

1                                    **BEFORE THE COMMISSION FOR COMMON-INTEREST**  
2                                    **COMMUNITIES AND CONDOMINIUM HOTELS**  
3                                    **STATE OF NEVADA**

4    Sharath Chandra, Administrator,  
5    Real Estate Division, Department of  
6    Business & Industry, State of Nevada,  
7                                    Petitioner,

8    vs.

9    Hillside Homeowners Association, Sourav  
10    Hazra, Roy Whitmore, Kyle Hagemaiier,  
11    George Smith, and Ramiro Ramirez,  
12                                    Respondents.

Case No. 2018-766

**FILED**

**SEP 21 2018**

NEVADA COMMISSION  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

13                                    **COMPLAINT FOR DISCIPLINARY**  
14                                    **ACTION AND NOTICE OF HEARING**

15            The Real Estate Division of the Department of Business and Industry, State of  
16    Nevada (the "Division"), by and through its counsel, Adam Paul Laxalt, Attorney  
17    General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney  
18    General, hereby notifies RESPONDENT HILLSIDE HOMEOWNERS ASSOCIATION,  
19    SOURAV HAZRA, ROY WHITMORE, KYLE HAGEMAIER, GEORGE SMITH, AND  
20    RAMIRO RAMIREZ (hereinafter, "RESPONDENTS") of an administrative hearing  
21    before the Commission for Common-Interest Communities and Condominium Hotels,  
22    State of Nevada, which is to be held pursuant to Chapters 233B and 116 of the Nevada  
23    Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code ("NAC").  
24    The purpose of the hearing is to consider the allegations stated below and to determine  
25    if an administrative penalty will be imposed on the RESPONDENTS pursuant to the  
26    provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS  
27    116.790.

28                                    **JURISDICTION AND NOTICE**

1.    During the relevant times mentioned in this complaint, RESPONDENTS  
SOURAV HAZRA, ROY WHITMORE, KYLE HAGEMAIER, GEORGE SMITH, and

1 RAMIRO RAMIREZ served as board members and/or officers of RESPONDENT  
2 HILLSIDE HOMEOWNERS ASSOCIATION (the "Association"), a common-interest  
3 community located in Las Vegas, Nevada.

4 2. RESPONDENTS are subject to the provisions of Chapter 116 of each the  
5 Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC")  
6 (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of  
7 the Division, and the Commission for Common-Interest Communities pursuant to the  
8 provisions of NRS 116.750.

### 9 FACTUAL ALLEGATIONS

10 3. In 2015, the Division received a complaint against the manager for  
11 RESPONDENT HILLSIDE HOMEOWNERS ASSOCIATION (the "Association") based  
12 on the manager's failure to recognize the complainant as an owner.

13 4. The complainant provided a signed and notarized deed evidencing  
14 ownership.

15 5. The deed transfers title from the original title holder back to her and the  
16 complainant together as joint tenants.

17 6. The Division closed the case with the understanding that the Association  
18 would allow the complainant to run for the board.

19 7. The same owners complained that the Association's October 2015 election  
20 did not allow cumulative voting as is permitted by the governing documents.

21 8. In July 2016, the owners hired an attorney to respond to a letter from the  
22 Association's attorney refusing to accept the deed and recognize both of them as owners  
23 and to challenge the 2015 election.

24 9. The Association held a curative election in October 2016 with the prior  
25 year's positions being up for election.

26 10. The Association continued to take the position that the deed had to be  
27 recorded in order for the owner to be recognized by the Association.

28 11. Despite the Association's assertion that the deed is ineffective, the

1 Association directed or authorized their attorneys to notify the lenders on the unit that  
2 a deed had been given by their borrower.

3 12. The letter to the lenders dated February 28, 2018 from the Association's  
4 attorney includes a copy of the deed and was sent to the lender without the owners'  
5 consent.

6 13. In the letter to the lender, the Association makes reference to a potential  
7 deed of trust violation and quotes a portion of the deed of trust entitled "Grounds for  
8 Acceleration of Debt... Sale Without Credit Approval."

9 14. In June 2018, one of the owners filed an intervention affidavit with the  
10 Division against the Association and its board for among other things refusing to  
11 recognize him as an owner of a unit.

12 15. The owner is prohibited from attending board meetings, talking to the  
13 community manager and running for the board.

14 16. The Division requested a notarized response from each board member to  
15 the allegation that the complainant was denied the rights of an owner under NRS 116.

16 17. Instead of providing a notarized affidavit from each board member, the  
17 Association's board responded through its attorney that they did not accept the deed  
18 because it was not recorded in the real property records.

19 18. The Division issued an advisory opinion dated December 12, 2013  
20 pursuant to NRS 116.623 entitled: What is a "unit's owner"? (Advisory No. 14-01-116)  
21 (hereinafter "Advisory Opinion"). A copy of the Advisory Opinion is attached as Exhibit  
22 1 and incorporated by reference into this Complaint.

23 19. The Advisory Opinion discusses issues where two people occupy a unit, but  
24 only one of them is on the recorded deed.

25 20. A deed need not be recorded in the real property records to be effective  
26 under state law.

27 21. Based on Nevada law, the Division's Advisory Opinion provides that "a  
28 unit's owner is a person or entity that can provide a written conveyance or other writing

1 that transfers a unit to them.”

2 22. The Advisory Opinion concludes:

3 Owners have significant rights within an association. It is important that an  
4 association grant those rights to anyone who is entitled to them. While a  
5 deed need not be recorded to be effective, the law does require that any  
6 transfer of an interest in real property be in writing, signed by the grantor,  
7 and notarized.

#### 8 VIOLATIONS OF LAW

9 23. RESPONDENTS HAZRA, WHITMORE, HAGEMAIER, SMITH, AND  
10 RAMIREZ violated NRS 116.3103 (through NAC 116.405(1)) by failing to act in good  
11 faith and in the best interests of the Association when they acted outside the scope of  
12 their authority granted by the governing documents by failing to afford an owner rights  
13 under NRS 116, including without limitation, the right to attend board meetings and  
14 run for a seat on the board.

15 24. RESPONDENTS HAZRA, WHITMORE, HAGEMAIER, SMITH, AND  
16 RAMIREZ violated NRS 116.3103 (through NAC 116.405(3)) by failing to act in good  
17 faith and in the best interests of the Association when they committed an act or  
18 omission which amounts to incompetence, negligence or gross negligence by failing to  
19 follow an Advisory Opinion of the Division.

20 25. RESPONDENTS HAZRA, WHITMORE, HAGEMAIER, SMITH, AND  
21 RAMIREZ violated NRS 116.3103 (through NAC 116.405(3)) by failing to act in good  
22 faith and in the best interests of the Association when they committed an act or  
23 omission which amounts to incompetence, negligence or gross negligence by failing to  
24 afford an owner rights under NRS 116, including without limitation, the right to attend  
25 board meetings and run for a seat on the board.

26 26. RESPONDENTS violated NRS 116.3103 (through NAC 116.405(4)) by  
27 failing to act in good faith and in the best interests of the Association when they  
28 directed or authorized their attorney to disclose the owners' confidential information to  
a third party without the owners' consent.

29 27. RESPONDENTS HAZRA, WHITMORE, HAGEMAIER, SMITH, AND

1 RAMIREZ violated NRS 116.31183 by retaliating against an owner when they directed  
2 or authorized their attorney to notify an owner's lender about a deed (filed with the  
3 Association) with the stated purpose of exposing an alleged breach of the deed of trust,  
4 because the owners complained in good faith about a violation of NRS 116 or the  
5 governing documents.

6 28. RESPONDENTS violated NRS 116.31034(4) by refusing to allow an owner  
7 the right to run for a seat on the board.

8 29. RESPONDENTS violated NRS 116.31083 by failing to allow an owner to  
9 attend meetings of the board, including the right to speak during the comment periods.

#### 10 DISCIPLINE AUTHORIZED

11 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS  
12 116.790 the Commission has discretion to take any or all of the following actions:

13 1. Issue an order directing RESPONDENT to cease and desist from  
14 continuing to engage in the unlawful conduct that resulted in the violation.

15 2. Issue an order directing RESPONDENT to take affirmative action to  
16 correct any conditions resulting from the violation.

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

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

23 5. Order an audit of the ASSOCIATION, at the expense of the  
24 ASSOCIATION.

25 6. Require the BOARD MEMBERS to hire a community manager who holds a  
26 certificate.

27 7. Require RESPONDENTS to pay the costs of the proceedings incurred by  
28 the Division, including, without limitation, the cost of the investigation and reasonable

1 attorney's fees.

2 8. Take whatever further disciplinary action as the Commission deems  
3 appropriate.

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

8 **NOTICE OF HEARING**

9 **PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider  
10 this Administrative Complaint against the above-named RESPONDENTS in  
11 accordance with Chapters 233B and 116 and 116A of the Nevada Revised Statutes and  
12 Chapters 116 and 116A of the Nevada Administrative Code.

13 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled for  
14 November 6-8, 2018, beginning at approximately 9:00 a.m. each day, or until such time  
15 as the Commission concludes its business. The Commission meeting will be held at the  
16 Nevada State Business Center, 3300 W. Sahara Avenue, Nevada Room, Suite 400, Las  
17 Vegas, Nevada 89102 with videoconferencing to Division of Insurance, 1818 E. College  
18 Parkway, Carson City, Nevada 89153.

19 **STACKED CALENDAR:** Your hearing is one of several hearings that may be  
20 scheduled at the same time as part of a regular meeting of the Commission that is  
21 expected to take place on November 6-8, 2018. Thus, your hearing may be continued  
22 until later in the day or from day to day. It is your responsibility to be present when  
23 your case is called. If you are not present when your hearing is called, a default may be  
24 entered against you and the Commission may decide the case as if all allegations in the  
25 complaint were true. If you need to negotiate a more specific time for your hearing in  
26 advance because of coordination with out of state witnesses or the like, please call  
27 Samiel Williams, Commission Coordinator, at (702) 486-4606.

28 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is

1 an open meeting under Nevada's open meeting law, and may be attended by the public.  
2 After the evidence and arguments, the commission may conduct a closed meeting to  
3 discuss your alleged misconduct or professional competence. A verbatim record will be  
4 made by a certified court reporter. You are entitled to a copy of the transcript of the  
5 open and closed portions of the meeting, although you must pay for the transcription.

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

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

20 Note that under NAC 116.575, not less than five (5) working days before a hearing,  
21 RESPONDENTS must provide to the Division a copy of all reasonably available  
22 documents that are reasonably anticipated to be used to support his position, and a list  
23 of witnesses RESPONDENTS intend to call at the time of the hearing. Failure to  
24 provide any document or to list a witness may result in the document or witness

25 ...

26 ...

27 ...

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1 being excluded from RESPONDENTS' defense. The purpose of the hearing is to  
2 determine if the RESPONDENTS have violated the provisions of NRS 116, and to  
3 determine what administrative penalty is to be assessed against RESPONDENTS.

4 DATED: September 21, 2018.

5 REAL ESTATE DIVISION,  
6 DEPARTMENT OF BUSINESS &  
7 INDUSTRY, STATE OF NEVADA

8 By: 

9 SHARATH CHANDRA, Administrator  
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11 Las Vegas, Nevada 89102  
12 (702) 486-4033

13 ADAM PAUL LAXALT  
14 Attorney General

15 By: 

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20 (702) 486-3420  
21 Attorneys for Real Estate Division  
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# EXHIBIT 1



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
ADVISORY OPINION

Subject: <b>What is a "unit's owner"?</b>	Advisory No. 14-01-116	3 pages
	Issued By:	Real Estate Division
	Amends/ Supersedes	N/A
Reference(s): NRS 116.095, NRS 116.093, NRS 111.205	Effective Date: December 12, 2013	

**QUESTION:**

What is a "unit's owner" within the meaning of NRS 116?

**SHORT ANSWER:**

A unit's owner is any person who is considered an owner of real property by law. Real property interests must be transferred in writing. Therefore, a unit's owner is a person or entity that can provide a written conveyance or other writing that transfers a unit to them. The written conveyance or other writing must be signed by the person transferring the unit. A unit's owner is also a lessee of a unit if the written lease expires when the common interest community expires. An owner of an entity that is a unit's owner is anyone who can provide the association with evidence of ownership of the entity regardless of the ownership percentage.

**ANALYSIS OF THE ISSUE:**

NRS 116.095 provides a definition of "unit's owner" as:

a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

“Unit’s owner” refers to ownership of a “unit” which is also defined by NRS 116. NRS 116.093 defines a unit as:

a physical portion of the common-interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to paragraph (e) of subsection 1 of NRS 116.2105.

Based on these definitions, it is clear that a unit’s owner is based on ownership or lease rights to real property within a common interest community. According to NRS 111.205 no interest in real property (other than a lease not to exceed 1 year) may be “created, granted, assigned, surrendered or declared... unless by act or operation of law, or by deed or conveyance, in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by the party’s lawful agent thereunto authorized in writing.” In addition, a conveyance must be either acknowledged or proved – as in notarized by a notary public. NRS 111.240.

There may be situations where title to real property is transferred by a court order, but generally speaking, interests in real property must be in writing and notarized. Therefore, a unit’s owner is one who can provide – in writing – evidence of ownership of a unit. Associations can use public records to see who the record owner is of a particular unit. But the law does not require that the writing be recorded in the real property records to be effective. If a unit’s owner wishes to exercise rights under NRS 116 or the association’s governing documents, but they are not the record owner, the association may require such person to provide the writing evidencing their ownership.

The result is no different when spouses are involved. The Division has been asked about a situation involving a husband and wife where only one or the other is the record owner of a unit. Can the spouse who is not the record owner be treated as a unit’s owner since Nevada is a community property state? Regardless of community property law, the non-record owner must provide a deed or other writing in their favor to evidence ownership. A deed or other writing does not need to be recorded to be effective. This approach puts the burden on the owner wanting ownership rights instead of the association who is not in a position to know an individual’s marital status and community property rights.

NRS 116 provides support for putting the burden to prove ownership rights on the person claiming ownership rights. A unit’s owner may be a corporate entity, a trust, a limited liability company, a partnership, or an estate. Under NRS 116.31034(10), a person seeking to serve as a board member who is not the record owner is required to provide proof of their association with the record owner. They must show they are an officer, employee, agent or director of a corporate owner; a trustee or designated beneficiary of a trust owner; a partner of a partnership owner; a member or manager of a limited liability company owner; or a fiduciary of an estate that owns a unit. The proof must be sufficient to the association to show the person is associated with the corporate owner, trust, partnership, limited-liability company or estate and identify the unit(s) owned. Associations should also consider that their governing documents may include

more detail as to what documentation must be shown by a person wanting to serve on the board when they are not the owner in the real property records.

**ADVISORY CONCLUSION:**

Owners have significant rights within an association. It is important that an association grant those rights to anyone who is entitled to them. While a deed need not be recorded to be effective, the law does require that any transfer of an interest in real property be in writing, signed by the grantor, and notarized. An association should require any person claiming to be an owner to provide evidence in writing if they are not the owner of record.