

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM
HOTELS MEETING MINUTES JUNE 4, 2019**

**NEVADA STATE BUSINESS CENTER
3300 WEST SAHARA AVENUE
NEVADA ROOM, SUITE 400
LAS VEGAS, NEVADA 89102**

**VIDEO CONFERENCE:
DIVISION OF INSURANCE
1818 E. COLLEGE PARKWAY
CARSON CITY, NEVADA 89706**

JUNE 4, 2019

9:00 A.M.

1-A) Introduction of Commissioners in attendance

In Las Vegas: Michael Burke, James Rizzi, Charles Niggemeyer, Ken Williams, Richard Layton, Doris Woods, and Deputy Attorney General Asheesh Bhalla sitting as Commission Counsel.

Ryan Henderson was not present.

1-B) Introduction of Division Staff in attendance

In Las Vegas: Sharath Chandra, Administrator; Teralyn Lewis, Administration Section Manager; Jan Unger, Commission Coordinator; Charvez Foger, Ombudsman; Terry Wheaton, Chief Compliance Audit Investigator; Monique Williamson, Information and Education Program Officer; Antonio Brown, Program Training Officer and Michelle Briggs, Senior Deputy Attorney General.

In Carson City: Perry Faigin, Deputy Administrator.

2) Public Comment

No public comment.

4-C) NRED v. Peter Densmore, for possible action

Case No. 2018-189

Type of Respondent: Community Manager

License# CAM.0000360-SUPR

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

John Leach was present representing Mr. Densmore.

Ms. Briggs stated that a settlement had been reached. Ms. Briggs provided the Commission with copies of the settlement.

The Commission decided not to have the stipulated facts into the record.

Mr. Leach stated that his client agreed to the settlement. Mr. Leach stated that part of the settlement was a payment of a \$5,000 fine which was paid this morning, June 4, 2019. Mr. Leach stated that the remaining issue would be the classes that need to be taken within the time period.

Chairman Burke moved to accept the settlement. Seconded by Commissioner Layton. Motion passed.

4-H) NRED v. Russell Powers, for possible action
Case No. 2019-100
Type of Respondent: Community Manager
License# CAM.0000030

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

John Leach was present representing Mr. Powers.

Ms. Briggs stated that a settlement had been reached. Ms. Briggs provided the Commission with copies of the settlement.

Commissioner Williams stated that his thought is that if someone admitted that they were wrong, the Commission would take the steps to correct it. Commissioner Williams stated that he is unsure about punishment. Commissioner Williams stated that managers fear that if they make a mistake and admit it, the manager will still be punished. Commissioner Williams stated that he thought that if a manager makes a mistake and tells the Division, there was a way to work around punishment other than coming to the Commission.

Ms. Briggs stated that Mr. Powers did not admit his mistake to the Division and did not see the problem. Ms. Briggs stated that the damage was already done to the association and the integrity of that election.

Mr. Leach stated that his client agrees to and understand the requirements of the settlement agreement.

Chairman Burke moved to approve the settlement. Seconded by Commissioner Layton. Motion passed.

4-D) NRED v. Diamond Creek Homeowners Association, for possible action
Case No. 2017-1826
Type of Respondent: Executive Board

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Edwina Daly was present representing the association.

Ms. Briggs stated that the Commission received a draft of the audit from Ms. Daly for the year ending 2017.

Chairman Burke asked if there has been any other work done on the audit since June 11, 2018.

Ms. Daly stated that she provided the draft of the audit that the board will review and accept per the CPA's recommendations. Ms. Daly stated that she provided a packet with the adjusting journal entries that the CPA recommended.

Ms. Briggs stated that in March 2019 Ms. Daly stated that the audit was in progress and Ms. Daly had to recreate records based on the prior management company.

Chairman Burke stated that the audit provided would have been in the association's possession since at least 2018.

Ms. Daly stated that she does not know where the June 2018 date came from. Ms. Daly stated that the audit was received in May 2019.

Commissioner Woods stated that her notes from the last Commission meeting state that the auditors were going to reconcile financials. Commissioner Woods stated that she does not see reconciled financials.

Ms. Daly stated that she will go back and ask the auditors about the date on the audit.

Ms. Briggs stated that she does not believe that the audit has been completed. Ms. Briggs stated that the Commission needs to see a final audit approved by the board. Ms. Briggs stated that Ms. Daly needs to provide the approved audit.

Commissioner Williams stated that the Commission needs an explanation from the firm that wrote the letter explaining the incorrect date on the audit.

Ms. Daly stated that the board is meeting on June 18, 2019 to review the audit.

Commissioner Rizzi moved to continue the case to be updated at the September Commission meeting. Seconded by Commissioner Williams. Motion passed.

**4-G) NRED v. Max McCombs & English Mill Condominiums Homeowners Association,
for possible action**

Case No. 2014-1179

Type of Respondent: Executive Board

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Mr. McCombs was present.

Community manager Robert Hughes was present representing Mr. McCombs.

Ms. Briggs stated that pursuant to the Commission's last order, Mr. McCombs was to pursue collection efforts and hire a manager. Ms. Briggs stated that Mr. McCombs has maintained management for the association and confirmed that the reserve assessment is being made in the amount of \$54.83 per unit. Ms. Briggs stated that the community manager provided the documents that are in the Commission meeting packet.

Ms. Briggs stated that one of the issues from the last meeting was who the board members are and if election were being conducted.

Mr. Hughes stated the association sent out ballots. Mr. Hughes stated that the only response was from three homeowners included Mr. and Mrs. McCombs.

Commissioner Layton stated that on the balance sheets there is one presented as a December 31, 2018 and another dated April 30, 2019. Commissioner Layton stated that both balance sheets show a negative \$16,000 in accounts receivable. Commissioner Layton asked why there was a negative amount.

Mr. Hughes stated that he is working with the software company because he believes that balance is part of an opening balance that the association is trying to get corrected. Ms. Hughes stated that the negative amount is inaccurate.

Commissioner Layton stated that there is an income statement as of one date and the long-range balance has a different date. Commissioner Layton stated that from an accounting standpoint, the information provided for a particular month end should be all the reports for that month end. Commissioner Layton stated that in the future, all reports should be sent for that month.

Commissioner Niggemeyer moved that the Commission wants another status update at the next meeting to explain the discrepancy and bring the accounting up to date. Seconded by Commissioner Williams. Motion passed.

4-F) NRED v. Los Verdes Community Association, Ruby Consing, Sayeh Sadegh, Monica Blake & Mary Baumgartner, for possible action
Case No. 2018-1481
Type of Respondent: Board Members

This case was continued and will be re-noticed for a future meeting.

4-I) NRED v. Terra Linda Townhouse Homeowners Association, for possible action
Case No. 2018-892
Type of Respondent: Executive Board

This case was continued and will be re-noticed for a future meeting.

4-A) NRED v. Sherryl Baca, for possible action
Case No. 2017-1579 and 2018-136
Type of Respondent: Community Manager
License# CAM.00001439.SUPR

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Ms. Briggs stated that Ms. Baca's attorney requested a continuance which was denied by the secretary of the Commission. Ms. Briggs stated that Ms. Baca's attorney stated that he was out of town today and Ms. Baca was not available until Thursday and the only day that they could both appear would be June 5, 2019. Ms. Briggs stated that the Commission could finish the meeting today.

Ms. Briggs stated that at the Commission meeting in March, the hearing was completed but the Commission allowed Ms. Baca to provide her inventory list 30 days prior to this meeting. Ms.

Briggs stated that list was not provided. Ms. Briggs stated that the investigator reviewed the boxes of documents that were transferred, and minutes were found. Ms. Briggs stated that she amended the complaint to say that not all of the minutes were unsigned but that the years investigated by the Division were not signed. Ms. Briggs stated Ms. Baca's attorney filed an answer to the amended complaint and documents but none of those documents include the inventory list. Ms. Briggs stated that the documents are transcription of audio.

Commissioner Williams stated that he asked for the inventory list from Ms. Baca to give her the benefit of the doubt. Commissioner Williams stated that he thinks the Commission should proceed with deliberation.

Factual Allegation

Commissioner Williams moved that factual allegations 2-21 have been proven. Seconded by Commissioner Layton. Motion passed.

Violations of Law

Commissioner Williams moved that violations of law 1-12 have been proven. Seconded by Commissioner Layton. Motion passed.

Division Recommendation for Discipline

Ms. Briggs presented:

- Revocation of certificate for 10 years no sooner than the fine is paid
- Fine of \$60,000
- Costs of \$3,771.70
- Fine and costs to be paid within 90 days

Chairman Burke moved to accept the Division's recommendation for discipline. Seconded by Commissioner Layton. Motion passed.

4-B) NRED v. Cary DeGrosa, for possible action

Case No. 2018-1246

Type of Respondent: Community Manager

License# CAM.000007-SUPR

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Ryan Reed was present representing Mr. DeGrosa.

Mr. DeGrosa was present.

Ms. Briggs stated that a settlement had been reached. Ms. Briggs stated that Mr. DeGrosa agrees to the revocation of his community manager certificate for 10 years and/or until restitution and fine are paid, agrees to pay \$20,000 restitution to the association in the amount of \$200 per month, agrees to pay \$10,000 to the Division in an administrative fine in the amount of \$100 per month beginning July 1, 2019.

Mr. DeGrosa stated that he agrees with the settlement.

Chairman Burke moved to approve the settlement as presented. Seconded by Commissioner Rizzi. Motion passed.

**4-E) NRED v. Greenridge Homeowners Association, Leslie Holland, Diane Leyva, Joshua Schaper, Carline Roks, Steve Hall, Dave Reid & Janet Meyers, for possible action
Case No. 2018-993**

Type of Respondent: Board Members

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Thomas Kelly, supervising community manager for First Columbia Community Management, was present representing the respondents.

Mr. Kelly requested a 90-day extension to get a formal response. Mr. Kelly stated that he advised the association to hire general counsel. Mr. Kelly gave the Commission background history on the association.

Leslie Holland and Diane Leyva were present. Ms. Holland stated that the current board members are:

- Leslie Holland, Secretary/Treasurer
- John Christopher
- Joshua Schaper
- David Reed
- Carline Roks

Ms. Holland stated that all of the board members were appointed.

Commissioner Williams stated that he would be okay with a continuance. Commissioner Williams stated that Mr. Kelly needs to understand that Mr. Kelly is taking on some liability as well.

Mr. Kelly stated that he understands.

Ms. Briggs stated that she would like an order that requires the association to get a reserve study done with evidence that a company has been hired to do it and that evidence has to be provided to the Division within a certain number of days. Ms. Briggs stated that she would like an order stating that the election has to take place within a certain number of days. Ms. Briggs stated that she would like an audit done of who has paid assessments, that any money that any board member's husband was paid is returned to the association, that all assessments are paid by every board member and evidence of such. Ms. Briggs stated that Ms. Holland and Ms. Leyva should not be able to serve on the board.

Mr. Kelly requested a list of documents that Ms. Briggs would like from the association and 45 days to provide those documents to the Division.

Chairman Burke moved to grant a continuance and, in the continuance, direct Mr. Kelly to work with Ms. Briggs to respond in 45 days to any documents that Ms. Briggs request. Seconded by Commissioner Williams. Motion passed.

5-A) Administrator's report on personnel

Sharath Chandra presented this report. Mr. Chandra stated that Perry Faigin is the new deputy administrator located in Carson City. Mr. Chandra stated that Jan Unger is the new Commission Coordinator.

Mr. Chandra stated that legislative session ended, and the Division has closed all budgets. Mr. Chandra stated that one of the budgeting items was an Education officer position in Carson City which was approved. Mr. Chandra stated that the Division will start recruiting around August 2019.

Mr. Chandra stated that there is a vacant investigator position in Carson City.

5-A) Administrator's report on pending litigation.

Mr. Chandra gave the Commission background on the Vistana Condominium Owners Association. Mr. Chandra stated that the District Court scheduled a hearing for the petition for judicial review for July 30, 2019.

6-D-1) Discussion regarding 2019 legislative bills and bill draft requests ("BDR") related to NRS 116 and 116A which may impact the Commission and/or Division including, but not limited to Assembly Bill 31 relating to common-interest communities; requiring an applicant for a certificate as a community manager or registration as a reserve study specialist to submit an application and undergo a background investigation; and providing other matters properly relating thereto.

Sharath Chandra gave a summary of the bill.

6-D-2) Discussion regarding 2019 legislative bills and bill draft requests ("BDR") related to NRS 116 and 116A which may impact the Commission and/or Division including, but not limited to Assembly Bill 161 relating to common-interest communities; prohibiting common-interest communities from restricting the ownership of pets by a unit's owner under certain circumstances; and providing other matters properly relating thereto.

Sharath Chandra gave a summary of the bill.

6-D-3) Discussion regarding 2019 legislative bills and bill draft requests ("BDR") related to NRS 116 and 116A which may impact the Commission and/or Division including, but not limited to Assembly Bill 335 relating to real property; revising provisions relating to the fees that a unit owners' association for a common-interest community may charge for certain services; revising provisions relating to the resale of a unit in a common-interest community or condominium hotel; and providing other matters properly relating thereto.

Sharath Chandra gave a summary of the bill.

6-D-4) Discussion regarding 2019 legislative bills and bill draft requests ("BDR") related to NRS 116 and 116A which may impact the Commission and/or Division including, but not limited to Assembly Bill 369 relating to common-interest communities; revising provisions governing foreclosure of a unit-owners' association's lien on a unit for certain amounts due to the association; and providing other matters properly relating thereto.

Sharath Chandra stated that this bill did not make it to the second house.

6-D-5) Discussion regarding 2019 legislative bills and bill draft requests (“BDR”) related to NRS 116 and 116A which may impact the Commission and/or Division including, but not limited to Assembly Bill 393 relating to governmental administration; prohibiting the foreclosure of real property or a lien against a unit in a common-interest community owned by a federal worker, tribal worker, state worker or household member of such a worker during a government shutdown in certain circumstances; providing certain protections to a tenant who is a federal worker, tribal worker, state worker or household member of such a worker during a government shutdown; prohibiting a person from repossessing the vehicle of a federal worker, tribal worker, state worker or household member of such a worker during a government shutdown; authorizing the provision of assistance in paying for natural gas and electricity to a federal worker, tribal worker, state worker or household member of such a worker during a government shutdown; providing penalties; and providing other matters properly relating thereto.

Sharath Chandra gave a summary of the bill.

6-D-6) Discussion regarding 2019 legislative bills and bill draft requests (“BDR”) related to NRS 116 and 116A which may impact the Commission and/or Division including, but not limited to Assembly Bill 421 relating to construction; revising the definition of “constructional defect”; revising provisions relating to the information required to be included in a notice of a constructional defect; removing provisions requiring the presence of an expert during an inspection of an alleged constructional defect; establishing provisions relating to a claimant pursuing a claim under a builder’s warranty; revising provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; revising provisions relating to the recovery of damages proximately caused by a constructional defect; increasing the period during which an action for the recovery of certain damages may be commenced; revising the prohibition against a unit-owners’ association pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.

Sharath Chandra stated that the Division monitored this bill and will provide a summary at the next Commission meeting.

6-D-7) Discussion regarding 2019 legislative bills and bill draft requests (“BDR”) related to NRS 116 and 116A which may impact the Commission and/or Division including, but not limited to Senate Bill 382 relating to real property; revising provisions governing deeds of trust; revising provisions governing notice requirements for certain mechanics’ liens; revising provisions relating to how a mortgage of real property is not deemed a conveyance; revising provisions relating to recording estates in property; revising provisions relating to common-interest ownership; and providing other matters properly relating thereto.

Sharath Chandra gave a summary of the bill.

6-D-8) Discussion regarding 2019 legislative bills and bill draft requests (“BDR”) related to NRS 116 and 116A which may impact the Commission and/or Division including, but not limited to Senate Bill 392 relating to real property; revising provisions relating to the employment of persons by the Real Estate Division of the Department of Business and Industry; revising provisions relating to the legal representation of the Division; authorizing the creation of a task force to study certain issues; and providing other matters properly relating thereto.

Sharath Chandra gave a brief history and summary of the bill.

5-B-1) Ombudsman’s report on Intervention Program

Charvez Foger provided the Commission with a report in the meeting packet and provided the Commission with a summary.

5-B-2) Ombudsman’s report on Informal Conferences

Charvez Foger provided the Commission with a report in the meeting packet and provided the Commission with a summary.

5-B-3) Ombudsman’s report on Alternative Dispute Resolution filings and subsidy claims

Charvez Foger provided the Commission with a report in the meeting packet and provided the Commission with a summary.

5-B-4) Ombudsman’s report on Homeowner Association and Compliance Audits

Charvez Foger provided the Commission with a report in the meeting packet and provided the Commission with a summary.

5-B-5) Ombudsman’s report on Program Training Officer’s Report

Charvez Foger provided the Commission with a report in the meeting packet and provided the Commission with a summary.

5-B-6) Ombudsman’s report on number and types of associations registered within the State

Charvez Foger provided the Commission with a report in the meeting packet and provided the Commission with a summary.

5-B-7) Ombudsman’s report on Compliance Section’s report

Charvez Foger provided the Commission with a report in the meeting packet. Terry Wheaton provided the Commission with a summary of the report.

Commissioner Williams asked for an example of why an intervention affidavit may take 1-2 years to close.

Mr. Wheaton stated that in some cases it may take 6-9 months for the Division to receive requested information from association attorneys. Mr. Wheaton stated that some information the Division receives needs to be sorted through and additional information may be requested for clarification purposes. Mr. Wheaton stated that the Division has also had staffing issues.

5-C) Licensee and board member discipline report.

Teralyn Lewis provided the Commission with a report in the meeting packet and provided the Commission with a summary.

5-D) Administrative sanction report.

Teralyn Lewis provided the Commission with a report in the meeting packet and provided the Commission with a summary.

6-A) Discussion regarding the State of Nevada Controller's Office debt collection process for fines issued by the Commission, including the Notice of Entry of Summary Judgement for State of Nevada, Catherine Byrnes, State Controller vs. Leslie White Case No. A-19-792770-C.

Commissioner Williams stated that the Controller's Office has hit a stumbling block. Commissioner Williams stated that the State's employee contact at the Controller's office will not be providing current reports to the State as she has been promoted. Commissioner Williams provided the Commission with new contact names at the Controller's office and a brief summary of emails that had been exchanged. Commissioner Williams stated that he asked the Controller's office for a new report to be generated within 10 days and did not receive it. Commissioner Williams asked Jan Unger for a schedule of upcoming Commission meetings to be provided and forwarded to the Controller's office.

Chairman Burke stated that at the previous Commission meeting they had asked for the State Controller to be present.

Commissioner Williams suggested a 1-on-1 with the new Controller and some of the Commissioners.

6-B) Discussion regarding Commissioners' speaking engagement requests.

No discussion.

6-C) For possible action: Discussion and decision to approve minutes of March 12, 2019 Commission meeting.

Commissioner Williams moved to approve the meeting minutes for the March 12, 2019 meeting. Seconded by Chairman Burke. Motion passed.

3-A) For possible action: Discussion and decision regarding respondent's motion for rehearing and/or reconsideration to set aside default:

NRED v. Shadow Wood Homeowners Association & Jose Escalona, for possible action

Case No. 2018-680

Type of Respondent: Director of the Board

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Jose Escalona was present.

Ms. Briggs stated that a settlement had been reached. Ms. Briggs stated that the Commission's original order will be amended to remove the administrative fines detailed in item # 2. Ms. Briggs stated that item #1 of the original order will also be removed. Ms. Briggs stated that Mr.

Escalona agrees to 10 hours of education classes offered by the Division and agrees to pay the Association restitution in the amount of \$3,450 within 6 months instead of 60 days as originally written. Ms. Briggs stated that Mr. Escalona will also have 6 months to complete his education courses.

Mr. Escalona stated that he agrees to the settlement.

Chairman Burke moved to approve the settlement. Seconded by Commissioner Williams. Motion passed.

7) For Possible Action: Discussion and decision on date, time, place, and agenda items for upcoming meeting(s).

The next Commission meeting is scheduled for September 17-19, 2019 in Carson City.

Commissioner Williams requested the continuance of item 6-A. Chairman Burke stated 6-A would be added to the next agenda.

8) Public Comment

Gerald Northfield provided public comment in Las Vegas. Mr. Northfield questioned why management companies are not being held accountable for putting community managers in situations relating to violations, procedures and internal issues that come before the Commission. Mr. Northfield stated that other states have recognized that management companies should be held responsible. Mr. Northfield asked the Commission to consider looking at what management companies should or should not be held responsible for when it relates to community managers appearing before the Commission.

Mr. Northfield asked the Commission and Division to consider updating Division forms so that forms may be filled out and submitted by email or online, rather than delivering by hand, mail or fax.

William Wright provided public comment in Las Vegas.

Mr. Wright asked the Commission for an advisory opinion on how to calculate a quorum. Mr. Wright stated that he had seen newsletters from the Division which seemed to indicate that a quorum is determined by the number of warm bodies in a seat rather than the number of positions on the board. Mr. Wright stated that he has never seen a corporation determine a quorum based on the number of warm bodies.

Mr. Wright stated the Division has concerns regarding actions by written consent. Mr. Wright stated that actions by written consent are perfectly legal. Mr. Wright stated that the Division has fought workshops before which are perfectly legal.

Mr. Wright stated that he does not want to see associations take an action based on the interpretation from the Division that may cause the association to lose insurance coverage as a result.

Mr. Wright stated that he would write a letter to the Division, so that an advisory opinion would be discussed at the next scheduled Commission meeting.

9) For possible action: Adjournment

Meeting adjourned on June 4, 2019 at 11:25 a.m.