

# Threats & Harassment in CICs

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# UNIQUE



# Disclaimer

# Agenda

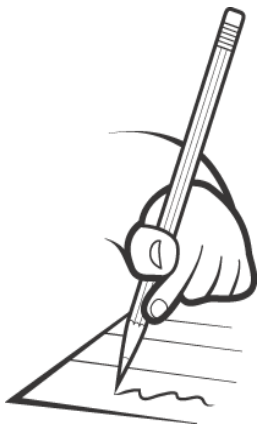


- Threats
- Harassment
- Creating a Policy
- Enforcing the Policy
- Health & Safety Violations
- Complaints to the Division

# Threats: Written

NRS 207.180

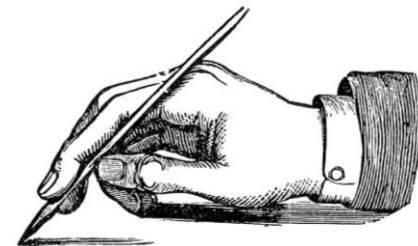
- Any person who knowingly sends or delivers any letter or writing:
  - Threatening to accuse another of a crime or misdemeanor, or to expose or publish any of the other person's infirmities or failings, with intent to extort money, goods, chattels or other valuable thing; or
  - Threatening to maim, wound, kill or murder, or to burn/destroy the house or property of another person, or
  - To accuse another of a crime or misdemeanor, or expose or publish any of the other person's infirmities, though no money, goods, chattels or other valuable thing be demanded,
  - Is guilty of a misdemeanor.



# Threats: Written continued

NRS 207.180

- Any person who:
  - Writes and sends, or writes and delivers, either through the mail, express, by private parties or otherwise, any anonymous letter, or any letter bearing a fictitious name, charging any person with crime; or
  - Writes and sends any anonymous letter or letters bearing a fictitious name, containing vulgar or threatening language, obscene pictures, or containing reflections upon his or her standing in society or in the community,
  - Is guilty of a misdemeanor.



# Threats: Extortion

NRS 205.320

- A person who, with the intent to extort or gain any money or other property or to compel or induce another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, or to influence the action of any public officer, or to do or abet or procure any illegal or wrongful act, whether or not the purpose is accomplished, threatens directly or indirectly:
  - To accuse any person of a crime;
  - To injure a person or property;
  - To publish or connive at publishing any libel;
  - To expose or impute to any person any deformity or disgrace; or
  - To expose any secret,
- Is guilty of a category B felony



# Harassment: Definition

NRS 200.571

- A person is guilty of harassment if the person knowingly threatens to:
  - Cause bodily injury;
  - Cause physical damage to property;
  - Subject the victim to physical confinement or restraint; or
  - Do any act intended to substantially harm the victim physically or mentally.
- A person who is guilty of harassment:
  - For the first offense, is guilty of a misdemeanor.
  - All subsequent offenses, is guilty of a gross misdemeanor.





# Harassment: Definition continued

NRS 116.31184

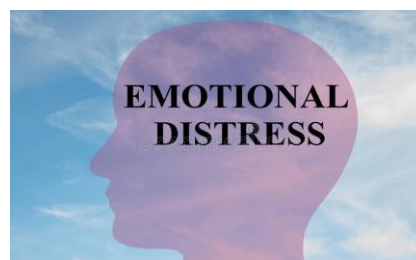
- A CAM, board member, agent/employee of CAM or board member, a unit owner, or guest/tenant shall not willfully and without legal authority threaten, harass or otherwise engage in a course of conduct against [any of the above] which:
  - Causes harm or serious emotional distress, or the reasonable apprehension thereof, to [another] person; or
  - Creates a hostile environment for that person.
- A person who violates [this provision] is guilty of a misdemeanor.



# Harassment: Emotional Distress

LegalDictionary.com

- Emotional distress symptoms are similar to those suffered by a person when going through depression or a medical condition related to anxiety.
  - Disturbed sleep (too much or not enough)
  - Changes in weight or appetite
  - Chronic fatigue and lack of energy
  - Memory problems
  - Favoring being alone over spending time with friends
  - Mood swings
  - Otherwise unexplainable physical symptoms
    - Chronic pain
    - Headaches, or
    - Constipation
  - Difficulty managing temper
  - Obsessive or compulsive behaviors.



# Harassment: Conclusion

- Harassment is a criminal offense.
- Harassment is NOT enforceable by the Division.



# Knowledge Check



1. Are threats defined in NRS 116?
2. True/False: Harassment, as it applies to CICs, is defined in two NRS's.
3. True/False: Harassment is considered a felony under NV law.
4. Is Emotional Distress a valid harassment claim?
5. Is harassment enforceable by the Division of Real Estate?

# What can be done?

- An association may, if the governing documents allow, create a policy or rule which governs conduct in a CIC.
  - These are often referred to as “Anti-Bullying” policies.



# Creating the Policy

- Subject to the provisions of the declaration, the association shall adopt and may amend the bylaws, rule and regulations of the association. NRS 116.3102(1)(a)
- If any change is made to the governing documents, all unit owners must receive a copy of the changes within 30 days of the change being made. NRS 116.12065
- A fine/penalty may not be imposed unless a unit owner was aware of the rule at least 30 days before the violation occurred. NRS 116.31031(4)(a)



# Creating the Policy continued

NRS 116.31065

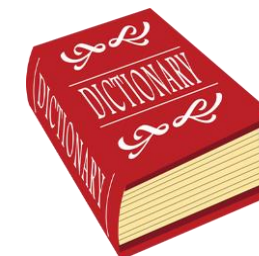
- Rules adopted by an association:
  - Must be reasonably related to the purpose for which they are adopted.
  - Must be sufficiently explicit to inform a person of any action or omission required for compliance.
  - Must NOT be adopted to evade any obligation of the association;
  - Must be consistent with the governing documents and must NOT arbitrarily restrict conduct...
  - Must be uniformly enforced under the same or similar circumstances against ALL unit owners.
    - “any rule that is not uniformly enforced may NOT be enforced against any unit’s owner”
  - May be enforced through the a fine ONLY if the association complies with NRS 116.31031.



# Creating the Policy: Defining Bullying

Oxford Dictionary

- “Seeking to harm, intimidate, or coerce”



NRS 200.900(4)(a)

- “Bullying” means a willful act that is written, verbal or physical and exposes a person one time or repeatedly to highly offensive negative actions:
  - Intended to cause harm or serious emotional distress;
  - Placing the person in reasonable fear; or
  - Creating an overall hostile environment.





# Enforcing the Policy

NRS 116.31031

- Authorized penalties for rules violations, if the governing documents so allow:
  - Send a written notice without further penalty;
  - Impose a monetary fine not to exceed \$100 per violation or a total of \$1000 per hearing.
    - Health, Safety, Welfare limits pending Commission approval
  - Temporary suspension of use of common element.
  - Reasonable suspension of voting rights.
- Penalty may not be imposed until:
  - Violator received written notice of the violation and an opportunity to cure the violation; and
  - A hearing on the violation has been held.



# Enforcing the Policy continued

NRS 116.3102(3)&(4)

- The executive board may determine whether to take enforcement action.
  - The board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:
    - The association's legal position does not justify taking action;
    - The rule being enforced is, or is likely to be construed as, inconsistent with current law;
    - The violation was not so material as to be objectionable to a REASONABLE person or to justify expending the association's resources; or
    - It is not in the association's best interests to pursue an enforcement action.
- The decision not to enforce under one set of circumstances does not prevent them from taking action under different circumstances.
  - May not be arbitrary or capricious in taking action.



# Enforcing the Policy: Retaliation

NRS 116.31183

- A board member, CAM, officer/employee/agent of the association shall NOT take, or direct another to take, any retaliatory action against a unit's owner because the owner has:
  - Complained in good faith about any alleged violation of law or the governing documents;
  - Recommended the selection or replacement of an attorney, CAM or vendor; or
  - Requested in good faith to review the books, records or other papers of the association.
- In addition to any other remedy provided by law, a unit owner may bring a separate action to recover:
  - Compensatory damages; and
  - Attorney's fees and costs of bringing the separate action.



# Enforcing the Policy: Retaliation continued

NRS 116.31031(7)

## ➤ Continuing Violations:

- If a fine is imposed and the violation is not cured within 14 days, or longer period prescribed by the board, the violation shall be deemed a continuing violation.
  - This period begins the date the notice of the decision is provided to the sanctioned person.
- Thereafter, the board may impose an additional fine, equal to the original, for each 7-day period or portion thereof that the violation is not cured.
  - Additional fines do not apply to the \$1000 per hearing cap.
- Any additional fine may be imposed without providing the opportunity to cure the violation and without the notice and an opportunity to be heard.



# Enforcing the Policy: Retaliation continued

- IF a board imposes additional fines under the previous circumstances, it is NOT harassment or retaliation.

However

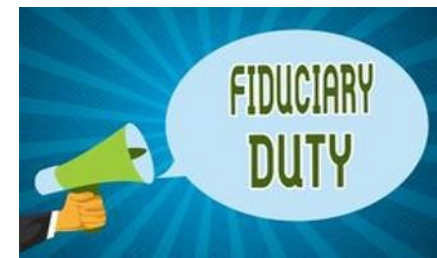
- IF a board imposes additional fines outside of the scope of NRS 116.31031(7), it MIGHT be harassment or retaliation depending on the facts of the situation.
  - Might also be considered a breach of fiduciary duty.



# Enforcing the Policy: Fiduciary Duty

NAC 116.405

- In determining whether a member of the executive board has performed his or her duties, the Commission may consider whether the member has:
  - Acted outside the scope of the authority granted in the governing documents; and/or
  - Acted for reasons of self-interest, gain, prejudice or revenge.



# Knowledge Check



1. Can an association create a policy which allows it to fine violators for harassment?
2. Rules created by the association must be \_\_\_\_\_ enforced under the same or similar circumstances.
3. What is the maximum monetary fine that may be imposed for a policy/rule violation?
4. True/False: An individual who believes they are the victim of retaliation may seek compensation through civil litigation.
5. How long must a violation go uncured before it is considered a continuing violation?

# Health & Safety Violations

NRS 116.31031(2)

- If the violation **does** pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the community:
  - The amount of the fine **MUST** be commensurate with the severity of the violation, and
  - **MUST** be determined by the executive board in accordance with the governing documents.

SB72 authorized Commission to establish criteria for determining a health and safety violation and limitations for these violation.

Pending NAC update.





# Health & Safety Violations continued

- Screaming, cursing, disrupting meetings, disputes between neighbors, etc. does not necessarily pose an imminent threat of harm.
  - It might violate procedure and/or etiquette.



- If this is true, it could still be a violation and thus finable under the schedule of fines; capped at \$100.

# Health & Safety Violations continued

- Why are we talking about Health and Safety violations?
- Because **IF** a board wrongfully or excessively uses the health & safety clause to impose large fines, it **MIGHT** expose itself to claims of harassment or retaliation!
  - **MIGHT** result in criminal charges and/or
  - Civil penalties.



# Complaints to the Division

- A person who is aggrieved by an alleged violation may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file with the Division a written affidavit that sets forth the facts constituting the alleged violation. NRS 116.760
- “Violation” as used [by the division to conduct an investigation] means a violation of: NRS 116.745
  - Any provision of [NRS 116] **except** NRS 116.31184 [threats and harassment];
  - Any regulation adopted pursuant to [NRS 116]; or
  - Any order of the Commission or a hearing panel.

**Threats and harassment are NOT a violation for the purposes of filing a complaint with the Division.**



# Knowledge Check



1. A health & safety violation is one which poses an \_\_\_\_\_ of causing \_\_\_\_\_ adverse effect on the health, safety and welfare of the CIC.
2. What is the maximum fine that may be imposed for a health & safety violation?
3. Is screaming, cursing, disrupting meeting always a health & safety violation?
4. If an association has a policy against such behavior, and the behavior does not pose an imminent threat of harm, what is the maximum monetary fine that may be imposed?
5. Can a board or board member be guilty of harassment or retaliation for misuse of the health & safety provisions of NRS?

# Conclusion!



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