May 30, 2022

TO: Nevada Commission For Common-Interest Communities and Condominium Hotels
May 31-June 2, 2022

RE: Rights of Homeowners to receive accounting statements for dues and fines

Dear Members of the Commission:

There is no statutory provision under NRS 116 Common-Interest Ownership that gives a unit owner the "right" to receive an accounting statement of dues or outstanding fines. This omission has created the potential for great abuse. . . abuse that exists today among certain HOA management companies, working in coordination with HOA collection agencies.

With respect to HOA dues, NRS 116.31069 (effective 1/1/23) provides for an online portal "*that may be accessed by any unit's owner*" and "*must provide units' owners with the ability to pay assessments electronically."* Unfortunately, this statute does not include language that a statement of accounting, and/or a ledger of the monthly dues, will also be made available on the online portal. Perhaps it is assumed this will be the case, but there is no language to require it.

In regards to fines, NRS 116.310315 states "*the association shall establish a compliance account to account for the fine, which must be separate from any account established for assessments,"* but it does not include language that a unit owner shall have access to this compliance account. And according to NRS 116.31031.12 "*not later than 60 days **after** receiving any payment of a fine, an association shall provide to the person upon whom the fine was imposed a statement of the remaining balance owed*." In other words, a statement of fines will be available to the unit owner only **after** a payment has been made, but not before. This effectively allows an HOA and/or its agent, the HOA management company, to withhold an accounting statement until **after** the unit owner has validated the claim by making a payment. Should a unit owner dispute the fine and request a statement balance, the HOA can essentially hold the accounting information hostage, until a payment is made. The only remedy for the unit owner would be a request under NRS 116.31175.

I'm sure these omissions weren't intentional, but the lack of specific language has resulted in a growing scheme in some HOA communities. It has opened the doors for certain HOA management companies, in coordination with the HOA collection agent, to illegally collect money from Homeowners through fictitious fines and fees. Imagine, for example, if the Clark County Treasurer wasn't required to provide the outstanding balance of your property taxes until **after** you paid a portion of the taxes that was claimed to be owed. It seems unbelievable that such a grave oversight exists, but unfortunately this is exactly the case.

The scheme:

This is a description of the "scheme" that permits illegal profits through fictitious fining and fees. An HOA sends out a request for an annual "Resident Tracking Form" to be submitted within a prescribed timeframe. The Homeowner submits the required document on time but the HOA management company ignores the submission. Past due letters are sent out and the Homeowner continues to send in the required form. But again, the submissions are ignored and/or discarded. The Homeowner continues with attempts to resolve the past due notices but the management company intentionally ignores the requests and receipt of the requested document. Fines begin to ensue as the Homeowner continues to dispute the validity of the fines, but the game continues. Fines can be issued without oversight and/or explanation because the Homeowner has no "right" to view an accounting of the purported fines until **after** a payment is made. Eventually the Homeowner either 1) acquiesces and pays off the greatly inflated fine balance to avoid continual fining or 2) disputes the balance which results in accumulating

fines and forces the account into “collection” so that additional collection fees can be added to the balance by the HOA collection agent.

This is an updated version of the HOA scheme that allowed the now disbarred collection agents, Alessi & Koenig, to operate in Nevada for years under the guise of “Super Lien” authority. These collection agent attorneys profited by wrongfully foreclosing on hundreds (and likely thousands) of HOA properties through fictitious fining that forced Homeowners into collection. Once in collection, the attorneys were able to record the required liens and force the properties into foreclosure. Ultimately these “HOA lien” properties were sold to a group of participating buyers.

The new scheme is similar, but now the goal is to create revenue through fines and fees. And it goes undetected because there is language missing in the NRS 116 statute. The scheme is easily concealed because an HOA management company can refer a participating HOA collection agent for contract with an HOA without anyone questioning the referral. HOA board members have no vested interest in questioning or scrutinizing a collection agent, like they might other vendors, because there is absolutely zero cost to the HOA for engaging the services of any particular HOA collection agent. And since the collection agent only generates revenues through collection activities, there is no out of pocket cost to the HOA unless foreclosure action is taken. While the oversight of HOA attorney collection agents might not be under your purview, you do have the ability to correct the statutory language and ensure that a Homeowner has the absolute right to receive accounting statements for both dues and fines. I urge you to consider this request.

Thank you for your time.

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