nuisance" or negatively impacts the "quiet enjoyment" of other residents in the community.

When the board does receive complaints of a potential home-business, it must act carefully. After all, how does the board

## WORKING FROM HOME IN A CIC CONTINUED



know that this unit owner is in fact running a business, as opposed to simply helping family and/or friends during a difficult time? The answer is that the association must provide the unit owner with an opportunity to be heard regarding any potential violation of the governing documents.

When it comes to alleged businesses being ran



from the home, the association should first focus on any obvious adverse impact on the community. Ideally, a picture can be obtained of the violation; i.e. cars being parked where they should not be, trash and/or boxes being left out against the association's rules, commercial signage being installed when not permitted. Each potential violation of a similar nature must then be treated equally, resulting in a notice being sent to the alleged violator.

When addressing governing document violations, NRS 116.31031 states that, within a reasonable time after discovery of the alleged violation, the violator should be provided

with written notice: specifying in detail the alleged violation; including a clear and detailed photograph of the alleged violation if possible; the proposed action to cure the alleged violation; the amount of the fine; and the date, time and location for a hearing.

By applying the CC&Rs to violations which have the greatest potential of impacting others in the community, board members can work towards preserving the “quiet enjoyment” of residents. At the same time, they can remove themselves from the perception of being arbitrary or capricious when taking enforcement action by applying provisions of the CC&Rs uniformly, and taking into consideration whether or not the violation can be justified by clear and specific language in the governing documents.

While there are absolutely times when behavior occurring inside of a unit needs to be corrected, the board’s job can be made easier by acting on those violations of the governing documents which can be easily documented, difficult to refute due to photographic evidence being obtained, and which negatively impact others in the community. The ultimate goal is always to protect and preserve the community from harmful behavior, and the executive board, after hearing the facts and circumstances, always has discretion regarding whether to take enforcement action.

# Questions from our Constituents

## **Q1. I recently submitted a Complaint Form 530 to your office and was told that I did not meet the requirements of NRS 116.760. Can you explain?**

A person who is aggrieved by an alleged violation committed by their association may, **not later than 1 year** after the person discovers or reasonably should have discovered the alleged violation, file with the Division a written affidavit stating the facts. The aggrieved person may not file such an affidavit unless he or she has first **provided the respondent** by certified mail, return receipt requested, written notice of the alleged violation set forth in the affidavit, specifying, 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. The affidavit must also be accompanied by evidence that: (1) The respondent has been given a reasonable opportunity after receiving the written notice to correct the alleged violation (at least 10 business days) ; and (2) Reasonable efforts to resolve the alleged violation have failed. What does the Division consider to be a “reasonable effort” as stated in this provision of law? We expect the board/community manager to abide by NRS 116.31087 whenever they receive a certified complaint by the unit owner and, not later than 10 business days after receiving such a complaint, acknowledge receipt of the complaint and notify the unit’s owner that if he or she submits a written request that the subject of the complaint be placed on the agenda of the next regularly scheduled meeting of the executive board, the subject of the complaint will be placed for discussion as such.

## **Q2. My association recently notified me that my tenant had a guest over who was refusing to pick up after their pet as is required in our association’s governing documents. This notice informed me of a potential fine if I do not address this behavior with my tenant moving forward. How can I be held responsible for the behavior of my tenant’s guest?**

NRS 116.31031(2) states that “the executive board may not impose a fine against a unit’s owner for a violation of any provision of the governing documents of an association committed by an invitee, unless the unit’s 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.”

While we can most likely agree that (a) and (c) do not apply to this situation, (b) is exactly what the association is attempting to comply with by sending you a courtesy notice of the alleged violation. Now that you have been notified, you have the opportunity to remind the tenant of the association’s rules and regulations, as well as any repercussions outlined in the rental agreement. You also have the opportunity to let your association’s board of directors know that you are correcting the alleged violation as required.

## **Q3. I am on my association’s executive board of directors and we have been conducting certain business via email. A unit owner now wants to see those emails, should we be providing them?**

NRS 116 speaks of conducting board business at a properly noticed board meeting, including an agenda, minutes, etc. (NRS 116.31083). NRS 82.271(3) states that “unless otherwise restricted by the articles or bylaws, members of the board of directors may participate in a meeting through electronic communications, or other available technology which allows the participants to communicate simultaneously or sequentially. Participating in a meeting pursuant to this subsection constitutes presence in person at the meeting.” As long as abiding by chapter 82 does not cause the board to avoid the requirements of chapter 116, there may be no conflict between the two provisions regarding board meetings. If a circumstance arises in which board members must participate in a meeting utilizing electronic methods, any electronic communication involved in the decision making of the board, resulting in board action taken, does become an association record to be provided upon request of a unit owner.



# 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. GERALD MARKS

<b>CASE NUMBER</b>	2018-952 2018-978 2019-409	<b>TYPE OF RESPONDENT</b>	Supervising Community Manager
--------------------	----------------------------------	---------------------------	-------------------------------

#### ALLEGATIONS/VIOLATIONS

Respondent violated NRS 116A.630 by failing to comply with state laws, failing to abide by the management agreement, failing to act as a fiduciary when misrepresenting the association's required reserve funding, failing to exercise ordinary and reasonable care in the performance of his duties by allowing a non-unit owner to serve on the executive board, and by permitting a board member to be compensated by the association for providing payroll services; NRS 116.31153 by being the sole signer of association checks and withdrawing money from the reserve account without proper signatures, and by creating a budget based on tiered assessments when the association's governing documents did not permit tiered assessments; NRS 116.31034(4) by failing to give unit owners notice of eligibility to serve as a member of the executive board; NRS 116.4109 by failing to furnish a resale package that stated any pending legal actions against the association and the status of such litigation; NRS 116A.640 by impeding or otherwise interfering with an investigation of the Division by failing to comply with a request for documents, providing false or misleading information to an investigator, and concealing facts or documents relating to the business of the association; and NAC 116A.355 by demonstrating a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a client, failing to exercise reasonable skill and care with respect to a client, and committing unprofessional conduct or professional incompetence by failing to act in the best interests of a client by failing to disclose a Law Firm letter to the board before the association incurred \$18,000 in attorney fees.

#### DISCIPLINARY ACTIONS

Within 90 days of the effective date of this order, Gerald Marks shall pay a total amount of \$78,536.39 (\$75,000.00 fine, \$3,536.39 in fees and costs). Respondent's license shall be revoked for a period of 10 years from the effective date of this order. At the expiration of the 10-year revocation period, respondent may reapply to the Division for a license but only if the amount due stated above has been paid in full. The Division may institute debt collection proceedings for failure to timely pay the amount due, or any installment thereof. Further, if collection goes through the State of Nevada, then the respondent shall also pay the costs associated with collection.

### NRED V. LISA TUFANO

<b>CASE NUMBER</b>	2018-977	<b>TYPE OF RESPONDENT</b>	Community Manager
--------------------	----------	---------------------------	-------------------

#### ALLEGATIONS/VIOLATIONS

Respondent with a temporary community manager certificate terminated her contract with the association that hired her under that certificate and then began working for a different association after her temporary certificate had expired. NRS 116A.410(1) states that the Commission shall by regulation provide for the issuance by the Division of certificates. NAC 116A.137(2)(a) states that a temporary certificate expires as of the time that the certified person ceases to be employed by the association which made an offer of employment. A temporary certificate may not be renewed, and no person may obtain another temporary certificate after the temporary certificate issued to that person has expired.

#### DISCIPLINARY ACTIONS

No discipline ordered. Respondent admitted that she had no ill intent and misunderstood the regulation. She has since obtained her community manager certificate and is managing under that credential. The Commission ordered the case dismissed.

## OUR OFFICES WILL BE CLOSED UNTIL FURTHER NOTICE:

To receive updates as to when the office will reopen, as well as other pertinent, ongoing information, please sign up to receive Ombudsman emails by subscribing from our [Direct Link](#).

## Ombudsman Information

July through September 2020

Total Associations Registered in the State of Nevada	<b>3,432</b>
Complaints Received	<b>85</b>
Alternative Dispute Resolution (ADR) Filings	<b>97</b>
Associations Reviewed for Possible Audit	<b>50</b>
Records Requests Processed	<b>9</b>
Training Sessions Conducted	<b>37</b>
Classroom Attendees	<b>675</b>

## UPCOMING COMMISSION MEETINGS

### ● OCTOBER 27-29

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

## UPCOMING HOLIDAYS

**OCTOBER 30** / NEVADA DAY

**NOVEMBER 11** / VETERANS DAY

**NOVEMBER 27** / THANKSGIVING & FAMILY DAY

**DECEMBER 25** / CHRISTMAS DAY

**JANUARY 1** / NEW YEAR'S 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

Charvez Foger  
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

Tonya Gale, Commissioner  
COMMUNITY MANAGER MEMBER

Vacant, Commissioner  
DEVELOPER MEMBER

Vacant, 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](mailto:CICOMBUDSMAN@RED.NV.GOV)