

BEFORE THE COMMISSION FOR COMMON-INTEREST  
COMMUNITIES AND CONDOMINIUM HOTELS  
STATE OF NEVADA

Sharath Chandra, Administrator,  
Real Estate Division, Department of  
Business & Industry, State of Nevada,

Case No. 2019-100

Petitioner,

vs.

**FILED**

**APR 25 2019**

Russell Powers,

Respondent.

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

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

The Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Michelle D. Briggs, Esq., Senior Deputy Attorney General, hereby notifies RESPONDENT RUSSELL POWERS ("RESPONDENT" or "POWERS") of an administrative hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and Chapters 116 and 116A of the Nevada Revised Statutes ("NRS") and Chapter 116 and 116A of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if an administrative penalty will be imposed on the RESPONDENT pursuant to the provisions of NRS and NAC including, but not limited to, NAC 116A.360.

**JURISDICTION AND NOTICE**

1. During all relevant times mentioned in this complaint, POWERS held, and currently holds, a community manager certificate from the Division (CAM.0000030) and is, therefore, subject to the jurisdiction of the Division and the provisions of NRS Chapters 116 and 116A and NAC Chapters 116 and 116A.

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## FACTUAL ALLEGATIONS

1  
2       2.     The Division received a complaint against Mountain Gate Homeowners  
3 Association (the "Association") alleging that a board member participated in opening  
4 ballots for an election and that the ballots were opened outside the meeting room.

5       3.     RESPONDENT RUSSELL POWERS, works for Prime Community  
6 Management, LLC ("Prime"), and is the community manager for the Association.

7       4.     POWERS attended the Association's December 2017 election meeting.

8       5.     A homeowner who attended the election meeting observed POWERS allow a  
9 board member access to the unopened ballots by allowing her to participate in the opening  
10 and counting of the ballots.

11       6.     The opening and counting of the ballots was done in a hallway outside the  
12 room where the meeting was taking place.

13       7.     Once the ballots were opened and counted, the board member entered the  
14 meeting room and the results were read aloud.

15       8.     The Division initiated an investigation against POWERS.

16       9.     The Association's attorney responded on behalf of POWERS saying owners  
17 could have left the meeting room and entered the hallway to watch the opening and  
18 counting of the ballots.

19       10.    No explanation was provided for why the ballots were opened and counted in  
20 the hallway outside the meeting.

21       11.    The Association's attorney also said volunteers were solicited and only two  
22 people volunteered resulting in a board member assisting in the opening and counting of  
23 the ballots.

24       12.    Two homeowners in addition to the board member participated in opening and  
25 counting the ballots.

26       13.    The complainant provided the Division with a recording of the meeting.

27       14.    Multiple owners are heard in the audio asking questions about Association  
28 issues relating to landscaping and maintenance.

1 15. POWERS is heard in the audio responding to owner questions while the  
2 ballots are being opened and counted outside the meeting room.

3 16. The complainant is heard in the audio questioning whether a current board  
4 member is allowed to participate in the opening and counting of the ballots.

5 17. The board member says the law only applies to candidates, and POWERS is  
6 not heard responding at all.

7 18. Prior to filing a complaint with the Division, the homeowner questioned Prime  
8 regarding allowing the board member to open and count the ballots.

9 19. Community Manager April Parsons, president of Prime, responded that  
10 POWERS was "unaware" of the law, but "[h]e is aware now and this will not occur in the  
11 future."

#### 12 VIOLATIONS OF LAW

13 20. POWERS violated NRS 116A.630(1)(b) by failing to exercise ordinary and  
14 reasonable care in the performance of his duties for the Association.

15 21. POWERS violated NRS 116A.630(2)(a) and NAC 116A.320 by failing to  
16 comply with state laws.

17 22. POWERS violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(a)(3)) by  
18 committing an act of unprofessional conduct by allowing a board member to participate in  
19 the opening and counting of the ballots for an election in violation of NRS 116.31034(15)(f).

20 23. POWERS violated NAC 116A.355(1)(a)(1) (through NAC 116A.355(2)(a)(3)) by  
21 committing an act of unprofessional conduct by allowing the opening and counting of the  
22 ballots for an election outside the meeting of the association in violation of NRS  
23 116.31034(15)(e).

24 24. POWERS violated NAC 116A.355(1)(a)(1) and (2) (through NAC  
25 116A.355(4)(f)) by committing acts of unprofessional conduct and professional  
26 incompetence by failing to keep informed of current statutes and regulations relating to  
27 common-interest communities and relating to other areas in which he attempts to provide  
28 guidance.





1 portions of the meeting, although you must pay for the transcription.

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

9 You have the right to request that the Commission issue subpoenas to compel  
10 witnesses to testify and/or evidence to be offered on your behalf. In making this request,  
11 you may be required to demonstrate the relevance of the witness's testimony and/or  
12 evidence. Other important rights and obligations, including your obligation to answer the  
13 complaint, you have are listed in NAC 116A.560 through NAC 116A.655, NRS Chapter  
14 233B, and NRS Chapters 116 and 116A and NAC 116 and 116A.

15 Note that under NAC 116A.585, not less than five (5) working days before a hearing,  
16 RESPONDENT must provide to the Division a copy of all reasonably available documents  
17 that are reasonably anticipated to be used to support his or her position, and a list of  
18 witnesses RESPONDENT intends to call at the time of the hearing. Failure to provide any

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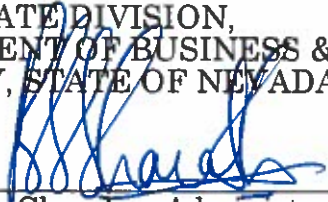
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1 document or to list a witness may result in the document or witness being excluded from  
2 RESPONDENT'S defense. The purpose of the hearing is to determine if the RESPONDENT  
3 has violated any of the provisions of NRS and NAC Chapters 116 and 116A, and to  
4 determine what administrative penalty is to be assessed against RESPONDENT, if any,  
5 pursuant to NAC 116A.360.

6 DATED: April 24, 2019.

7 REAL ESTATE DIVISION,  
8 DEPARTMENT OF BUSINESS &  
9 INDUSTRY, STATE OF NEVADA

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