

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,  
7 STATE OF NEVADA,

8                                   Petitioner,

9 vs.

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

13                                   Respondent.

Case No. 2024-137

**FILED**

SEP 20 2024

NEVADA COMMISSION FOR  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS



14                                   **SUPPLEMENTAL MEMORANDUM**

15                                   The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY  
16 OF THE STATE OF NEVADA (“Division”), by and through its attorneys of record, Aaron D. Ford,  
17 Attorney General, and Christal P. Keegan, Deputy Attorney General, presents this Supplemental  
18 Memorandum.

19                                   DATED this 19th day of September 2024.

20                                   AARON D. FORD  
21                                   Attorney General

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*Attorney for Real Estate Division*

1 **I. BACKGROUND**

2 This matter came before the Commission for Common-Interest Communities and Condominium  
3 Hotels, State of Nevada (the “Commission”) on September 10, 2024 (the “Hearing”), wherein, the  
4 Commissioners deferred the matter until its December Meeting.<sup>1</sup> The next day, September 11, 2024, the  
5 Respondent’s provided the State with supporting documentation for the checks identified in the  
6 2021-2022 AvidPay log, specifically alleging to have included images of each history from the  
7 Strongroom software showing the dual approval process for each check, with some exceptions pursuant  
8 to NRS 116.31153(3)(b).<sup>2</sup> Therefore, the State presents the Commission with its Supplemental  
9 Memorandum in order to properly decide this matter at its December 3-5, 2024 Commission Meeting.

10 **II. SUPPLEMENTAL POINTS**

11 **A. The Respondent Violated NRS 116.31153 and NAC 116.405(5) for Failing to Provide**  
12 **the Division with the AvidPay “approval log”.**

13 Despite Respondent’s playing word games, the Division’s investigation opening letter dated  
14 March 26, 2024, Allegation 5, clearly requested the AVIDPAY “approval log” to confirm the approval  
15 process for funds disbursement.<sup>3</sup> There is a difference between “approval log” and check disbursement  
16 “log”, the latter of which the Division plainly did not request. The Respondent did not provide proof of  
17 electronic board member approval process wherein the board members are identified, and therefore what  
18 they supplied was non-responsive.<sup>4</sup>

19 **B. The Division’s Requests to Confirm Board Approvals for Disbursements Are**  
20 **Unambiguous and Objectively Clear.**

21 **i. Auditor’s Letters**

22 When Audit Engagement Letters are sent, the auditor cannot know what accounting software is  
23 being utilized. Accordingly, the Division’s requests are encompassing but they do indicate board  
24 approvals are needed.

25  
26  
27 <sup>1</sup> Exhibit A. Order Case No. 2024-137, Filed September 19, 2024.

28 <sup>2</sup> Exhibit B. Letter from Respondent’s Counsel dated September 11, 2024 re: Supporting  
documentation for checks.

<sup>3</sup> Exhibit C. Division’s Investigator Letters, Letter March 26, 2024, P. *CICC 000261*.

<sup>4</sup> Exhibit D. Supplemental Letter dated April 29, 2024, with enclosure, and Exhibit E.  
Response to Complaint for Disciplinary Action Filed August 30, Exhibit 8.

1 The Auditor's Engagement Letter dated August 24, 2023, under Items 7 (b) and (c), clearly  
2 request demonstration of board approvals:<sup>5</sup>

3 (b) If using electronic payment methods, then return a copy of  
4 the Invoice Approval and Payment report or registers **showing  
Board approvals**,

5 (c) If using electronic payment methods, then return a copy of the  
6 Resolution approving said method of payment,

7 The Respondent's FedEx package sent to the Division on September 14, 2023, failed to provide  
8 the relevant requested documents per the Audit Engagement Letter.<sup>6</sup> As a matter of standard course, the  
9 Auditor followed up the very next day requesting proof of Board approvals:

10 10. Registers for electronic payments showing Board approvals: This  
11 document was not provided. Please submit.<sup>7</sup>

12 On January 8, 2024, in the Auditor's second follow-up extended to the Respondent, she again  
13 requested the missing information initially requested in the Audit Engagement letter.<sup>8</sup>

14 On January 19, 2024, the missing information was not provided and instead responded, "There is  
15 not one on file."<sup>9</sup>

16 3. Registers for electronic payments showing Board approvals: This  
17 document was not provided. Please submit.- *There is not one on file*

18 4. Resolution approving electronic methods of payment - This  
19 document was not provided. Please submit.- *There is not one on file*

20 5. Bank signature card - 2021 was not provided. Please submit.- *There  
is not one on file.*

21 The claims by the Respondent that the Division's requests are ambiguous and subjective are  
22 special to this Association, because other Associations being audited are able to provide confirmation of  
23

24  
25 <sup>5</sup> Exhibit F. Division's Audit Engagement Letter Dated August 24, 2023, P. 2, Items 7(b)  
26 and (c).

27 <sup>6</sup> Exhibit F. Email Correspondence from the Division's Auditor to the Respondent's CAM at  
the time, Kevin Berg on September 15, 2023 11:51:00 AM.

28 <sup>7</sup> *Id.*

<sup>8</sup> Exhibit F. Email Correspondence from the Division's Auditor to the Kevin Kirkeby on  
January 8, 2024 11:52 AM.

<sup>9</sup> Exhibit F. Email Correspondence from Tara Maples to the Division's Auditor on January 19,  
2024 at 10:10:08 AM.

1 controls for using electronic signatures to withdraw money (AVIDPAY) and verify that two board  
2 members are reviewing and approving invoices.<sup>10</sup>

3 **ii. Investigator's Letters**

4 The Investigator's letters clearly ask for the AVIDPAY approval logs to confirm the appropriate  
5 approval process for funds disbursement is in effect, to include in bold lettering that this investigation is  
6 to determine violations under "NRS 116.31153 – signatures required for withdrawals of certain  
7 association funds".<sup>11</sup>

8 Importantly, after the Respondent submitted its supplemental response to the Division's  
9 Investigator, the Division by way of its letter dated May 24, 2024, informed the Respondent that it still  
10 failed to provide the necessary documentation to confirm the appropriate approval process for funds  
11 disbursement is in effect, and specifically identified the AVIDPAY approval log for 2021 and 2022.<sup>12</sup>

12 Thereafter, there is no evidence that the Respondent ever followed up with the Division's  
13 Investigator. Yet, the Respondent's counsel appeared before the Commissioners at the September 10-  
14 12, 2024, meeting representing that had the Division informed the Association that the AVIDPAY logs  
15 submitted in its supplemental response were not satisfactory, it would have supplied it. Clearly, the  
16 representation that had the Association had the notice and opportunity is undermined by the facts.

17 **C. While the Supporting Documentation Submitted on September 11, 2024, Appears to**  
18 **Satisfy the Two Board Approval Requirement, Variances were Identified which**  
**Underscores the Importance of the Division's Requests for Information.**

19 Upon the Division's review, the information provided to the State on September 11, 2024 appear  
20 to show multiple board approvals for the disbursements that would require dual authorization. It is  
21 important to note that while AVIDPAY is considered a secure platform, the Division has seen instances  
22 where a required board authorization has been overwritten.<sup>13</sup>

23 When the Division ran a test of the log provided against the workflows, while it did contain  
24 multiple approvals for the payments made, for one payment, the AVIDPAY log demonstrated \$16,000  
25

26 <sup>10</sup> Exhibit G. Examples of AVIDPAY Invoice Reports, Automatic Payment Authorization  
27 Form, and Electronic Signature Authorization Protocol & Signature Card.

28 <sup>11</sup> Exhibit C. Division's Exhibits, Investigator Letters, Letter March 26, 2024, P. CICC  
000261 – CICC 000262.

<sup>12</sup> Exhibit C. Division's Exhibits, Investigator Letters, Letter May 24, 2024, P. CICC 000267  
– CICC 000268.

<sup>13</sup> Exhibit H. Example where required board authorization has been overwritten.

1 was paid, but the workflow indicated that \$5,500 was approved.<sup>14</sup> In looking back at the ledgers provided  
2 by the Respondent, the \$5,550 in January of 2022 was paid.<sup>15</sup> This variance emphasizes why the Division  
3 asks for these items and seeks further clarification during the audit process. But as we know from the  
4 record, based on the Audit results, an invoice was not provided for this item either.<sup>16</sup>

### 5 III. CONCLUSION

6 Let's remember, the Division first requested this documentation way back on August 24, 2023<sup>17</sup>,  
7 the Division closed its investigation on May 29, 2024<sup>18</sup>, the State on behalf of the Division filed its  
8 Complaint on July 22, 2024<sup>19</sup> and just now, over one (1) year later, the Association has finally submitted  
9 the information requested.<sup>20</sup>

10 Let's remember, this is an Association that has admitted to "poor record keeping"<sup>21</sup>, "irregular  
11 reserve transfers"<sup>22</sup>, and other "errors"<sup>23</sup>. While the Association has made admissions, it has qualified  
12 them by blaming others<sup>24</sup>, going beyond pointing to their management changes, but directly attacking the  
13 Division's processes for its own failures to comply with request-after-request by the Division for  
14 information or documents.

15 This Supplemental Memorandum was necessary to inform the Commission of the Division's  
16 sound practices which by all appearances other associations who work with the Division during its audits  
17 and investigations don't have issues in understanding what the Division's requests are. What the State  
18 is respectfully asking this Commission to do, is to find, by a preponderance of the evidence, that the  
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20 <sup>14</sup> Exhibit I. Screenshots of AvidPay log showing that \$16,000 was paid, although the  
21 workflow indicates that \$5,500 was approved.

21 <sup>15</sup> *Id.*

22 <sup>16</sup> Division's Exhibits its Complaint for Disciplinary Action and Notice of Hearing, Case  
23 No. 2024-137 Filed July 22, 2024, *CICC 000008*.

23 <sup>17</sup> Exhibit F. Division's Audit Engagement Letter dated August 24, 2023, P. 2, Items 7(b)  
24 and (c).

24 <sup>18</sup> Exhibit C. Division's Exhibits, Investigator Letters, Letter May 24, 2024, P. *CICC 000267*  
25 – *CICC 000268*.

25 <sup>19</sup> Exhibit J. Complaint for Disciplinary Action and Notice of Hearing, Case No. 2024-137,  
26 Filed July 22, 2024.

26 <sup>20</sup> Exhibit B. Letter from Respondent's Counsel dated September 11, 2024 re: Supporting  
27 documentation for checks.

27 <sup>21</sup> Exhibit E. Response to Complaint for Disciplinary Action, Filed August 30, 2024, P. 3,  
28 line 18, P. 8, lines 20-21, and line 23, P. 9, line 3.

28 <sup>22</sup> *Id.* at P. 9, lines 4-5.

<sup>23</sup> *Id.* at P. 4, line 2.

<sup>24</sup> Exhibit E. Response to Complaint for Disciplinary Action, Filed August 30, 2024, P. 4, line  
10, P. 5, lines 5-6, P. 6, lines 5-6, P. 8, line 24.


1 remaining violations of law contested in its paragraphs numbers 40 and 41 of its Complaint filed July 22,  
2 2024 have been PROVEN. Thank you.


3  
4 DATED this 19 day of September 2024.

DATED this 19th day of September 2024.

5 STATE OF NEVADA  
6 Department of Business and Industry  
7 Real Estate Division

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