

1 7. On November 20, 2018, the Division properly notified the Association
2 regarding Complainant's complaint and requested notarized, written responses to the
3 allegations set forth in the Division's November 20th letter.

4 8. On December 7, 2018, the Division received a response from the
5 Association's attorney, John E. Leach of Leach Kern Gruchow Anderson Song, stating in
6 part, that the Association only has an obligation to allow owners to review records *filed*
7 with a court.

8 9. In his letter, Mr. Leach proceeded to state that because the Settlement
9 Agreement was not a record *filed* with the court, the Association was not obligated to
10 produce it to Complainant.

11 10. Mr. Leach also stated that filing the Settlement Agreement with the court
12 would make it a public record, violating the Settlement Agreement's confidentiality
13 provision.

14 11. In his December 7th letter to the Division, Mr. Leach stated:

15 Based on the language of the aforementioned statutes, production of
16 settlement agreement is not necessary and appropriate. Therefore, the
17 Association does not intend to do so as it is not going to breach the
18 terms of the settlement agreement.

19 12. After this case was referred to the Attorney General's Office to pursue
20 disciplinary action, the Division obtained a copy of the Settlement Agreement that had
21 been filed with the court on August 28, 2017, as part of the parties' Joint Motion for
22 Preliminary Approval of Class Settlement as Set Forth in the Settlement Agreement,
23 Approval of Class Notification and Entry of Scheduling Order.

24 13. NRS 116.31088(4) requires:

25 If any civil action in which the association is a party is settled, the
26 executive board shall disclose the terms and conditions of the
27 settlement at the next regularly scheduled meeting of the executive
28 board after the settlement has been reached. The executive board may
not approve a settlement which contains any terms and conditions that
would prevent the executive board from complying with the provisions
of this subsection.

1 14. Despite the Settlement Agreement being filed with the court on August 28,
2 2017, for court approval, the Settlement Agreement was not on the agenda of
3 Association's Board meeting set for October 10, 2017.

4 15. Minutes obtained from the October 10, 2017 meeting failed to expressly
5 reference the Settlement Agreement.

6 16. Despite the agenda and the minutes not mentioning the Settlement
7 Agreement, the Association claimed it satisfied the requirements of disclosure when the
8 president responded to an owner during the homeowner's forum at the beginning of the
9 meeting which is part of the audio from the October 10, 2017 meeting.

10 17. Based on the audio from the October 20, 2017, the president's comments on
11 the Settlement Agreement did not fully disclose the terms and conditions of the
12 Settlement Agreement as required by statute.

13 18. The Settlement Agreement terms and conditions were not disclosed to the
14 homeowners until a year later, at the October 10, 2018 Board meeting.

15 19. On February 28, 2019, the Division sent the Association a letter stating
16 that the Division viewed the Settlement Agreement as a record of the Association and
17 that it must be made available for inspection.

18 20. On August 21, 2019, the Association was properly notified by the Division
19 that the Division intended to commence disciplinary action against the Board by filing a
20 complaint for hearing before the Commission for Common Interest Communities and
21 Condominium Hotels.

22 VIOLATIONS OF LAW

23 21. RESPONDENTS violated NRS 116.31175(1), (2) by failing to disclose the
24 Settlement Agreement and the financial records pertaining to the payment of the
25 settlement to Complainant.

26 22. RESPONDENTS violated NRS 116.31088(4) by failing to disclose the
27 terms and conditions of the Settlement Agreement at the next regularly scheduled
28 meeting of the executive board of directors.

1 **DISCIPLINE AUTHORIZED**

2 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
3 116.790 the Commission has discretion to take any or all of the following actions:

4 1. Issue an order directing RESPONDENTS to cease and desist from
5 continuing to engage in the unlawful conduct that resulted in the violation.

6 2. Issue an order directing RESPONDENTS to take affirmative action to
7 correct any conditions resulting from the violation.

8 3. Impose an administrative fine of up to \$1,000 for each violation by
9 RESPONDENT.

10 4. IF RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND
11 WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best
12 interest of the Association, such RESPONDENTS may be removed from his/her position
13 as a director and/or officer.

14 5. Order an audit of the ASSOCIATION, at the expense of the
15 ASSOCIATION.

16 6. Require the BOARD MEMBERS to hire a community manager who holds a
17 certificate.

18 7. Require RESPONDENTS to pay the costs of the proceedings incurred by
19 the Division, including, without limitation, the cost of the investigation and reasonable
20 attorney's fees.

21 8. Take whatever further disciplinary action as the Commission deems
22 appropriate.

23 The Commission may order one or any combination of the discipline described
24 above. If the Commission finds that the RESPONDENTS knowingly and willfully
25 violated the provisions of NRS or NAC 116, the Commission may order that
26 RESPONDENTS be personally liable for all fines and costs imposed.

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1 As a RESPONDENT, you are specifically informed that you have the right to
2 appear and be heard in your defense, either personally or through your counsel of
3 choice. At the hearing, the Division has the burden of proving the allegations in the
4 complaint and will call witnesses and present evidence against you. You have the right
5 to respond and to present relevant evidence and argument on all issues involved. You
6 have the right to call and examine witnesses, introduce exhibits, and cross-examine
7 opposing witnesses on any matter relevant to the issues involved.

8 You have the right to request that the Commission issue subpoenas to compel
9 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
10 you may be required to demonstrate the relevance of the witness' testimony and/or
11 evidence. Other important rights and obligations, including your obligation to answer
12 the complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including
13 without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC
14 116.635 and NRS Chapter 233B.

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1 Note that under NAC 116.575, not less than five (5) working days before a
2 hearing, RESPONDENTS must provide to the Division a copy of all reasonably
3 available documents that are reasonably anticipated to be used to support his position,
4 and a list of witnesses RESPONDENTS intend to call at the time of the hearing. Failure
5 to provide any document or to list a witness may result in the document or witness
6 being excluded from RESPONDENTS' defense. The purpose of the hearing is to
7 determine if the RESPONDENTS have violated the provisions of NRS 116, and to
8 determine what administrative penalty is to be assessed against RESPONDENTS.

9 DATED this 2 day of April, 2020.

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11 REAL ESTATE DIVISION,
12 DEPARTMENT OF BUSINESS &
INDUSTRY, STATE OF NEVADA

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