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May 5, 2008

Mendy K. Elliott  
Director  
Department of Business and Industry  
901 South Stewart Street, Suite 1003  
Carson City, Nevada 89701-5453

Dear Ms. Elliott:

You have requested an Attorney General's opinion concerning whether the Commission for Common Interest Communities and Hotel Condominiums and its Administrative Law Judges (elsewhere referred to as "hearing panels") have jurisdiction over issues and/or disputes, concerning or arising out of a common interest community's governing documents, which are not alleged violations of NRS Chapter 116 ("governing document disputes").

QUESTION

Does the Commission for Common Interest Communities and Hotel Condominiums (Commission) or a hearing panel appointed by the Commission have jurisdiction to determine whether a violation of the governing documents of a common interest community has occurred, to decide how the governing documents will be interpreted or applied and/or to direct that any action be taken, or discipline imposed as a result?

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### ANALYSIS

Pursuant to NRS 116.049, the "governing documents" consist of the following:

1. The declaration for the common interest community;
2. The articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents that are used to organize the association for the common interest community;
3. The bylaws and rules of the association; and
4. Any other documents that govern the operation of the common interest community or the association.

NRS 116.665 (1) requires the Commission to conduct such hearings and proceedings as are required by the provisions of NRS Chapter 116. The Commission is authorized by NRS 116.675 to delegate its power to conduct hearings, determine violations, and impose fines, penalties or other discipline, to a hearing panel or hearing panels. Thus a hearing panel has the same jurisdiction as the Commission to the extent it has delegated those powers. The procedure for hearing complaints is set forth in NRS 116.770.

The Commission has jurisdiction, through NRS 116.750, to take appropriate action against a person who commits a "violation." "Violation" as used in NRS 116.745–116.795, inclusive, is defined, specifically in NRS 116.745, as follows: "unless the context otherwise requires, 'violation' means a violation of any provision of this chapter [116], any regulation adopted pursuant thereto or any order of the Commission or a hearing panel."

The process through which a matter proceeds through the Real Estate Division to a hearing before the Commission is specifically limited, at each level, to include only "violations" as defined in NRS 116.745. Governing document disputes arise from differences of opinion concerning the interpretation, application or enforcement of a common interest community's governing documents. Chapter 116 does not give the Commission or its Administrative Law Judges jurisdiction to consider or render decisions concerning such disputes.

The consistent use of the narrow definition for "violation" throughout the pertinent provisions of NRS 116 reinforces the clear intent that governing document disputes be excluded from the Commission's jurisdiction. It is well established that, where a statute is clear and unambiguous on its face, a court may not look beyond the language of the statute to determine the legislature's intent. *Westpark Owners' Association v. Eighth Jud. Dist. Ct.*, 123 Nev. \_\_\_\_, 167 P.3d 421, 427 (Adv. Op. 37, Sept. 20, 2007); *Sheriff v. Witzenburg*, 122 Nev. 1056, 145 P.3d 1002, 1005 (2006); *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438, 441 (1986). The provisions of NRS 116 discussed above are unambiguous and therefore should be interpreted in accordance with the plain meaning of the words and phrases utilized.

The process through which a violation proceeds to the Commission is described in NRS 116.745 et. seq. The process begins with the filing of an affidavit by a person aggrieved "by an alleged violation." NRS 116.760. Upon receipt of an affidavit which complies with NRS 116.760, the affidavit is referred to the Ombudsman who ". . . shall give such guidance to the parties as the Ombudsman deems necessary to assist the parties to resolve the alleged violation." NRS 116.765(1). If the parties are unable to resolve the violation with the Ombudsman's assistance, the matter is referred to the Division for investigation of the alleged violation. NRS 116.765(3)(4). Based upon the outcome of the investigation, a matter may move forward to a hearing before the Commission or a hearing panel. To initiate a hearing before the Commission, the Administrator for the Division must file a formal complaint. A complaint filed with the Commission must allege violations of NRS 116, for purposes of NRS 116.765(5) and 116.770.

NRS 116.1206 provides that any provision contained in a governing document of a common interest community which violates Chapter 116 shall be deemed to conform with the chapter by operation of law, obviating any need for a common interest community to amend its governing documents to bring them into compliance with current law. Therefore, the contents of a common interest community's governing documents, in and of themselves, are not an appropriate basis for alleging a violation of Chapter 116, and hence, are not subject to the Commission's jurisdiction.

Further support for our opinion that there is no intent for the Commission to be involved with governing document disputes is found in NRS 116.755(3), which provides, "In carrying out the provisions of NRS 116.745 to 116.795, inclusive, the Commission or a hearing panel shall not intervene in any internal activities of an association *except to the extent necessary to prevent or remedy a violation.*" [Emphasis added]

The Commission, therefore, does not have jurisdiction over the interpretation, application, or enforcement of the provisions of a common interest community's governing documents, except to the extent that violations of Chapter 116 have occurred. A hearing panel has no broader jurisdiction than the Commission, and governing document issues are equally beyond the jurisdiction of a hearing panel. An Administrative Law Judge (ALJ) is a hearing panel as defined in NRS 116.675(1).

### CONCLUSION

The jurisdiction of the Commission and its appointed Administrative Law Judges, is limited to "violations" as defined in NRS 116.745. Neither the Commission nor its Administrative Law Judges have jurisdiction to consider or take any action concerning

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the interpretation, application, or enforcement of a common interest community's governing documents, where there is not a violation of the provisions of NRS Chapter 116 or an order of the Commission.

Sincerely,

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