

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS MEETING MINUTES JUNE 17, 2015**

**GAMING CONTROL BOARD
GRANT SAWYER BUILDING
555 E. WASHINGTON AVENUE, ROOM 2450
LAS VEGAS, NEVADA 89101**

**VIDEO CONFERENCED TO:
GAMING CONTROL BOARD
1919 COLLEGE PARKWAY,
CARSON CITY, NEVADA 89706**

JUNE 17, 2015

9:00 A.M.

1-A) Introduction of Commissioners in attendance

In Las Vegas: Barry Breslow, Stephen Aichroth, Robert Frank, Ken Williams, James Rizzi, Scott Sibley, and Senior Deputy Attorney General Henna Rasul as Commission Counsel.

Richard Layton was not present.

1-B) Introduction of Division Staff in attendance

In Las Vegas: Joseph Decker, Administrator; Sharon Jackson, Ombudsman; Claudia Rosolen, Commission Coordinator; Teralyn Thompson, Administration Section Manager; Jennifer Oerding, Education Officer; Stacey Spoerl, Program Training Officer; Chief Compliance Investigator Chris Sewell, and Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Michael Jory, Deputy Administrator and Christopher Cook, Compliance Audit Investigator.

2) Public Comment

In Carson City: No public comments.

In Las Vegas: Pennie Puhek, resident at Anthem Highlands Community Association Las Vegas, commented. Ms. Puhek requested to remove item 7-A from the agenda.

In Las Vegas: Jonathan Friedrich, former Commission for Common-Interest Communities and Condominium Hotels commissioner, commented. Mr. Friedrich stated that two of the bills that he had a legislator sponsoring had been signed into law. Mr. Friedrich stated that he may not be on the Commission, but that doesn't mean that he is no longer trying to protect homeowners.

In Las Vegas: Norman McCullough, homeowner in Sun City Anthem in Henderson Nevada, commented. Mr. McCullough stated that he is the victim of a biased Real Estate Division. Mr.

McCullough stated that by the instruction of the commission coordinator he brought a packet containing documents related to his case for each commissioner. Mr. McCullough asked the Commission to view the documents, evaluate and possibly make recommendations on his case.

In Las Vegas: George Crocco, resident of Canyon Willow Pecos, commented. Mr. Crocco thanked the Nevada State Legislature for a job well done. Mr. Crocco stated that since the Division has a full staff of investigators, he would like to see walks-in reinstated. Mr. Crocco stated that many people would like to consult a compliance investigator before filing an affidavit.

**3) Motion for Reconsideration of Respondent's Request for a Hearing Continuance
Leslie White; Audra Collins; Ryon Collins v. NRED, Case Nos. 2014-1491; 2014-1505;
2014-4473 & 2014-4472**

Parties Present:

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Joseph Garin was present representing Leslie White and Audra Collins.

Chairman Breslow stated that Mr. Garin represented Chairman Breslow's law firm in the past. Chairman Breslow stated that Mr. Garin has been co-counsel with Chairman Breslow's partner Michael Sullivan on contested matters, though he is not aware if they continue to do so. Chairman Breslow stated that he can be fair and impartial to both sides. Chairman Breslow asked the counsels to discuss if they think he should recuse himself from these matters.

Ms. Briggs stated that both counsels were fine with Chairman Breslow proceeding in this case.

Commissioner Frank disclosed that Mr. Garin was his counsel against the Division seven years ago. Commissioner Frank stated that this will not affect his ability to be fair and impartial.

Commissioner Williams disclosed that he and Ms. White know each other through a management company. Commissioner Williams stated that this will not affect his ability to be fair and impartial.

Preliminary Matters:

Mr. Garin filed a motion to reconsider the respondent's request for a hearing continuance.

The Commission heard Mr. Grain's motion for case 2014-1505.

Ms. Briggs opposed to respondent's motion for case 2014-1505.

Mr. Garin responded to Ms. Briggs opposition to the motion for case 2014-1505.

Commissioner Frank asked why the respondent waited until January to hire an attorney.

Mr. Garin stated that this is an issue that is going to be presented during the hearing.

Commissioner Aichroth asked if the statement that the respondent anticipates at least ten additional homeowners associations will be implicated is forthcoming.

Ms. Briggs stated that it's hard to say since those investigations are ongoing.

Commissioner Frank moved to deny the motion for a continuance for case 2014-1505. Commissioner Aichroth seconded.

Motioned failed. 2 to 4 with Commissioners Rizzi, Sibley, Williams and Breslow opposed.

Commissioner Sibley move to grant the motion for a continuance for case 2014-1505 until the next Commission meeting in the South. Commissioner Rizzi seconded.

Motion carried. 5 to 1 with Commissioner Frank opposed.

4-A) NRED v. Anita Herrera-Perez, for possible action
Case No. 2013-2973

Type of Respondent: Unlicensed Community Manager

Parties Present:

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Jack Chen Min Juan was present on the telephone representing Anita Herrera-Perez.

Preliminary Matters:

Ms. Briggs provided the Commission with a copy of the stipulation for settlement of disciplinary action signed by the respondent, respondent's attorney, the Administrator, and Division's Counsel. Ms. Briggs read the stipulation for settlement into the record.

Chairman Breslow asked Mr. Juan if Ms. Perez is aware of the obligations under the terms of the stipulation.

Mr. Juan stated that Ms. Perez understands and agrees with the terms set forth in the stipulation.

Commissioner Sibley moved to accept the stipulation. Commissioner Rizzi seconded.

Motion carried unanimously.

4-B) NRED v. Las Brisas HOA; Donald Piet; Ted Champaign; Judy England; Rick Ernest; Jerry Price; and John Christensen; for possible action
Case No. 2014-697

Type of Respondent: Board members

Cases have been continued to the next Commission meeting.

4-C) NRED v. Leslie White, for possible action

Case No. 2014-1505

Type of Respondent: CAM.0000070-SUPR (ACTIVE)

Cases have been continued to the next Commission meeting.

4-D) NRED v. Leslie White, for possible action

Case No. 2014-1491

Type of Respondent: CAM.0000070-SUPR (ACTIVE)

Cases have been continued to the next Commission meeting.

4-E) NRED v. Ryon Collins, for possible action

Case No. 2014-4472

Type of Respondent: CAM.0007445 (ACTIVE)

Cases have been continued to the next Commission meeting.

4-F) NRED v. Audra Collins, for possible action

Case No. 2014-4473

Type of Respondent: CAM.0000314-SUPR (ACTIVE)

Cases have been continued to the next Commission meeting.

5-A-1) For possible action: Assembly Bill 125 relating to constructional defects; enacting provisions governing the indemnification of a controlling party by a subcontractor for certain constructional defects; enacting provisions governing wrap-up insurance policies or consolidated insurance programs covering certain claims for constructional defects; authorizing the parties to a claim for a constructional defect to agree to have a judgment entered before the filing of a civil action under certain circumstances; revising the definition of "constructional defect"; revising provisions governing the information required to be provided in a notice of constructional defect; removing provisions authorizing claimants to give notice of common constructional defects in residences or appurtenances; requiring a claimant to pursue a claim under a homeowner's warranty under certain circumstances; revising provisions governing the damages recovered by a claimant; revising the statutes of repose regarding actions for damages resulting from certain deficiencies in construction; revising provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; prohibiting a homeowners' association from pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association. (BDR 3-588)

Joseph Decker presented this report. Mr. Decker stated that section 20 makes changes to NRS 116.3102 regarding litigation for constructional defects. Mr. Decker stated that the association cannot pursue constructional defects on behalf of the unit owner. Mr. Decker stated that the bill has already been signed and approved by the Governor.

5-A-2) For possible action: Assembly Bill 141 relating to common-interest communities revising provisions relating to the foreclosure of liens by a homeowners' association. (BDR 10-751)

Joseph Decker presented this report. Mr. Decker stated that this bill removes a provision in NRS 116.31163 that requires a copy of the notice of default and election to sell to be mailed to holders of certain security interests only if such holders have notified the association of the existence of the security interest 30 days before the recordation of the notice.

5-A-3) For possible action: Assembly Bill 192 relating to common-interest communities revising certain provisions concerning a period of declarant's control of a unit-owners' association; revising certain provisions relating to elections of the members of the executive board of a unit-owners' association. (BDR 10-661)

Joseph Decker presented this report. Mr. Decker stated that this bill amends NRS 116.31032 regarding the termination of a declarant's control. Mr. Decker stated that section 1(a) makes provisions for associations with less than 1,000 units and still keeps to the 60 days. Mr. Decker stated that section 1(b) makes provisions for units with 1,000 units or more keeping the 60 days. Mr. Decker stated that with smaller associations it requires 75% of units that may be created to units' owners, larger associations are required to have 90%. Mr. Decker stated that section 1(f) changes 25% to 15%. Mr. Decker stated that there are only 28 associations with more than a thousand units in the State.

5-A-4) For possible action: Assembly Bill 238 revises provisions relating to the solicitation of bids for a homeowners' association project. (BDR 10-808)

Joseph Decker presented this report. Mr. Decker stated that this bill adds to NRS 116.31034 excluding additional people from being a member of the executive board or an officer of the association. Mr. Decker stated that the amendment to section 1 adds business associate or co-owner of a business owned by a member of the executive board or an officer of the association or community manager.

Teralyn Thompson stated that section 2 requires an association to solicit at least three bids if the association project is going to cost \$500 or more. Ms. Thompson stated that bids are to be read aloud and requires member of the executive board to vote on the acceptance of a bid in accordance with Robert's Rules of Order Newly Revised. Ms. Thompson stated that section 2 states that an association must solicit at least 3 bids if the project is projected to cost in an association with less than 1,000 units \$2,500.00 or more or in an association of 1,000 or more \$5,000.00 or more. Ms. Thompson stated that section 2 states that bids opened at an executive board meeting must be read out loud in summary form and posted on association website or newsletter.

5-A-5) For possible action: Assembly Bill 301 prohibits restrictions on the freedom to display the flag of the State of Nevada in certain places. (BDR 10-533)

Joseph Decker presented this report. Mr. Decker stated that this bill prohibits restrictions on the freedom to display the flag of the State of Nevada in a common-interest community.

5-A-6) For possible action: Senate Bill 154 relating to common-interest communities requiring the adoption of regulations concerning continuing education requirements for community managers. (BDR 10-725)

Joseph Decker presented this report. Mr. Decker stated that that this bill changes NRS 116A.410 to establish the qualifications for renewal of a certificate and the hours of continuing education. Mr. Decker stated that this bill requires certificates to be renewed bi-annually. Mr. Decker stated that this bill allow for continuing education credits to be done in one hour increments and authorizes not more than 5 hours of continuing education credits for attendance of a Commission meeting, mediation or arbitration. Mr. Decker stated that this bill allow for attendance at the disciplinary portion of a Commission meeting to count towards law and legislation updates pursuant to NAC 116A.140(1)(d).

Commissioner Williams requested to have this item on July 9, 2015 Commission meeting agenda.

5-A-7) For possible action: Senate Bill 174 relating to common-interest communities revising provisions governing eligibility to be a member of the executive board or an officer of a unit-owners' association. (BDR 10-617)

Joseph Decker presented this report. Mr. Decker stated that this bill adds to NRS 116.31034 excluding additional people from being a member of the executive board or an officer of the homeowner association.

5-A-8) For possible action: Senate Bill 306 revises provisions relating to liens on real property located within a common-interest community. (BDR 10-55)

Joseph Decker presented this report. Mr. Decker stated that this bill revises provisions governing super priority liens on property located in a common-interest community. Mr. Decker stated that this bill was the most influential bill regarding the super priority liens that passed during this Legislative session.

5-A-9) For possible action: Senate Bill 389 revises provisions relating to condominium hotels. (BDR 10-76)

Joseph Decker presented this report. Mr. Decker stated that this bill makes various changes concerning common-interest communities and condominium hotels.

Teralyn Thompson stated that this bill incorporate the Common-Interest Ownership Act into NRS 116.

5-B) Discussion and decision to approve minutes of March 3, 2015 Commission meeting.

Commissioner Sibley moved to approve the minutes. Commissioner Aichroth seconded.

Motion carried unanimously.

5-C) Discussion regarding Commissioners' speaking engagement requests.

No speaking engagements.

6-1) University of Nevada, Las Vegas: Division of Education Outreach, Continuing Education

“60-Hour Association Manager Pre-Certification Course”

Request: 60 Hours General Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Williams stated that he received a brochure from UNLV about the class. Commissioner Williams stated that the brochure says that class will be available upon Commission's approval and the brochure was very misleading.

Jodi Gilliland stated that those courses will not be open for registration on the UNLV website until approved by the Commission.

Commissioner Williams asked why the brochure was sent out before the class was even submitted for possible approval by the Commission.

Jodi Gilliland stated that the marketing department used the brochure to announce the class.

Commissioner Frank stated that this feels like a tactic to force the Commission to approve the class.

Commissioner Frank moved to approve the course. Commissioner Rizzi seconded.

Motion carried 5 to 1 with Commissioner Williams opposed.

6-2) Absolute Collection Services, LLC

“HOA Collections”

Request: 3 Hours General Distance Education – Internet

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Williams disclosed that he has knowledge of Kelly Mitchell. Commissioner Williams stated that this will not affect his ability to be impartial in his vote.

Commissioner Sibley disclosed that Absolute Collection is a client of his employer, Nevada Legal News. Commissioner Sibley stated that this will not affect his ability to be impartial in his vote.

Commissioner Frank stated that he doesn't like the course objective and he will continue to object until all continuing education courses will include a final exam because these courses are professional training.

Commissioner Aichroth moved to approve the course. Commissioner Williams seconded.

Motion carried unanimously.

6-3) Better Reserve Consultants

“Reserve Studies from Start to Finish”

Request: 3 Hours General Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Frank asked if at the end of the course, a community manager will be able to evaluate a reserve study of an association.

Ms. Oerding stated that she will hope that they will be able to do it.

Commissioner Williams disclosed that he has knowledge of Mari Jo Betterley. Commissioner Williams stated that this will not affect his ability to be impartial in his vote.

Commissioner Sibley moved to approve the course. Commissioner Williams seconded.

Motion carried unanimously.

6-4) Better Reserve Studies

“Reserve Studies – Meet the Experts in the Field – Part II – Pools and Gates”

Request: 3 Hours General Classroom

Jennifer Oerding stated that this course has been provisioned to be removed from the agenda.

6-5) Better Reserve Consultants

“Reserve Studies – Working with the Experts – Part III - Roofing”

Request: 3 Hours General Classroom

Jennifer Oerding stated that this course has been provisioned to be removed from the agenda.

6-6) Patrick Ward, Insurance

“Habitational Risk and the Community Manager”

Request: 3 Hours General Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Williams disclosed that he has knowledge of Patrick Ward. Commissioner Williams stated that this will not affect his ability to be impartial in his vote.

Commissioner Sibley moved to approve the course. Commissioner Williams seconded.

Motion carried unanimously.

6-7) Mutual of Omaha Bank – Chuck Balacy

“Dollars and Sense: What You Should Know About Banking and Your Homeowners Association”

Request: 3 Hours General Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Williams disclosed that he has knowledge of Chuck Balacy and dealt with Mutual of Omaha Bank. Commissioner Williams stated that this will not affect his ability to be impartial in his vote.

Commissioner Williams moved to approve the course. Commissioner Rizzi seconded.

Motion carried unanimously.

6-8) Leach, Johnson, Song and Gruchow

“Architectural Guidelines, Satellite Dishes, Solar Panels and your HOA”

Request: 3 Hours General Classroom

Jennifer Oerding presented this course. Ms. Oerding stated that the Division is recommending approval.

Commissioner Williams disclosed that some of his clients had used Leach, Johnson, Song and Gruchow. Commissioner Williams stated that this will not affect his ability to be impartial in his vote.

Commissioner Frank stated that due to personal knowledge of Leach, Johnson, Song and Gruchow he will recuse himself from voting.

Commissioner Sibley disclosed that his employer, Nevada Legal News, receives compensation for work provided for Leach Johnson Song & Gruchow. Commissioner Sibley stated that this will not affect his ability to be impartial in his vote.

Commissioner Sibley moved to approve the course. Commissioner Williams seconded.

Motion carried with Commissioner Frank abstaining.

7-A) Discussion regarding a Division Advisory Opinion 15-02 regarding retaliatory action prohibited by NRS 116.31183.

Joseph Decker presented this report. Mr. Decker stated that on May 20, 2015 he issued an advisory opinion regarding retaliatory actions. Mr. Decker stated that in the Division's mind retaliation is punitive. Mr. Decker stated that a retaliatory action is something that otherwise will not have occurred and would require to have some sort of impact.

Commissioner Frank asked when the Commission will be able to see a case that is based on retaliatory action.

Mr. Decker stated that the Division has a case of retaliation that my go in front of the Commission in August. Mr. Decker stated that in order to get those cases to Commission, the Division had to clarify what retaliation is.

Commissioner Frank asked to work with the Division on a frame-work for homeowners on how to describe retaliatory actions.

In Las Vegas: Jonathan Friedrich commented. Mr. Friedrich stated that he is aware of at least two cases in where the homeowner had great financial harm from defending themselves against their associations. Mr. Friedrich stated that it took him two years to convince Gail Anderson to issue an advisory opinion stating that the board cannot charge a homeowner for their time during a hearing.

7-B-1) Administrator's Report on staffing updates

Joseph Decker presented this report. Mr. Decker stated that the Division has an opening in accounting. Mr. Decker stated that the Ombudsman's Office has a new section manager; Marina Benn. Mr. Decker stated that the Division has an opening in the Compliance section but the current case load per investigator is now manageable.

7-B-2) Administrator's Report on Division budget proposal and Assembly Bill 474 revising certain fees paid by homeowners' associations. (BDR 10-1170)

Joseph Decker presented this report. Mr. Decker stated that the Real Estate Division was not successful with the self-funded proposal.

Mr. Decker stated that Assembly Bill 474 passed allowing the increase of the per door fee. Mr. Decker stated that the three dollar per door fee was established in 1998 and had never been increased.

7-B-3) Administrator's Report on NRS 116.750 regarding the jurisdiction of the Division, Ombudsman, Commission and hearing panel; NRS 116.760 regarding the right of a person aggrieved by alleged violation to file affidavit with the Division and NRS 116.765 regarding referral of affidavits to the Ombudsman for assistance in resolving alleged violation, report by the Ombudsman, investigation by the Division, determination of whether to file complaint with the Commission.

Joseph Decker presented this report. Mr. Decker stated that NRS 116.750 is regarding the Division's jurisdiction. Mr. Decker stated that NRS 116.760 is regarding the process for dispute resolution. Mr. Decker stated that NRS 116.765 is regarding misconduct. Mr. Decker stated that there are two kinds of cases; complainant versus respondent under NRS 116.760 and the NRED versus respondent. Mr. Decker stated that the Division can initiate a case for misconduct.

7-C-1) Ombudsman's Report on intervention

Sharon Jackson introduced the new Chief Compliance Investigator Chris Sewell.

Sharon Jackson presented this report. Ms. Jackson stated that the total number of affidavits received for fiscal year 2015 was 270.

7-C-2) Ombudsman's Report on informal conference

Sharon Jackson presented this report. Ms. Jackson stated that the total number of informal conferences offered by the Ombudsman's Office was 414. Ms. Jackson stated that the Ombudsman's Office held 146 informal conferences; 120 were resolved and 88 cases were closed and referred to the Alternative Dispute Resolution program.

7-C-3) Ombudsman's Report on alternative dispute resolution filings and subsidy claims

Sharon Jackson presented this report. Ms. Jackson stated that they had a total of 108 cases opened and 89 mediation claims.

7-C-4) Ombudsman's Report on homeowner association and compliance audits

Sharon Jackson presented this report. Ms. Jackson stated that the auditor has a total of 21 audits and one audit in process right now.

7-C-5) Ombudsman's Report on Program Training Officer's Report

Sharon Jackson presented this report. Ms. Jackson stated that the number of views generated by viewing the video tutorials is steady.

7-C-6) Ombudsman's Report on number and types of associations registered with the State

Sharon Jackson presented this report. Ms. Jackson stated that there are 3,078 registered associations with 509,645 registered units in Nevada. Ms. Jackson stated that there were 1,790 total new units. Ms. Jackson presented the informal conference evaluation report.

7-D) Compliance Section's report

Chris Sewell presented this report. Mr. Sewell stated that the Division currently has 159 active cases. Mr. Sewell stated that the enforcement unit is narrowing the case load down to actual misconduct cases that will be pursued by investigators. Mr. Sewell stated that investigators are working through the back log.

Commissioner Frank stated that 90% of the cases that are filed with the Division are eventually dismissed without action. Commissioner Frank stated that he is concerned about the Division's judgment on the compliance cases. Commissioner Frank would like for the Commission to have the chance to review all cases that have been closed.

Mr. Decker stated that the Commission's involvement is on the adjudication side. Mr. Decker stated that the enforcement unit is not set up to handle dispute resolution, yet at least 80% of the cases that ended up in enforcement were dispute resolution. Mr. Decker stated that the Division is triaging cases in order to keep the misconduct cases that meet the standard of good cause for investigators to work on, and re-route all other cases to the Ombudsman's Office for dispute resolution. Mr. Decker stated that the service that the Division offers to homeowners and board members is dispute resolution. Mr. Decker stated that he inherited cases that are over four years old and some of those are cases are not actionable.

7-E) Administrative fine report pursuant to NAC 116A.350 (4)

Teralyn Thompson presented this report. Ms. Thompson reported that there are no administrative fines at this time.

7-F) Licensee and board member discipline report

Teralyn Thompson presented this report. Ms. Thompson stated that this report is updated after every Commission meeting and when the Division receives an order or payment. Ms. Thompson stated that Mary Brailey is on time with her payments.

8) For possible action: Discussion and decision on date, time, place, and agenda items for upcoming meetings.

Date and location for the next Commission meeting are to be determined.

9) Public Comment

In Las Vegas: Dominic Ciociola, Las Vegas residence since 1971, commented. Mr. Ciociola stated that he was not aware of the Commission and that he is positively impressed by it.

In Las Vegas: George Crocco, resident of Canyon Willow Pecos, commented. Mr. Crocco stated that that he has submitted numerous affidavits to the Division and he has come to the Commission meeting for over six years. Mr. Crocco stated that that nothing has been done. Mr. Crocco asked if he needs to submit more affidavits.

In Carson City: No public comments.

10) Commissioner Comment

Commissioner Williams stated that he has a lot of community managers that come up to him and talk about how the Division has changed so dramatically. Commissioner Williams stated that community managers no longer feel like their license is in jeopardy every time they make a decision.

Commissioner Frank stated that he was personally involved in 30 to 40 well documented and well described affidavit and not a single one of those affidavits had ever been satisfactorily resolved by the Division. Commissioner Frank stated that he is frustrated from the years' worth of unsatisfactory actions by the Division which are closed, secret, cannot be reviewed or appealed. Commissioner Frank stated that this is an injustice to the people.

11) For possible action: Adjournment

Meeting adjourned at 12:07 p.m. on June 17, 2015.

Respectfully Yours,

Claudia Rosolen
Commission Coordinator