

RESPONSIBILITIES OF THE COMMUNITY MANAGER



Presented by the Training Officer for the Office of the Ombudsman;
Common-Interest Communities & Condominium Hotels Program



INTRODUCTION

- ◉ The Office of the Ombudsman receives a number of questions regarding the community manager/executive board relationship each day:
 - Unit owners typically ask who they should be referring their questions, concerns and complaints to within the association.
 - Board members typically ask who has the ultimate authority to make business decisions for the association.
 - Community managers - typically ask what they can do about an unruly, difficult board.

OVERVIEW

- NRS and NAC 116 allocate all decision making power within the association to the board of directors elected by unit owners to represent them.
- If the board hires a community manager pursuant to their governing documents, the bylaws of the association specify the powers that the board may delegate to a manager (NRS 116.3106).
- Manager duties are then specifically outlined in the management agreement, which must be entered into and signed by the client (board) and manager or management company prior to work being commenced (NAC 116A.325).

TYPES OF COMMUNITY MANAGERS/ EMPLOYEES

- ◎ Bulletin #17 - Activities an **unlicensed employee** may perform:
 - Agenda, minutes, mailings, letters, resale package, forms, etc. (basic administrative work)
- ◎ **NAC 116.065** A “**Provisional community manager**” has fulfilled the *educational* requirements for certification (60 hours of instruction - followed by a national exam), but has not yet fulfilled the *experience* requirements (2 years performing the tasks of a community manager under the supervision of a supervising manager).

SUPERVISING COMMUNITY MANAGER - NAC 116A.165

- ◉ A community manager is qualified to act as a **supervising manager** if he or she:
 - Submits to the Division the appropriate application;
 - Has been actively and *recently* engaged in the full-time management of a CIC for at least 4 years, at least 2 of which were in this State; and
 - Is in good standing with an active certificate or permit.

- ◉ A supervising community manager is responsible for:
 - Supervising one or more provisional managers or managers;
 - Teaching the fundamentals of managing a CIC and the ethics of the profession;
 - Supervising the activities and operation of CICs;
 - Establishing policies, rules, procedures and systems necessary for supervision;
 - Establishing safeguards for the filing, storage, handling and maintenance of client documents; and
 - Establishing safeguards for the handling of client money.

BOARD MEMBERS AND MANAGERS- NRS 116.31034

⦿ A person may not be a candidate, member of the executive board, or an officer of the association, if:

- the person,
- the person's spouse, or
- the person's parent or child

performs the duties of a community manager for:

- the association
- the master association; or
- any association that is subject to the governing documents of a master association.

THE BOARD'S AUTHORITY - NRS 116.3102

◉ To:

- hold meetings and elections accordingly;
- adopt and amend budgets [NRS 116.31151];
- collect assessments for common expenses;
- invest funds of the association and maintain records [NRS 116.311395];
- hire and discharge managing agents and independent contractors;
- institute, defend or intervene in litigation affecting the common-interest community;
- make contracts and incur liabilities;
- regulate the use, maintenance, repair, replacement and modification of common elements;
- impose charges for late payment of assessments [NRS 116.3115];
- impose reasonable fines for violations of the governing documents.

A MANAGER'S AUTHORITY:

- ◉ To carry out any duties listed in the management agreement which *MAY* include to:
 - enter the grounds (exterior) of a vacant unit, after notice and hearing are provided, to cure a potential health and safety violation (NRS 116.310312);
 - act on behalf of the association and attempt to collect a past due obligation from a unit owner (NRS 116.310313);
 - develop written collection policies, approved by the executive board, and provide timely updates and reports as necessary (NRS 116A.630);
 - post an opinion on an official publication (website, newsletter, bulletin board) concerning an issue of official interest to the association, provide notices to unit owners, and conduct elections (NRS 116.31035);
 - receive petitions from unit owners to either recall a member of the board or call a special meeting (NRS 116.31036 & 3108);
 - obtain qualified bids for any capital improvement project (NRS 116A.630);
 - make available the books, records and other papers of the association for review;
 - deposit or invest all funds of the association in an appropriate financial institution (NRS 116.311395);
 - withdraw money from the *operating* account of the association for day-to-day services and utilities (NRS 116.31153).

FINANCES - NRS 116A.630

- A community manager *shall* at all times ensure that:
 - The financial transactions of a client are current, accurate and properly documented.
 - There are established policies and procedures designed to provide reasonable assurances in the reliability of the financial reporting, including:
 - (1) Proper maintenance of accounting records;
 - (2) Documentation of the authorization for any purchase, 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.
 - Financial statements or audits are prepared by an independent certified public accountant when necessary.
 - The financial records of an association are made available to unit owners upon written request.
 - Various funds are maintained in separate accounts.

FORMS TO THE DIVISION

- Oftentimes, the Manager is assigned the duty of submitting required forms to both the Division and Secretary of State in a timely manner.
 - Examples:
 - Annual Association Registration Form (562) with fee
 - Reserve Study Summary Form (609)
 - Registration Filing Addendum (623)

BEFORE THE MANAGEMENT AGREEMENT

- NRS 116A.610

Before entering into a management agreement, a community manager shall disclose, in writing, to the prospective client :

1. Whether the community manager, or any member of his or her organization, expects to receive any direct or indirect compensation, gifts or profits from any person who will perform services for the client and, if so, the identity of the person and the nature of the services rendered.
2. Any affiliation with any person or business who furnishes any goods or services to the client.
3. Any monetary relationships with any unit owner, member of the executive board or officer of the association.

MANAGEMENT AGREEMENT - NRS 116A.620

- ◉ Any management agreement must:
 - Be in writing and signed by all parties;
 - State the term of the agreement;
 - Include a statement of the scope of work;
 - State any spending limits;
 - State the basic services to be provided and the payment schedule;
 - Include a complete schedule of all fees, costs, expenses and charges to be imposed by the community manager, including:
 - start-up costs;
 - fees for services, such as the mailing of collection letters, the recording of liens and foreclosing of property;
 - fees for setting up the account of a new member (sale of a unit).
 - State any limitations on the liability of each contracting party;
 - Include provisions relating to the grounds and procedures for termination of the community manager;

MANAGEMENT AGREEMENT CONT'D

- Identify the types and amounts of insurance coverage to be carried by each contracting party, including, without limitation:
 - A requirement that the community manager or his or her employer shall maintain insurance covering liability for errors or omissions, professional liability or a surety bond to compensate for losses in an amount of \$1,000,000 or more;
- Acknowledge that all records and books of the client are the property of the client, except any proprietary information and software belonging to the manager;
- State the physical location, including the street address, of the records of the client, which must be within 60 miles from the community;
- State the extent, if any, of the authority of the community manager to sign checks on behalf of the client in an *operating* account.

AFTER THE AGREEMENT

- ◉ After signing the agreement, the community manager shall provide a copy to each member of the executive board.
- ◉ The community manager shall provide a new board member with a copy of the management agreement within 30 days after his or her election or appointment (NRS 116A.620).
- ◉ Not later than 10 days after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance, including:
 - (a) The names and addresses of all insurance companies;
 - (b) The total amount of coverage; and
 - (c) The amount of any deductible.
- ◉ If there are any changes after the execution of a management agreement, those changes must be in writing and signed by the contracting parties.
- ◉ While the management agreement may allow for a month to month continuation following the end of the term, it may not contain an automatic renewal provision.

FIDUCIARY DUTY - NRS 116A.630

- ◉ A community manager *shall*:
 - Act as a fiduciary in any client relationship and exercise ordinary and reasonable care in the performance of his or her duties.
 - Comply with all applicable federal, state and local laws, regulations and ordinances, as well as lawful provisions of the governing documents of each client.
 - Keep informed of new developments in the management of a CIC through continuing education.
 - Advise a client to obtain advice from an independent expert relating to matters that are beyond their expertise.
 - Under the direction of a client, uniformly enforce the provisions of the governing documents of the association.
 - Comply with the directions of a client, unless the directions conflict with governing documents or applicable laws, at which point a written recommendation to become compliant should be sent.

A COMMUNITY MANAGER SHALL NOT - NRS 116A.640:

- ⦿ Perform the duties of a community manager without such a certificate.
- ⦿ Except as required by law or court order, disclose confidential information relating to a client.
- ⦿ Impede or otherwise interfere with an investigation of the Division.
- ⦿ Commingle money or property of a client with that of another client or use it for personal use.
- ⦿ Be a signer on a withdrawal from a reserve account.
- ⦿ Provide or attempt to provide any service for which the community manager is not properly licensed (i.e. legal advice).
- ⦿ Intentionally apply a payment of an assessment from a unit owner towards any fine, fee or other charge that is due, or refuse to accept the payment because there is an outstanding payment due.
- ⦿ Collect any fees or other charges from a client not specified in the management agreement.
- ⦿ Accept any compensation, gift or any other item of material value as payment or consideration for a referral unless the client consents, in writing.

ETHICS

- ◉ *Neither* a member of the board nor a community manager:
 - can take or encourage another person to take any retaliatory action against a unit owner because he or she complained or requested to review records (NRS 116.31183).
 - can receive, directly or indirectly, any compensation or promise thereof, upon an agreement or understanding that his or her action will be influenced thereby [category D felony] (NRS 116.31189).
 - shall enter into a contract to provide goods or services to the association for compensation (NRS 116B.700).
 - ◉ *Does not prohibit a community manager from being paid compensation under the terms of a contract for providing management duties.*
 - shall not accept, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value which exceeds \$500 per year (NAC 116.482).
- ◉ A community manager shall not solicit or accept any form of compensation that is based, in whole or in part, on the number or amount of fines imposed for violations (NRS 116.31185).

TERMINATING AN AGREEMENT - NRS 116A.620

- ⦿ Notwithstanding any provision in a management agreement to the contrary, a management agreement may be terminated by the client, without penalty, upon **30 days'** notice following a violation by the community manager of any provision of NRS or NAC 116.
- ⦿ Except as otherwise provided in the management agreement, the community manager shall, within **30 days** after termination, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client, regardless of any unpaid fees or charges.

EXECUTIVE SESSION - NRS 116.31085

- ⦿ An executive board may NOT meet in executive session to **enter into**, renew, modify, **terminate** or take any other action regarding a contract.
- ⦿ An executive board WILL meet in executive session to **discuss** the character, alleged misconduct, professional competence, or physical or mental health of a community manager.

CIVIL ACTION - NRS 116.4117

- ⦿ If the community manager fails to comply with any provisions of NRS 116 or the declaration, any person suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

- ⦿ Such an action may be brought against a community manager:
 - By the association; or
 - By a class of units' owners constituting at least 10 % of the total number of voting members of the association.

DISCIPLINING MANAGERS - NAC 116A.355

- ◉ A community manager is subject to disciplinary action by the Division if he or she commits any of the following:
 - (1) **Unprofessional conduct** (violates: an order of the Commission, an agreement with the Division, NRS or NAC 116 or 116A; fails to disclose important information to the client; knowingly communicates false, misleading or fraudulent information to the client; making a false statement of material fact on the application for the certificate, temporary certificate or permit; fails to produce any association document, book or record after request; exceeds the authority granted to him or her by the client);
 - (2) **Professional incompetence** (demonstrates a significant lack of ability, knowledge or fitness to perform duties or fails to exercise reasonable skill and care);
 - (3) **Negligence**;
 - (4) **A felony or any offense involving moral turpitude.**

ACTS BY THE COMMISSION AGAINST A MANAGER - NAC 116A.360

- ◉ If the Commission finds that grounds for disciplinary action against a community manager exists, it may take one or more of the following actions:
 - Revoke or suspend the manager's certificate for at least 1 year;
 - Impose a fine of not more than \$5,000 for each violation;
 - Refuse to renew or reinstate the certificate [especially if a fine has not been paid (NRS 116A.400)];
 - Place the community manager on probation;
 - Issue a reprimand or censure for public record;
 - Require the manager to pay restitution for the costs of investigation and hearing;
 - Require the manager to obtain additional education.

ACTS BY THE COMMISSION AGAINST A BOARD MEMBER - NRS 116.790

- ◉ Unless a board member has knowingly and willfully committed a violation, the association is liable for all fines and costs incurred.

- ◉ If the Commission finds that the executive board has committed a violation, it may:
 - Order an audit of the association
 - Order the members removed from office or position
 - Require the executive board to hire a certified community manager
 - Appoint a receiver if any of the following violations occurred (receivership is governed by NRS 32):
 - fraud, collusion or gross mismanagement;
 - intentional wrongdoing; or
 - assets of the association put in danger of foreclosure, loss through litigation, or otherwise.

STATUTE OF LIMITATIONS FOR DISCIPLINE - NRS 116.750(2)

- The Commission has jurisdiction to take appropriate action against any person who commits a violation, including any officer, employee or agent of an association or any member of an executive board who currently holds the position or:
 - Who held the office, employment, agency or position *at the commencement of proceedings* against him or her (despite resignation); or
 - Within 1 year after the violation is discovered or reasonably should have been discovered.

ALLEGATIONS/ STIPULATIONS OF THE COMMISSION - EXAMPLES

Respondents agree not to serve as a board member or officer of any common-interest community located in the State of Nevada for a period of no less than 10 years from the date of the Order and agree to pay an administrative fine in the amount of \$250 to the Division no later than 30 days from the date of the Order.

Community manager shall pay an administrative fine to the Division in the amount of \$11,516.17 (\$10,000 for violations of law and \$1,516.17 for the Division's attorney's fees and costs), no later than 30 days from the date of the Order.

Community manager certificate revoked for a period of no less than 10 years from the date of the Order, but in no event sooner than the administrative fine of \$15,595.72 (\$13,000 for violations of law and \$2,595.72 for the Division's attorney's fees and costs) is paid to the Division.

Three of the respondents shall be removed from the board and shall not serve as a board member or officer of any common-interest community located in the State of Nevada for a period of no less than 10 years from the date of the Order. The two remaining respondents are to appoint a third board member as soon as possible, hire a community manager, hold an election as soon as possible, and cause audits or reviews to be performed pursuant to NRS 116.31144.

RECORD OF COMPLAINTS AGAINST COMMUNITY MANAGERS (FORM 780)

- Find a manager (not company) by logging into - <https://red.prod.secure.nv.gov/Lookup/LicenseLookup.aspx>



The screenshot shows the Nevada Real Estate Division website. At the top, there is a header with the Nevada state seal, the text "Nevada Real Estate Division", and "A Division of the Department of Business & Industry". A "Login" button is visible in the top right. On the left, there is a sidebar with "ONLINE SERVICES" and "NO LOGIN REQUIRED" sections, with "License Lookup" selected. The main content area is titled "Search for a License" and contains a search form. The form has a "Criteria" tab and a note: "Note: Hover over any field to display help text." The form fields include: "License Number" (a dropdown menu with "CAM" selected), "Company Name/DBA:" (a text input field), "First Name:" (a text input field), "Last Name:" (a text input field), "City:" (a text input field), "State:" (a dropdown menu), "County:" (a dropdown menu with "Select a State" selected), and "Zip:" (a text input field). There are "Search" and "Clear Form" buttons at the bottom of the form.

- The Division shall maintain (NRS 116A.260):
 - All commission rulings or decisions of all complaints filed;
 - Any denials of applications.
- The Division may refuse to make public, unless ordered to do so by a court (NAC 116.500):
 - Examination scores;
 - Files compiled by the Division while investigating possible violations;
 - The criminal and financial records of community managers;
 - Home addresses and personal telephone numbers.

CONCLUSION

- ◉ Board members are volunteers and may not always have the time necessary to carry out all of the responsibilities assigned to them. As such, they often choose to hire professional community managers to assist them with the running of the association.
- ◉ While a manager should provide guidance and information to the board, board members have the ultimate authority to make decisions for the association.
- ◉ A community manager should:
 - Acquire pertinent facts from verifiable/licensed resources before providing any advice to the board;
 - Fully understand and comply with the governing documents, policies and procedures of the association;
 - Always act in the best interest of the association;
 - Keep the board informed and educated regarding the law;
 - Perform duties only when authorized to do so by the board or management agreement.

THANK YOU

- ◎ <http://red.nv.gov/> - Main Page
- ◎ CICOmbudsman@red.nv.gov - Email Questions
- ◎ http://red.nv.gov/Content/CIC/Program_Training/