

COMMUNITY INSIGHTS

VOLUME XI, ISSUE II

Department of Business and Industry, Real Estate Division

Spring/Summer 2015

Nevada

Real Estate Division

OUR MISSION

The mission of the Nevada Real Estate Division is to safeguard and promote interest in real estate transactions by developing an informed public and a professional real estate industry.

Office of the Ombudsman

OUR MISSION

To provide a neutral and fair venue to assist homeowners, board members and community managers in handling issues that may arise while living in a common-interest community.

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Education outreach

The Ombudsman's Office hosts training sessions for Nevada association residents who want to know more about their rights and responsibilities.

To find an upcoming class visit http://red.nv.gov/Content/CIC/Program_Training/Classes/

All HOA residents welcome.

Call Stacey Spoerl at (702) 486-4480 for registration and information.

Can't make a class?

The slide presentations are posted online, along with lots of other resources.

From the Ombudsman's Desk

Promoting and Fostering Relationships



Sharon Jackson

Greetings. As the Ombudsman, on a daily basis I work towards promoting and fostering relationships between common-interest community participants. I feel that many situations are a simple matter of communications and can be resolved once each side understands the concerns of the other.

In this office we strive to "open the gates" of communication. We have seen first-hand when an open dialog is established many of the underlying problems are able to be resolved. In our informal conferences we allow questions to be asked, we encourage each

side to give the benefit of doubt, have an open mind when others are speaking and if necessary clarify your position if there seem to be any misunderstandings.

Unit owners, board members and community managers are participants which make up the common-interest community. It is encouraging to witness the success of an association when all parties work toward a common goal of resolution.

First and foremost, the Ombudsman's office is always willing to discuss any NRS 116 statutes that may pertain to common-interest communities. Strong communications and increased knowledge can lead to a win-win situation for all involved.

On June 15th the Division went live with our new website at <http://red.nv.gov>. I encourage you to log on and become familiar with all the new resources.

From the Desk of the Administrator

The Legislative Session is over and the Division's budget and accompanying bills have been passed. The Division remains a General Fund agency, although the CICCH section has always been self-funded within the Division's master budget. We appreciate and value the support we've received from the sector and look forward to continuing our great relationship with all of you who make HOA's work in Nevada. Our collaboration together is what keeps everything running smoothly. The Ombudsman's informal dispute resolution process has achieved an 89% resolution rate, and we look forward to continuing work with you.



Joseph (JD) Decker

COMMUNITY INSIGHTS

VOLUME X, ISSUE II

is an official publication of the

**STATE OF NEVADA
DEPARTMENT OF BUSINESS
AND INDUSTRY**

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Robert Frank, Commissioner
Homeowner Member

Stephen Aichroth, Commissioner
Homeowner Member

James Rizzi, Commissioner
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Ken Williams, Commissioner
Community Manager Member

Richard Layton, Commissioner
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DID YOU KNOW?

TOWING

Regarding any towing issue within a community you must comply with **BOTH** NRS 487.038 **AND** NRS 116.3102 (1)(5).

BUDGET RATIFICATION MEETING

A budget ratification meeting must be called to order and minutes must be taken. The board must assign these duties, and the tasks can be carried out by any person the board assigns as may be provided in the bylaws.

DEEMED ELECTED

In an election where the number of candidates equals the number of available seats, pursuant to NRS 116.31034 (5)(6) the executive board must make a determination prior to eligibility that the nominated candidates will be "deemed elected". This procedure must be in the written election policy of the association, in the governing documents, or referenced in the minutes of a meeting.

OFFICERS AND DIRECTORS

Officers - Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners. They are appointed by the vote of the members of the board. Typically the President, Secretary and Treasurer.

Board of Directors - Required to be a unit owner and are elected by the unit owners. Board members, unlike officers have voting rights. They serve as the governing body of the association and vote on actions taken by the association.

MARRIED BOARD MEMBERS

Please see the Division notice of requirements for SB 174 at http://red.nv.gov/Content/Whats_New/Recent_Updates/

ADVISORY OPINION 15-02

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 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.

To read all Real Estate Division Advisory Opinions please refer to:
http://red.nv.gov/Content/Publications/Division_Advisory_Opinions/

Disciplinary Actions/ Stipulations

By the Commission for Common-Interest Communities and Condominium Hotels

Judith Fenner

Case No: CIS 11-01-57-205

November 19, 2014

Community Manager

This matter came before the Commission for Common-Interest Communities and Condominium Hotels (Commission) November 19, 2014. Judith Fenner failed to appear.

Findings of Fact: Respondents failed to appear before the Commission, the Commission determined the following factual allegations to be true.

- Respondent was licensed as a Community Manager.
- Respondent acted as the Community Manager for Pueblo at Santa Fe (the Association) until September 2013 when she terminated her contract with the association after three of the four members of the board of directors resigned to settle a disciplinary case before the Commission.
- Complaint was filed by a unit's owner stating he had not been receiving complete financial records from the Respondent who was acting as the community manager, but calling herself the bookkeeper for the Association.
- Respondent deposited assessment payments totaling \$3,664 into a different association's account. The association's attorney pursued correction of the error.
- The Association incurred overdraft and insufficient check fees totaling approximately \$4,300.
- Respondent requested a transfer of \$18,000 from the Association's reserve account to its operating account.
- Respondent received checks in the amount of \$7,125 and \$7,500 for management fees when her contract payment was \$1,100 per month.
- During Respondent's contract with the Association, she sometimes referred to herself as the bookkeeper and disclaimed any use of her license as a community manager.
- Concern over Respondent's attempt to avoid the jurisdiction of the Division and the Commission prompted the Division to investigate the actions of the Respondent with several other associations.
- Respondent filed a lawsuit against the Division, the Division's investigator and the Commission (Respondent lawsuit).
- Respondent suggested the board transfer \$40,000

from the reserve account to cover the Associations operating expenses.

- Respondent then directed the Association to pay her attorney fees for the Respondent lawsuit in an amount in excess of \$37,000.
- Respondent directed the Association to pay her subsequent attorney in excess of \$4,000. Claiming the Association had a duty to indemnify her with reference to a complaint filed with the Division, but the request was a retroactive addendum to her contract, after the complaints with the Division were filed.
- Respondent notified homeowners in election materials that a candidate homeowner was in good standing when he was not.
- Respondent advised the Board that their reserve account was overfunded and the Association subsequently reduced their reserve contribution and then transferred \$50,000 from the reserve account to the operating account. Reserve study reflected the Association was 63.2% funded.

Actions/Decisions

Acts of the Commission for Common-Interest Communities and Condominium Hotels are not published in this newsletter by the Real Estate Division until after the 30-day period for filing under Judicial Review. If a stay on discipline is issued by the court, the matter is not published until the final outcome of the review.

Allegations/Stipulations

Stipulations occur when both the respondent and the Division have agreed to conditions reviewed and accepted by both sides. A stipulation may or may not be an admission of guilt.

- Association balance sheets, prepared by Respondent were willfully misleading, overstated bank balance and misrepresented the financial condition of the Association.

- Respondent failed to properly review attorney bills which resulted in a refund by counsel to the association in the amount of \$21,000.

- Two board members were not current on their assessments. One other board member opposed the ordering of the foreclosure, Respondent refused to stop the foreclosure of an owner's unit for delinquent assessments. The attorney representing the board members in a disciplinary case

directed Respondent to stop the foreclosure. The delinquent owner attempted to make assessment payments to the Respondent, payments were rejected.

- Respondent took three months advance payments from the Association when she knew the board was working on a settlement with the Division which would have resulted in their resignation.

Conclusions of Law: The Commission concludes by no less than a preponderance of evidence The Respondent violated:

- Pay a total fine of \$102,795. This reflects a fine of \$95,000 for violations of law, plus \$7,795 for the Division attorney fees and costs.
- Pay restitution to Pueblo at Santa Fe Condominium

Disciplinary Actions/ Stipulations

By the Commission for Common-Interest Communities and Condominium Hotels

Association in the amount of \$4,300 for overdraft and insufficient funds fees incurred.

- Not serve on any homeowners' association board in the State of Nevada for a period of 10 years, but in no event prior to the restitution being paid in full.
- Shall not work as a bookkeeper for any homeowners' association board in the State of Nevada.
- The Division may institute debt collection proceedings for failure to pay the total fine in a timely manner

Richard Willer

Case No: 2013-3730

November 19, 2014

Officer and Director of
Images-Fiesta Master Association

This matter came before the Commission for Common Interest Communities and Condominium Hotels (Commission) November 18, 19, 2015. Mr. Willer (Respondent) appeared with counsel.

Finding of Fact: Based upon the evidence and testimony presented during the hearing, the parties stipulated to some findings of fact, and by a preponderance of the evidence, the Commission finds the following factual allegations to be supported:

- Respondent was an officer and a director of the Images-Fiesta master Association.
- Division received an Intervention Affidavit against the Respondent.
- The affidavit was made by a woman (the Tenant) who rented a home owned by the Association.
- Respondent responded to a maintenance complaint made by the Tenant.
- Tenant alleged that the Respondent took off all of his clothes while doing plumbing repairs in the home with her young daughter there.
- The Tenant asked the Respondent to put on his clothes and leave immediately.
- The Tenant had to ask repeatedly for respondent to put on his clothes and leave.
- As a result of the encounter the Tenant changed her residence locks and took action to terminate the lease with the Association.
- Subsequently the Tenant filed a police report and received a Temporary Protective Order from Las Vegas Justice Court.
- According to Division records when the incident took place and Intervention Affidavit was filed Respondent was a board member and the treasurer for the

Association.

- During the Divisions investigation, the other members of the board were asked to respond to the allegations made by the Tenant.
- After receiving a demand for indemnification with regard to the court proceedings from Respondent the Association requested and received a legal opinion regarding their options and potential liability.
- The Association refused to indemnify the Respondent with regards to the court proceedings brought by the Tenant.
- Respondent admits that he took off all of his clothes, but says it was a misunderstanding.
- Respondent asked the Tenant if he could take off his clothes, and she said it was okay thinking he meant only his shirt.
- Respondent says he initially put on his underwear, but wanted to make sure the repairs he made would work, so he did not leave immediately.
- Prior to the date of the hearing Respondent was no longer a board member for the Association but is currently on the board for his sub-association.

Conclusions of Law: Based on the foregoing factual findings, the Commission concludes by unanimous vote that the following violations of law occurred:

- Respondent knowingly and willfully violated NRS 116.3103 by committing incompetence, negligence or gross negligence and failing to act in the honest belief that his action were in the best interest of the Association when he, as a representative of the Association, removed all his clothing exposing himself to a tenant of the Association.

Order: The Commission, being fully apprised in the premises, and good cause appearing to the Commission by a vote of 6 to 1 orders as follows:

- Respondent shall pay the Division a total fine of \$9,120. The amount reflects a fine of \$2,000 for committing the violations of law, plus \$7,120 for the Division attorney fees and costs.
- The total fine shall be paid within 60 days of the date of this order.
- Respondent shall be removed from his position as a director and officer of the Association.
- Respondent is prohibited from serving on any board in the State Of Nevada for a period of not less than

**TO READ THESE
OR OTHER CASES AND ORDERS
PLEASE GO TO:
WWW.RED.NV.GOV
click CICCH/HOA,
then ADMINISTRATION
then COMMISSION ORDERS.**

Compliance and Enforcement Names New Chief



Christopher Sewell
Chief Investigator

N.R.E.D. Administrator Joseph (JD) Decker and Ombudsman Sharon Jackson are pleased to announce the appointment of Christopher Sewell as the Chief Investigator for Compliance and Enforcement. He will head this unit within the Common Interest Communities and Condominium Hotels section of the Nevada Real Estate Division. Mr. Sewell's responsibilities include the assignment, review and approval of cases concerning violations of NRS 116 and 116A.

Previously, Sewell, who is a fifth-generation Nevadan, was the Supervisory Compliance Investigator for the State of Nevada, Division of Insurance. Prior to this position, he served as Senior Compliance Investigator, Acting Manager for the Consumer Complaint Resolution Division, and a Financial Analyst for the State of Nevada, Public Utilities Commission. He also served as a Compliance/Enforcement Investigator with the State of Nevada, Transportation Authority. Mr. Sewell worked in the national insurance arena as an investigator and adjuster. Sewell also has experience as a Police Officer and Deputy Sheriff in Washoe County.

Chief Sewell states that one of his goals is to “maintain the compliance and enforcement unit’s positive changes while continuing to investigate violations of the law for prosecution before the Commission.”

Licensees Can Establish My Account Online

The Nevada Real Estate Division has implemented “My Account” functionality to our “Online Services.” My Account can provide 24/7 communication between licensees and the Division regarding licensing, education and contact information.

To access My Account, go the Division’s website at: <http://www.red.nv.gov/> and click on the online services link under the home page banner. Then click my account. Carefully read the instructions regarding User ID and Password found on this page. Find and click “Login here” The login screen will request the user to enter their User ID and Password following the parameters outlined on the previous “Welcome” page.

First-time users will be asked to create three security questions. Ongoing user maintenance of My Account includes the ability to change your password and security questions.

There are three tabs in My Account: “Contact Information” reflects your name and home physical address, mailing address and phone number as they appear in Division records. Under the “Credential Information” heading in My Account, a licensee can see information as it appears in the Division’s database pertaining to licenses held. Credential information includes the license number, license type and license status. The “Continuing Education Credits” tab shows courses completed according to education sponsor data provided to the Division. For continuing education, the information provided is the education provider’s (sponsor’s) name, course title and course number assigned by the Division, course designation, course delivery (classroom or distance education), credit hours and the date that the course was successfully completed.

It is intended that the continuing education information will allow licensees to know exactly what courses the Division has received towards upcoming license renewal requirements. Education sponsors are providing class roster information to the Division which is then loaded into the Division database and provides the details to populate the My Account screen. When renewing a license and using continuing education completed prior to January 1, 2015 licensees will have to provide paper course completion certificates to the Division for courses taken prior to electronic roster submission by the sponsors, which took effect on January 1, 2015. A licensee will be able to view My Account to determine if continuing education requirements for license renewal have been met and, if there are discrepancies, address them prior to renewal deadline.

If the information found under the “Contact Information” tab is not current, a licensee can update addresses and phone numbers by clicking on “Change Address/Phone” at the screen top left and then click “Start.” This will take the user to a new screen showing all information as it appears in the Division database.

The user can edit any field shown by clicking the “Edit Address Above” box and entering the new information in the proper field.

A special note on emails: Licensees can provide a current email address for future Division use, but will not see the My Account email field update at this time.

If you desire a step-by-step guide with screen shots for setting up and using My Account, go to the Division’s web site, click “Online Services” (under quick links) and then “My Account Resources” (under the “Online Services” heading). Then click on “Guide for Setting Up My Account”. Requests to reset passwords after log-in failures must include your license number and should be emailed to: realest@red.state.nv.us with “reset password” in the subject line.

Stephen Aichroth Appointed to Commission

Governor Sandoval appointed Steven Aichroth as the newest member to the Common-Interest Community and Condominium Hotels Commission. Mr. Aichroth was appointed as a Homeowner Representative.

In 1986, he was awarded a Bachelor of Science in Industrial Design from San Jose State University. This led to a career in private business.

Mr. Aichroth, a resident of Northern Nevada since 1995 has lived in his current homeowner's association community since 1999. He also served as a Board member for his Association.

Aichroth, a proud father of two University of Nevada graduates, absolutely loves living in Nevada.

He stated that his goal as a member of the Commission is "to protect the public, ensure that the process is followed, and make reasoned, well thought-out decisions in regards to Common-Interest Communities."

Ombudsman Acknowledges Community Managers

The Ombudsman would like to take this opportunity to thank licensed community managers for their hard work, dedication to the common-interest communities that they serve and for their cooperation with the Division in resolving problems and disputes.

Your diligence in working with this office is appreciated.

We encourage all community managers to utilize our redesigned website as an educational resource. It showcases many useful tools such as our videos and presentations that can be used to educate your boards and unit owners.

The Office of the Ombudsman's goal is to encourage open communication. If you have questions or need assistance, please contact this office at 702-486-4480.

TMWA Reports 10.6 Percent Decrease

Rain showers and voluntary cutbacks in water consumption combined to reduce water use in June by 10.6 percent, continuing a trend that has the community on target to meet a conservation goal during this summer of drought, according to the Truckee Meadows Water Authority (TMWA).

TMWA's offers a list of ten tips to help you conserve and preserve the water supply for next year called "Reduce your water use by 10% It's the least you can do."

1. Get your outside watering dialed in. Test all sprinklers and drip systems to be sure they are leak free, properly targeted, and timed correctly. Please, only water on your assigned days.
2. Timing is everything. Please don't water between 11am and 7pm.
3. Fix that leaky toilet. A single leaky toilet could be sending hundreds of gallons of water down the drain.
4. Get to know your water bill. In your bill find an easy-to-read chart that allows you to track your usage over time and identify increases.
5. Full loads only when washing dishes and clothes. By choosing to wash only full loads, you can make remarkable

reductions: 15-45 gallons per load of laundry and 5-15 gallons per load of dishes.

6. Use shutoff spray nozzles on all your hoses. Also check for leaks in your hose connections. A rubber washer can save many gallons.
7. Is everything cool with your evaporative cooler? A constantly leaking unit can be a huge drain on your water use. Check for drips and make repairs when needed.
8. Simply shower smarter. Install a water-efficient shower head. This step alone can save 1.2 gallons per-minute. By reducing your shower time from 10 to 5 minutes, you can save as much as 12.5 gallons.
9. Don't wash the car. A simple five-minute wash in your driveway can use as much as 100 gallons of water.
10. Whatever you are doing ten times, only do it nine. For every 10 times you do water-using activity, just cut back by one every week of month. Nine loads of laundry instead of ten.

Also, if you have any questions regarding the drought and water supply, please see the TMWA link of frequently asked questions at:

<https://tmwa.com/conservation/drought-faqs-2015>

Attention CAMs

Online Renewal Available *

To renew your certificate online, visit www.red.nv.gov. At the bottom of the page under Online Services, select "My Account" and follow the instructions. Applicants must use Internet Explorer, have a credit card ready and be no more than 45 days before your certificate expiration date.

Applicants must list the continuing education courses they attended, including CE number and date. You may also scan and attach your certificates to document your completed education for the renewal.

Managers wishing to "upgrade" their certificates, such as change from provisional to regular community manager, must submit an application to the Division.

**** Online renew is not available***
at this time for
Supervising Community Managers

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