



DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

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ADVISORY OPINION 15-02

Replaces: N/A

May 20, 2015

QUESTION:

What is retaliatory action prohibited by NRS 116.31183?

SHORT ANSWER:

Retaliatory action is the harmful, punitive action taken by an Association or its representatives against another person that would not have been taken but for such person having:

1. Complained in good faith about an alleged violation of NRS 116 or the governing documents,
2. Recommended the selection or replacement of an attorney, community manager or vendor, or
3. Requested in good faith to review the books, records or other papers of the association.

ANALYSIS OF THE ISSUE:

NRS 116.31183 prohibits taking, or directing or encouraging another person to take any retaliatory action against an owner.

NRS 116.31183 provides as follows:

1. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an attorney, community manager or vendor; or

(c) Requested in good faith to review the books, records or other papers of the association.

2. In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:

- (a) Compensatory damages; and
- (b) Attorney's fees and costs of bringing the separate action.

The issue is what constitutes "retaliatory action." Retaliation generally is the act of harming someone in response to an action they took that is perceived to have warranted punishment. NRS 116 prohibits board members, officers, employees, and community managers from taking retaliatory action against an owner for having done any of the 3 things listed in Subsection 1 above. Therefore, board members, officers, employees, and community managers may not take or direct another to take harmful, punitive action against an owner based on such owner having done any of those 3 things.

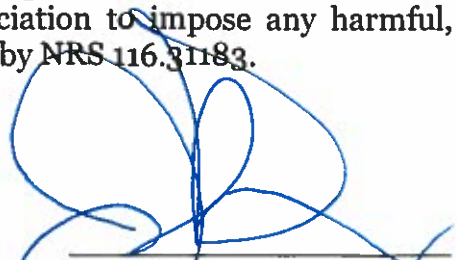
The Commission for Common Interest Communities and Condominium Hotels tried to clarify the meaning of retaliation at a meeting July 31, 2011. The minutes from that meeting state:

Chairman Buckley asked if the Commission would like to provide clarity on retaliatory action. Commissioner O'Donnell moved the Commission will clarify NRS 116.31183 which deals with retaliatory action to clarify that retaliatory action means taking actions that affect the unit owner's rights as a unit owner. Seconded by Commissioner Brainard. Unanimous decision.

The Commission never elaborated on what a unit owner's rights are. Owners have rights specifically provided in NRS 116, like a hearing before a fine and notice of meetings. But generally speaking, unit owners expect to have the right to enjoy their property and live in their community without being harassed or bullied. In fact, NRS 116.31184 makes such behavior a misdemeanor offense. In line with the Commission's previous attempt to clarify retaliatory action, the Division finds that any harmful, punitive action taken against an owner by an Association or its representatives that would not have otherwise occurred but for the owner having complained in good faith about the board or a vendor or having asked to see records (as further detailed in NRS 116.31183(1)) is retaliatory action.

ADVISORY CONCLUSION:

Owners have the right to complain about the actions of the board, the community manager and any other vendor, and to request records. The misuse of a position as a board member, community manager, officer, agent or employee of an Association to impose any harmful, punitive action in response is retaliatory action and prohibited by NRS 116.31183.



JOSEPH DECKER
Administrator
Real Estate Division