

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
6 OF BUSINESS AND INDUSTRY, STATE
7 OF NEVADA,

8 Petitioner,

9 vs.

10 CLEARACRE CONDOMINIUM
11 HOMEOWNERS ASSOCIATION
(Entity Number C6070-1982)

12 Respondent.

Case No. 2024-137

FILED

JUL 22 2024

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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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, Aaron D. Ford, Attorney General of
17 the State of Nevada, and Christal P. Keegan, Deputy Attorney General, hereby notifies
18 Clearacre Condominium Homeowners Association ("RESPONDENT") of an
19 administrative hearing before the Commission for Common-Interest Communities and
20 Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and
21 Chapters 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada
22 Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations
23 stated below and to determine if an administrative penalty will be imposed on the
24 RESPONDENT pursuant to the provisions of NRS and NAC including, but not limited to
25 NRS 116.785 and NRS 116.790.

26 **JURISDICTION AND NOTICE**

27 During all relevant times, RESPONDENT is a common-interest community of
28 about 63 condominium units located in Reno, Washoe County, Nevada (Entity Number

1 C6070-1982) and is, therefore, subject to the provisions of Chapter 116 of each the Nevada
2 Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”) (hereinafter
3 collectively referred to as “NRS 116”) and are subject to the jurisdiction of the Division,
4 and the Commission for Common-Interest Communities and Condominium Hotels
5 pursuant to the provisions of NRS 116.750.

6 **FACTUAL ALLEGATIONS**

7 1. Between about August 24, 2023, to February 5, 2024, the Division conducted
8 an audit for the Clearacre Condominium Homeowner’s Association (“RESPONDENT”).
9 *Exhibit 1, CICC 000003 – CICC 000028.*

10 **A. Delinquent CPA Audits**

11 2. At all times relevant to the Complaint, RESPONDENT’S 2020 and 2021 CPA
12 audits were draft reports not finalized nor adopted by the Board. *Exhibit 1, CICC 000010.*

13 3. While the Board initiated the 2022 CPA Audit, it had not been completed.
14 *Exhibit 1, CICC 000010.*

15 4. The May 24, 2022, Board of Directors Meeting Minutes indicated the
16 2019 CPA Audit was approved by the Board nearly two and a half years later. *Exhibit 1,*
17 *CICC 000010, and Exhibit 3, CICC 000044.*

18 5. The RESPONDENT admitted its audits were untimely. *Exhibit 2,*
19 *CICC 000031.*

20 **B. Inadequate Budget Preparation**

21 6. From the records provided, the Division’s audit findings determined
22 RESPONDENT’S budgeting practices resulted in variances and net losses each year.
23 *Exhibit 1, CICC 000011 – CICC 000013.*

24 7. RESPONDENT reported inconsistent information between its approved
25 and ratified budgets from the Budget-to-Actual statements. *Exhibit 1, CICC 000011–*
26 *CICC 000013.*

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1 8. The May 10, 2021, Meeting Minutes indicated unit owners would be assessed
2 an emergency special assessment of \$112 per month for an additional 11 months to repair
3 a water intake line. *Exhibit 1, CICC 000011, and Exhibit 3, CICC 000041.*

4 9. Yet, the December 2021 Budget-to-Actual demonstrated regular assessments
5 were reduced and a special assessment was collected. *Exhibit 1, CICC 000011–*
6 *CICC 000013.*

7 10. Further, in 2022, the Board supplied two separate budgets indicating entirely
8 different budget information. *Exhibit 1, CICC 000011 – CICC 000013.*

9 11. Additionally, the Reserve Budget for 2023 incorrectly listed the Reserve
10 special assessment contribution, which consequently incorrectly reported the Reserve net
11 balances. *Exhibit 1, CICC 000011 – CICC 000013.*

12 12. RESPONDENT admitted it sent erroneous information out to owners.
13 *Exhibit 2, CICC 000032.*

14 13. RESPONDENT admitted to improper record keeping resulting in incomplete
15 budget packages and minutes of budget ratification minutes. *Exhibit 2, CICC 000031.*

16 **C. Failure to Adequately Contribute to Reserve Account**

17 14. RESPONDENT did not contribute to its Reserve Account in 2021, and only
18 *some* contributions were made in 2022 and 2023. *Exhibit 1, CICC 000014.*

19 15. According to the 2022 Reserve Study, the RESPONDENT'S funding status
20 was inadequately funded (18.57% funded). *Exhibit 1, CICC 000014, and Exhibit 4,*
21 *CICC 000080.*

22 16. In 2023, the Board stopped tracking the deferred contributions on the Due-
23 to account ledger. *Exhibit 1, CICC 000014.*

24 17. The General Ledger statements failed to consistently show all deferred
25 contributions as an Accounts Payable owed to the Reserve. *Exhibit 1, CICC 000014, and*
26 *Exhibit 7, CICC 000139 – CICC 000159.*

27 18. In August of 2023, ledgers indicated contributions were made to the Reserve
28 but the bank statements demonstrated no transfers were made. *Exhibit 1, CICC 000014.*

1 19. As of August 31, 2023, RESPONDENT'S total Due-to owed from Operating
2 to the Reserve Account of \$234,689.90, did not include reported amounts under Accounts
3 Payable and unreported deferred contributions of additional amounts of \$29,750.00.
4 *Exhibit 1, CICC 000014, and Exhibit 7, CICC 000116 – CICC 000183.*

5 20. RESPONDENT admitted problems with proper recordkeeping and regularly
6 transferring reserves. *Exhibit 2, CICC 000032.*

7 **D. Frequency Shortcomings of Executive Session Meetings**

8 21. In 2021, only one executive session appears to be held. *Exhibit 1,*
9 *CICC 000015.*

- 10 22. Ultimately, Meeting Minutes were missing for:
- 11 a. The October 25, 2021, Executive Session;
 - 12 b. November 15, 2021, Budget Ratification; and
 - 13 c. 2021 and 2022 Annual Unit Owner's meetings.

14 *Exhibit 1, CICC 000014.*

15 23. RESPONDENT admitted its shortcomings in properly maintaining meeting
16 minutes record keeping. *Exhibit 2, CICC 000033.*

17 **E. Delinquent Omitted Invoices, Receipts, Check Images, and**
18 **Electronic Payments**

19 24. The RESPONDENT failed to provide documents during the audit, with
20 remaining outstanding items:

- 21 a. The approval log, or register, for AVIDPAY;
- 22 b. 2021 and 2022 check images;
- 23 c. Invoices and receipts for Eugene Burger Management (EBMC); and
- 24 d. The 2021 and 2022 budget ratification packages.

25 *Exhibit 1, CICC 000016, Exhibit 2, CICC 000034, Exhibit 5, CICC 000100 – CICC 000107,*
26 *Exhibit 6, CICC 000108 – CICC 000115.*

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1 **F. Inadequate Insurance Crime Policy**

2 25. The Certificate of Insurance submitted to the Division provided only
3 \$175,000 in crime coverage. *Exhibit 9, CICC 000257.*

4 26. As of August 23, 2023, the Reserve Fund balance was approximately
5 \$263,360 with the three-month assessments of approximately \$115,459. *Exhibit 1,*
6 *CICC 000017.*

7 27. Therefore, the coverage should be a minimum of \$378,820. *Exhibit 1,*
8 *CICC 000017.*

9 28. RESPONDENT admitted the Board was unaware of their responsibility to
10 maintain a certain level of Crime Insurance. *Exhibit 2, CICC 000035.*

11 **G. Cash Balances Not Fully Insured**

12 29. RESPONDENT'S financial statements demonstrate cash balances in 2023
13 exceeding the FDIC coverage limits. *Exhibit 1, CICC 000017.*

14 30. As of August 31, 2023, the maximum loss at risk was approximately \$84,239.
15 *Exhibit 1, CICC 000017.*

16 **VIOLATIONS OF LAW**

17 31. RESPONDENT violated NRS 116.31144 by admission for delinquencies in
18 completing its annual audits.

19 32. RESPONDENT violated NAC 116.457 by admission for delinquencies in
20 completing its annual audits.

21 33. RESPONDENT violated NRS 116.3102(1)(b) by admission for failing to
22 create, retain and/or maintain proper record keeping.

23 34. RESPONDENT violated NRS 116.31151 by admission for failing to create,
24 retain and/or maintain proper record keeping.

25 35. RESPONDENT violated NRS 116.3103 by failing its fiduciary duties
26 regarding the Association's missing or omitted documents and records.

27 36. RESPONDENT concedes it violated NRS 116.3115 by failing to adequately
28 fund its Reserves and maintain its budget in accordance with the Reserve Study.

1 37. RESPONDENT concedes it violated NAC 116.415 by failing to have proper
2 recordkeeping and regularly transferring reserves.

3 38. RESPONDENT violated NRS 116.31083 by admission for failing to maintain
4 its recordkeeping with regards to the requested meeting minutes.

5 39. RESPONDENT violated NRS 116.3108 by admission for failing to maintain
6 its recordkeeping with regards to the requested meeting minutes.

7 40. RESPONDENT violated NRS 116.31153 for failing to demonstrate two
8 approved signers on its checks.

9 41. RESPONDENT violated NAC 116.405(5) for failing to provide the Division
10 with the requested items to confirm the appropriate approval process for funds
11 disbursement.

12 42. RESPONDENT violated NRS 116.3113(1)(c) for failing to acquire the
13 required amount of Insurance Crime Policy required by law.

14 43. RESPONDENT violated NRS 116.311395(2) for failing to ensure all
15 Association deposits are fully insured.

16 **DISCIPLINE AUTHORIZED**

17 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
18 116.790, the Commission has discretion to take any or all of the following actions:

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

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

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

25 4. IF RESPONDENT IS FOUND TO HAVE KNOWINGLY AND WILLFULLY
26 COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best interest of the
27 Association, such RESPONDENT may be removed from his/her position as a director
28 and/or officer.

1 5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.

2 6. Require RESPONDENT'S to pay the costs of the proceedings incurred by the
3 Division, including, without limitation, the cost of the investigation and reasonable
4 attorney's fees.

5 7. Take whatever further disciplinary action the Commission deems
6 appropriate.

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

11 **NOTICE OF HEARING**

12 **PLEASE TAKE NOTICE** that a disciplinary hearing has been set to consider this
13 Administrative Complaint against the above-named RESPONDENT in accordance with
14 Chapters 233B and 116 of the Nevada Revised Statutes and Chapter 116 of the Nevada
15 Administrative Code.

16 **THE HEARING WILL TAKE PLACE** at the Commission meeting(s) scheduled
17 for **September 10-12, 2024**, beginning at approximately 9:00 a.m. each day, or until such
18 time as the Commission concludes its business. The Commission meeting will be held at
19 the Nevada State Business Center, 3300 W. Sahara Avenue, 4th Floor, Nevada Room, Las
20 Vegas, Nevada 89102 on September 10-12, 2024, with videoconferencing to Department of
21 Business and Industry, Division of Insurance, 1818 E. College Parkway, Suite 103, Carson
22 City, Nevada 89706.

23 **STACKED CALENDAR: Your hearing is one of several hearings that may**
24 **be scheduled at the same time as part of a regular meeting of the Commission**
25 **that is expected to take place on September 10-12, 2024. Thus, your hearing may**
26 **be continued until later in the day or from day to day. It is your responsibility**
27 **to be present when your case is called. If you are not present when your hearing**
28 **is called, a default may be entered against you and the Commission may decide**

1 the case as if all allegations in the complaint were true. If you need to negotiate
2 a more specific time for your hearing in advance because of coordination with
3 an out of state witness or the like, please call Maria Gallo, Commission
4 Coordinator, at (702) 486-4074.

5 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is
6 an open meeting under Nevada's open meeting law and may be attended by the public.
7 After the evidence and arguments, the commission may conduct a closed meeting to
8 discuss your alleged misconduct or professional competence. You are entitled to a copy of
9 the transcript of the open and closed portions of the meeting, although you must pay for
10 the transcription. As a RESPONDENT, you are specifically informed that you have the
11 right to appear and be heard in your defense, either personally or through your counsel of
12 choice. At the hearing, the Division has the burden of proving the allegations in the
13 complaint and will call witnesses and present evidence against you. You have the right to
14 respond and to present relevant evidence and argument on all issues involved. You have
15 the right to call and examine witnesses, introduce exhibits, and cross-examine opposing
16 witnesses on any matter relevant to the issues involved.

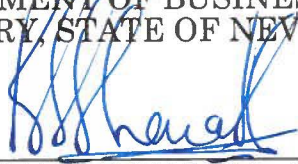
17 You have the right to request that the Commission issue subpoenas to compel
18 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
19 you may be required to demonstrate the relevance of the witness' testimony and/or
20 evidence. Other important rights and obligations, including your obligation to answer the
21 complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including
22 without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC
23 116.635 and NRS Chapter 233B.

24 Note that under NAC 116.575, not less than five (5) working days before a hearing,
25 RESPONDENT must provide to the Division a copy of all reasonably available documents
26 that are reasonably anticipated to be used to support his position, and a list of witnesses
27 RESPONDENT intends to call at the time of the hearing. Failure to provide any document
28 or to list a witness may result in the document or witness being excluded from

1 RESPONDENT'S defense. The purpose of the hearing is to determine if the
2 RESPONDENT has violated the provisions of NRS 116, and to determine what
3 administrative penalty is to be assessed against RESPONDENT.

4 DATED this 19 day of July 2024.

REAL ESTATE DIVISION,
DEPARTMENT OF BUSINESS AND
INDUSTRY, STATE OF NEVADA

6
7 By: 
8 SHARATH CHANDRA, Administrator
9 3300 W. Sahara Ave., Ste 350
Las Vegas, Nevada 89102
(702) 486-4033

10 DATED this 19th day of July 2024.

AARON D. FORD
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