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NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Public comment – CIC and Condo Hotels Committee meeting 06/13/23

Subject: The investigative arm of the Nevada Real Estate Division (NRED) is broken

Good morning. My name is Mike Kosor. I hope I am recognized and remembered, for I have appeared before this committee on average three times a year for the past six years. My plea each time has been the same, **the investigative arm of the Nevada Real Estate Division (NRED) is broken**, potentially compromised. In turn, HOA owner due process as provided by law, a Commission hearing, is being restricted. I am here again with the same allegation.

The Division's own data¹, the numbers you review each meeting and will again see in a few minutes, point to a large column of dangerous smoke. Certainly, this body cannot find acceptable nearly half of all investigations referred to the Division closed with no resolution.

"Unsubstantiated" is not a resolution - certainly when that is all you are told. Was the complainant's understanding of the statute inaccurate? If the evidence is deemed insufficient, what is needed? But "unsubstantiated" then hiding behind claims of confidentiality is unacceptable.

And there is no appeal and I am unaware of any accountability. The result is owners come to see their efforts futile.

My personal experiences with NRED are reflective of the Division's data. I have filed nearly twenty affidavits with the Division over six years. All were forwarded by the Ombudsman as not frivolous. One resulted in "no violation" finding (interestingly, it was a no-bid contracting allegation Ombudsman Foger asserted was "optional"). Two were labeled "resolved" but no action by the Division was taken when the records wrongly withheld were eventually turned over.

The Division finds little over 25% of cases (20) as action having been taken (LOI, CDL, or CIC). Less than 5% (4) are referred to the CIC (or otherwise combined with prior CIC referrals). This leaves a majority of complaints falling, as in my case, in a no man's land. They are being closed with no violations and no action is taken.

In 2018, NRED's data shows about 15% of the Intervention Affidavit complaints were closed in this manner. Today this occurs nearly 40% of the time. A case is closed by the Division that neither asserts "no violation" or takes any action. This cannot be acceptable.

My recent examples here.

When the gatekeeper is absent disorder and intimidation follows. This is analogous to our District Attorney's Office abdicating their valuable role. It would quickly empower the thugs in our society seeking control, to crank up the intimidation, in turn causing most law-abiding people to retreat to safety.

¹ Ombudsman Report-April 2023. Note, the reports generated from the Ombudsman's office throughout the years are inconsistent and it is difficult to evaluate the information. Often the reports contain mathematical/counting errors and, most importantly, there is no consistent annualized reporting.

I live in a 9,000 unit community where the developer has been in control for nearly 24 years. This year, where one of only two elected directors was selected, a mere 6% of the owners eligible to vote participated. This is reflective of a community where owners have no hope of governance change or in having their voices heard. They are aware opposition will be met with intimidation. And the Division sits on the sidelines.²

This was evident just recently. The majority appointed board, led by an attorney well known to this body and I believe holding an inappropriate level of access/influence in the Division, **declared void**, absent any authority, one of the owners elected director- notably eighteen months into his two-year term. The director neither committed nor even accused of any violation of law. He simply expressed opposition and challenged some actions by the majority directors- the very same opposition owners found appealing and led to his election. That director is me.

My opposition makes me ineligible for office? Absurd. Meanwhile, the Division is not only aware of this abuse, but encouraged it- the removal of an elected director by a board. The law makes clear this is exclusively the realm of the owners.

While my community may near an extreme, I suggest this sense of helplessness and intimidation is widespread. This is in no small part because the Division is turning a blind eye. Please find the fire behind the smoke the Division's data identifies. Hold the investigative arm of the NRED accountable and provide more transparency in what is currently a secretive program.

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Note- From 2015 until 2018 the Ombudsman's office surveyed participants and issued a report entitled an "Informal Conference Survey Report." As of 7/1/18 the office stopped requesting/reporting this information.

² Nevada's sole regulator is turning a blind eye to violations while it is willfully absent in making our laws better, this despite a legislative mandate it do so (see SB 392 (2019) providing for, among other things the CIC Taskforce which last met on 8/2020).