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NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

mgallo

Testimony before the CICCH Commission 6/10/25

By Mike Kosor

Subject: The Commission is not fulfilling its duty under Nevada law

My name is Mike Kosor. My testimony exceeds the three minutes allotted me so I have submitted a copy for inclusion in the meeting minutes and will summarize its content in the time allotted.

At your March meeting, I shared my experience regarding my unlawful removal as an elected director in an HOA with over 8,000 units, a community that has been under developer control for more than 26 years. This removal and the subsequent disenfranchisement of the owners I represented occurred without proper authority or due process. Following this, my HOA sued me, without owner approval, simply for applying for re-election.

Despite their awareness of these issues, the Nevada Real Estate Division (NRED) has, to my knowledge, taken no action. The same appears to be true for this Commission.

This leads me to the central point of my testimony today: the Commission is not fulfilling its duty under Nevada law.

When NRED's discretion is used in ways that ignore, dismiss, or prematurely "resolve" complaints where violations exist, where there is good cause for action, or when the Division generally exceeds its authority, this undoubtedly hinders the Commission's ability to fulfill its statutory role of adjudicating alleged violations.

My reading of NRS 116 suggests that the authority to find violations of this statute rests solely with the Commission, not with the Nevada Real Estate Division (NRED). A memorandum dated February 11, 2025, from the Director of Business and Industry (attached) supports this interpretation, stating that the Commission's role is "adjudicative" and NRED's role is "to investigate."

Furthermore, Nevada law provides that the Commission "may do all things necessary and convenient to carry out the provisions of [NRS 116]" (NRS 116.615(2)). The statutory phrase "necessary and convenient" implies a broad grant of powers, allowing the Commission to take helpful or useful actions, even if not explicitly mandated.

NRS 116.665 further directs the Commission to "collect and maintain accurate information" on specific topics, including the effects of Nevada HOA laws on communities, foreclosures, reserve studies, and "other issues... of concerns" to unit owners and HOA stakeholders. This reinforces the extensive scope of the Commission's responsibility to "carry out the provisions of the [law]."

However, Part III of the Director's February 2025 Memo asserts significant limitations on the Commission's powers, which I believe are not supported by statute. Notably, it suggests that confidentiality protections (presumably per NRS 116.757, though not explicitly referenced) restrict the Commission's powers and scope. I strongly disagree with this assertion. It does not appear that this memo was coordinated with the Attorney General's Office, and as you are aware, the Director has no authority over the Commission.

NRS 116.757 makes "all documents and other information" filed with a complaint affidavit or compiled by the Division during its investigation confidential. The statute establishes an overly broad definition of "confidential", where for which there **exist no valid public policy objective** for the secrecy where the protection of personal information was the likely intent.

In any case, the phrase "to any person" cannot reasonably be interpreted to exclude members of this Commission. Moreover, the memo's implication that Nevada Public Meeting Laws somehow prevent governmental bodies like this Commission from accessing confidential information seems unfounded. Governmental bodies routinely use various provisions to access confidential information when

executing their duties, and I see no reason why this Commission should be different. Additionally, a strict interpretation of "and other information" obtained from the documents under investigation, as suggested by the memo, would imply that the Division has long been violating the law by publishing information in its Ombudsman's reports.

My concern is that this memo appears to be an attempt to discourage the Commission's involvement in concerns and issues affecting HOA owners and, in my assessment, inappropriately threatens the Commission with "potential ethics considerations." Ultimately, it aims to shield NRED's investigatory practices from any review.

Does the Commission concur with the Director's February 2025 Memo? I have seen no public discussion of it. Has the Commission requested an opinion from the Attorney General's Office on this matter? If not, why not? If so, I respectfully request a copy of that opinion.

I raise these points not solely as a defense of the Commission, as I have been a vocal critic. However, I believe the Commission's role is critical for Nevada HOA owners. **You serve as the sole check on what I perceive as the industry's undue influence over the state's only HOA regulator.** Laws are worthless without enforcement. Oversight and accountability – outside the courts – are lost if the Commission abdicates its duty. Furthermore, it appears the direction of NRED, exemplified by the 2025 Memo from the Dir of B & I, is having a chilling effect on the Commission's ability to perform its duties.

Based on my research and years of attending these meetings, the last time this Commission placed any item other than the hearing of Division-brought cases on its agenda was in 2022—over three years ago—when changes to NAC 116 were adopted. These changes, I might add, have still not been published.

This leads me to several questions: Is the lack of agenda items addressing broader concerns due to a belief that current laws and regulations are sufficient? Is nothing further needed? Is everything functioning perfectly, with stakeholders generally satisfied? Or are questions being avoided due to flawed and threatening memos? Are there other reasons for this apparent inactivity?

I believe that Nevada's HOA owners, where a significant portion of Nevada's population resides, face numerous issues and often require assistance in understanding the law. I hope you agree. So where is the assistance?

Below are a few areas of concern, by no means comprehensive, that owners I speak with have regarding NRS 116 and its enforcement. These are issues you should be familiar with and that do not require confidential information to consider --but are not being addressed:

--NRS 116.31085(2) prohibits executive boards from meeting in executive session to "open or consider bids for an association project... or to enter into, renew, modify, terminate or take any other action regarding a contract." Yet, it appears some boards are circumventing this by **conducting such business via email**. The NRED has previously acknowledged the risks of this practice in Advisory No 11-01 (June 14, 2011) and in educational materials, stating that "a vote via email or possibly another method may not satisfy the fiduciary duty of a board member, thus these methods of voting for members of an executive board is greatly disfavored..." My own association contracted with a new management company via email just last month, and they are likely not alone. Why is this not a topic of discussion for the Commission?

--Requirements to **obtain three bids** on large projects, widely recognized as exercising good business practices, has nonetheless and for too long, been a controversial issue. This body has previously added guidance to NAC 116 and will be reviewing a case today involving the alleged lack of bids, while HOAs frequently renew major contracts without seeking competitive bids, often for extended periods facing no or at best selective consequences. I was informed by Mr. Foger in response to a complaint I filed that obtaining bids is "optional." Is this truly accurate? It certainly does not align with good business practices.

--What about the common use of evergreen clauses by management companies and landscape contractors to avoid contract review or re-execution? What about a declarant-controlled board awarding a management contract to a wholly owned affiliate of the declarant?

--Then there is the issue of **secret board meetings**. Many HOAs regularly hold what are termed "workshops," where a quorum of directors gathers to discuss community concerns. These often occur without notice or owner attendance, allowing for private discussions on annual budgets or controversial topics. Some counsel advise that this is permissible due to the lack of a clear definition of "meeting" in NRS 116. But this Commission feels no regulation or guidance is warranted?

--The large-scale shift to **virtual-only meetings** is also concerning. Before COVID-19, virtual meetings were not considered sufficient. Public entities received temporary exceptions to in-person meeting requirements, which have since been revoked. Yet, many HOA board meetings are now exclusively virtual. My large HOA has not held an in-person meeting where owners could participate since the pandemic began. During my term as an elected director, the board never met in person, despite my requests. Again, counsel advised it wasn't required. While convenient for managers and directors, especially when suppressing opposition might be the goal, does the Commission view this practice as helpful and acceptable, despite its potential to alienate owners, suppress dissent, and foster apathy?

--NRS 116.098 provides a declarant during the declarant control period may appoint and **remove** any member of the executive board- even elected directors? The Commission finds no issue of concern?

--Finally, what about conflict-of-interest (COI) issues? Nevada's statutory framework creates a fiduciary duty for all homeowners' association (HOA) board members, regardless of whether they are elected by homeowners or appointed by the declarant (developer). So how does an employee or affiliated declarant appointee act as a fiduciary for the association without violating COI principles? The law does not ask whether the director *believes* they can act independently—it applies an objective standard: Would a reasonable person in that position have divided loyalties? Is COI waived for declarant-appointee?

Similarly, since the 2015 amendment to NRS 116.31034(10), a person is ineligible to serve as a director if they "stand to gain any personal profit or compensation of any kind by a matter before the board." What is the practical meaning of this? What is the due process? Does a conflict of interest disqualify an owner from serving- but not a declarant appointee?

NRS 116.31084(1) uses the exact same language requiring director recusal- except for declarant appointees apparently. However, when read together, the two statutes can lead to an absurd outcome: a director who recuses themselves from a matter before the board could then be deemed ineligible to serve. For instance, if a homeowner sues the association over a governance dispute (seeking equitable relief), the board or its counsel might argue that the lawsuit creates "personal compensation or profit," thereby disqualifying the homeowner from running for the board. This decision can then be used unilaterally, without any outlined due process, by the conflicted board to prevent the homeowner from seeking reform through elections. This is not a hypothetical situation; it is my current real-world dispute before the Nevada courts- likely unnecessary had this Commission fulfilled its duty.

The concerns I've raised this morning are not exhaustive. They are not minor and have been known for many years- but they are being ignored. As one example, in September 2024, I asked Ombudsman to assist me in understanding a few provisions of NRS 116 (see attached). The Ombudsman refused directing I seek legal advice despite the Division and this Commission, under NRS 116.620(3), having the duty and ability to seek a deputy attorney general opinion upon all questions of HOA law and its administration. If the Ombudsman had an understanding of the statutes I sought clarification, she needed only educate me on the statute- an undisputed duty. If gray areas exist, it demands your attention.

In conclusion, it is my assessment and one widely held, numerous gray areas and arguably outright injustices exist in Nevada's HOA laws. Plus, there exists issues around the manner in which NRED

investigates alleged violations. These concerns are critical and require your attention. The Director's Memo is also problematic and demands clarification.

What is the role of this Commission? From what I have observed, the Commission is failing Nevadans, I urge you to exercise the authority granted you on behalf of the over one million HOA owners.

Respectfully,



Mike Kosor
Founder, Nevada HOA Reform Coalition
www.NvHOAreform.com

Atch: Dir of B&I Memo, 2/11/25
9/2024 email exchange with Ombudsman

STATE OF NEVADA

JOE LOMBARDO
Governor



DR. KRISTOPHER SANCHEZ
Director

PERRY FAIGIN
Deputy Director

MARCEL F. SCHAEFER
Deputy Director

NIKKI HAAG
Deputy Director

DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE DIRECTOR

MEMORANDUM

To: Commissioners - Commission for Common-Interest Communities and Condominium Hotels

From: Kristopher Sanchez, Director, Department of Business and Industry

Date: February 11, 2025

Subject: The Role of the Commissioners - Common-Interest-Communities and Condominium Hotels

I. Introduction

To provide additional clarity on the role of the Common-Interest-Communities and Condominium Hotels ("CIC") Commissioners, specifically on the following key points, but not limited to:

1. Commission jurisdiction and statutory authority.
2. Limitations of the Commission's powers.
3. Administration and Authorities of NRS 116 & 116A.
4. Confidentiality of Division investigations.

In accordance with the advice of the Nevada Attorney General's Office, this memorandum provides an overview of the relevant statutes that govern the Commission's activities and guide its decision-making processes.

II. Commission Jurisdiction and Statutory Authority

The Commission operates within the framework established by NRS 116 and NRS 116A. Under NRS 116.750(1), the Commission has jurisdiction over violations within common-interest communities, including condominiums and homeowners' associations ("HOAs"). The Commission's role is adjudicative, focusing on addressing proven violations during hearings. However, the authority to investigate such violations lies with the Real Estate Division, which operates under the administrative supervision of the Department of Business & Industry (NRS 116.615).

Under NRS 232.520(2), the Director oversees the administrative functions of all divisions within the Department of Business & Industry, including the Real Estate Division. The Director of the Department of Business & Industry has broad authority to oversee and manage the administration of all the divisions within the Department, establish policies for their efficient operation, and function as staff of a division, provided however, that the Director does not preempt another administrator's statutory authority or contravene the law (NRS 232.520(2)).

The Director's administrative authority over the functions of divisions in the Department encompasses the divisions' budgeting, accounting, planning, program development, personnel, information services, dispute resolution, travel, workplace safety, acceptance of gifts or donations, management of records, coordination in adopting and enforcing regulations, executing agreements, purchasing goods, services or equipment, preparing legislative requests, and leasing or using office space, and may also entail divisions working together to increase the operational efficiency of the Department. (NRS 232.520(3)(a)). In the exercise of this administrative authority over agency functions, the Director must remain cognizant of, and refrain from, encroaching upon the statutory responsibilities and duties of the divisions within the Department. (AGO 2002-02).

III. Limitations on Commission Powers

Importantly, the Commission's powers are subject to certain statutory limits (NRS 116.660, NRS 116.665 – NRS 116.680). Specifically, NRS 116.665(2) enumerates the information the Commission can collect. While NRS 116.665(2)(g) generally identifies other issues of concern, it is not without limitations, particularly if in conflict with enumerated confidentiality protections. In conflicting circumstances, the law has contemplated the Division can carry out such procedures. (NRS 116.615(2)).

Further, the Legislature clearly intended that all public bodies exist to aid in the conduct of the people's business and that their actions be taken openly and that their deliberations be conducted openly. (NRS 241.010). Open Meeting Law ("OML") specifically defines an "action" as "a decision made by a majority of the voting members present... during a meeting of a public body." (NRS 241.015). Accordingly, OML does not permit unilateral action by any single member of a voting body, unless specifically enumerated by law.

IV. Administration of NRS 116 & NRS 116A

The administration of NRS 116 and 116A lies within the purview of the Real Estate Division, not the Commission. (NRS 116.615). While the Commission plays a critical role in hearing cases and rendering decisions, the authority to investigate and enforce compliance is vested in the Division and the Ombudsman under NRS 116.765. This distinction ensures that the Commission functions as an impartial adjudicative body, while the Division handles investigative and enforcement actions.

V. Confidentiality Requirements

NRS 116.757(1) provides explicit prohibitions on any and all information compiled from investigations conducted by the Division. Further, short of a formal complaint, all documents and any other information are not a public record. (NRS 116.757(2) and NAC 116.500(2)).

VI. Potential Ethics Considerations

In accordance with NRS 233B, it is crucial to address the ethical concerns surrounding the roles of agency members in contested cases. Specifically, NRS 233B.122 prohibits any agency member who acts as an investigator or prosecutor in a contested case from participating in the adjudication of that same case. This ensures that the same individual does not serve in dual capacities, preventing any conflict of interest or appearance of bias. As such, any board member involved in investigating or prosecuting a case is disqualified from sitting as a decision-maker or board member during the adjudicative process.

This statutory separation of roles is vital to maintaining the integrity and impartiality of the Commission's decisions. If a member is disqualified due to their prosecutorial or investigative involvement, the process for replacing the member must be initiated promptly. Under Nevada law, notification must be made to the Governor's office to request the appointment of a temporary or permanent replacement. This ensures that the Commission can continue to operate efficiently and ethically, without interruption, while preserving the rights of all parties involved.

Any deviation from statutory guidelines could raise concerns about potential ethics violations, whether intentional or inadvertent, may contravene both NRS 233B's procedural requirements and broader ethical obligations governing public officials. (NRS 281A.400(2), (5)). Thus, it is critical the Commission avoid any actions that could be perceived as prejudicial or in conflict with public trust.

The adherence to this statutory provision not only upholds ethical standards but also mitigates the risk of conflicts of interest and ensures that the Commission's decisions remain fair and impartial. It is essential that this process is followed rigorously to prevent any breach of ethical or legal obligations.

VII. Conclusion

The scope of the Commission's activities are bound by its statutory authority under NRS 116 and 116A, and confidentiality rules under NRS 116.757. It is essential that Commissioners do not exceed its jurisdiction or powers vested.

Furthermore, these rules are widely applicable across various regulatory bodies. It is important to note that, generally, Nevada Boards and Commissions act in a judicial capacity, serving as both judge and jury in their proceedings, rather than functioning as prosecutorial entities. Their primary responsibility, pursuant to NRS 116.660, *et seq.*, is to adjudicate matters brought before them based on evidence and applicable laws, rather than initiating or prosecuting cases themselves.

Therefore, it is strongly recommended that legal counsel continue to be consulted to ensure compliance with statutory limitations and confidentiality obligations. Requests from Commissioners are appropriately directed to the de facto commission resource, the Commission's Counsel. This step is crucial to guarantee adherence to legal frameworks enshrined in Nevada State Law.

In conclusion, in addressing Commissioner requests, consideration should be given to the Commission's primary mandate, pursuant to NRS 116.660, *et seq.*, to ensure alignment with the scope and mission of the Commission for Common-Interest Communities and Condominium Hotels.

cc: Sharath Chandra, Administrator, Nevada Real Estate Division
Charvez Foger, Deputy Administrator, Nevada Real Estate Division
Michael Detmer, Chief Deputy Attorney General
Rosalie Bordelove, Chief Deputy Attorney General, Boards and Open Government

RE: Speak to the Ombudsman

From: Shareece N. Bates (sbates@red.nv.gov)

To: mkosor@aol.com

Date: Wednesday, September 18, 2024 at 05:26 PM PDT

Good afternoon Mr. Kosor,

Based on your previous interactions with the office and your multiple presentations during the public comment period of the CIC commission, it is evident that you have a good understanding of the statutory authorities underpinning the questions you are posing. The Ombudsman Office's mission to "assist owners in common-interest communities to understand their rights and responsibilities" does not extend to offering legal advice, and, unfortunately, most of your questions either implicate, or directly pose, legal questions that exceed the scope of the Ombudsman/NRED's ability to assist, and/or concern issues raised either in prior litigation or current, pending litigation. Instead, you should seek legal counsel for specific answers to these questions.

Thank you for your time.

Shareece

Shareece Bates

Administration Section Manager
3300 W. Sahara Avenue, suite 350
Las Vegas, NV 89102
702.486.4036 (phone)
702.486.4275 (fax)
sbates@red.nv.gov



Nevada Real Estate Division

Nevada Department of Taxation & Finance
"Growing business in Nevada"

From: Michael Kosor <[REDACTED]>
Sent: Friday, September 13, 2024 9:28 AM
To: Shareece N. Bates <sbates@red.nv.gov>
Subject: Re: Speak to the Ombudsman

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you

On Friday, September 13, 2024 at 09:13:48 AM PDT, Shareece N. Bates <sbates@red.nv.gov> wrote:

Good morning Mr. Kosor,

Yes, I received your email yesterday afternoon. I don't know her schedule, but I have sent her the email for review and response. I'll definitely be in touch with you. 😊

Have a good weekend

Shareece

Shareece Bates

Administration Section Manager

3300 W. Sahara Avenue, suite 350

Las Vegas, NV 89102

702.486.4036 (phone)

702.486.4275 (fax)

sbates@red.nv.gov



Nevada Real Estate Division

Nevada Department of Business and Industry

"Growing business in Nevada"

From: Michael Kosor <[REDACTED]>
Sent: Friday, September 13, 2024 8:26 AM
To: Shareece N. Bates <sbates@red.nv.gov>
Subject: Re: Speak to the Ombudsman

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Shareece

Please confirm you have received the email below.

Any idea when I might hear from the Ombudsman?

Thanks

Mike Kosor

On Thursday, September 12, 2024 at 10:39:05 AM PDT, Michael Kosor <mkosor@aol.com> wrote:

Shareece

OK- lets see if I get timely assistance.

I ask the Ombudsman and/or other applicable section(s) of the Division as may be necessary, to assist me in understanding my rights and responsibilities as an owner and assist me as an elected board member in carrying out my duties by responding to the following six related questions and providing other assistance has deemed necessary/available:

My association governing documents (adopted prior to 2015) provide the following: "The power reserved to declarant in this Section 4.2 to appoint or remove a majority of the Board ("Declarant Control Period") shall terminate on the earliest of: (i) sixty (60) days after conveyance by Declarant of seventy-five percent (75%) of the Units That May Be Created; (ii) five years after Declarant has ceased to offer any Units for sale in the ordinary course of business; or (iii) five years after any right to annex any portion of the Annexable Area was last exercised by Declarant."#

The Maximum Units per the association's CC&Rs (as amended by the Declarant), is 10,400. The association has years reported annually to the Division over 8,000 units annexed. A declarant has no interest in any of the annexed units. The association has more than a 1,000 units.

Question #1- Has the period of declarant's control terminated?

Question #2- Should the association's board have conducted an election of the appointed directors IAW NRS 16.31034?

Question #3- What action should an elected director take if the majority appointed directors refuse to comply with NRS 116.31034 or any other provision of NRS?

Question #4- What action should an elected director take if the majority directors refuse to comply with a provision of the governing documents?

My association governing documents provide the following: "Any Director may be removed from the Board, with or without cause, as set forth hereunder. Upon receipt of a written petition requesting removal of any Director, signed by such Members as are required for the calling of a special meeting of the Members [...] the Board shall present said petition to the Members for vote. By a two-thirds vote of all Members present and entitled to vote at any duly noticed meeting of the Members at which a quorum is present, the Members may remove, with or without cause, any Director, other than a Director appointed by Declarant."

Question #5- Assuming the association failed to comply with the above provision of its governing documents, what provision(s) of NRS, if any, grants the board authority to act to remove and/or declare void the position of an elected director?

Question #6- What provision(s) of NRS, if any, grants the board authority to unilaterally exclude an elected director from any deliberation(s) of the board?

I can provide additional information and/or clarification if necessary upon request. I hope to receive a prompt response.

Thank you

Mike Kosor

Las Vegas HOA owner

#The association's governing documents defines Declarant Control Period as follows:

"Declarant Control Period": The period of time during which Declarant is entitled to appoint and remove the entire Board of Directors (or a majority thereof). The Declarant Control Period shall terminate upon the first to occur of the following:

- (a) 60 days after Declarant has conveyed 75% of the Maximum Units;*
- (b) five years after the Declarant has ceased to offer Units for sale in the ordinary course of business; or,*
- (c) five years after Recording of the most recent Annexation Notice or Supplemental*

Declaration to add any additional property to the Declaration as provided in Section 1 0.1. Nothing in this Section shall preclude Declarant, in its sole discretion, from voluntarily

relinquishing control of the Board earlier than required by this Section, and in such event, Declarant reserves the right to veto actions of the Association as provided in the bylaws until such time as

the Declarant Control Period would have otherwise expired under this Section. Within 30 days after Owners other than Declarant are entitled to elect a majority of the Directors pursuant to this

Section, the Declarant shall deliver to the Association all personal property of the Owners and the Association which Declarant holds or controls including such items as are specifically required to

be delivered under NRS § 116.31038.

On Wednesday, September 11, 2024 at 05:56:56 PM PDT, Shareece N. Bates <sbates@red.nv.gov> wrote:

Good afternoon Mr. Kosor,

To assist you regarding your request pertaining to the statutes listed below, as you have done in the past, please provide the Division, in writing, any questions or clarifications you are seeking. This will remove the need to drive to our office to obtain such information.

Upon receipt, the Division will respond accordingly.

Thank you

Shareece

Shareece Bates

Administration Section Manager

3300 W. Sahara Avenue, suite 350

Las Vegas, NV 89102

702.486.4036 (phone)

702.486.4275 (fax)

sbates@red.nv.gov



Nevada Real Estate Division

Nevada Department of Business and Industry
"Growing business in Nevada"

From: Michael Kosor <mikosor@red.nv.gov>
Sent: Wednesday, September 11, 2024 11:22 AM
To: Shareece N. Bates <sbates@red.nv.gov>; CICOMBUDSMAN <CICombudsman@red.nv.gov>
Cc: Charvez Foger <cfoger@red.nv.gov>; Terry Wheaton <TWheaton@red.nv.gov>
Subject: Speak to the Ombudsman

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Help Requested Please

I just called the Ombudsman's office requesting to talk to the Ombudsman. I was told it was not possible to schedule a meeting or call. My only option, according to the lady who answered the phone was to walk in anytime and someone will speak to me.

Really? Is this how the office " Assist[s] owners in common-interest communities to understand their rights and responsibilities..."?

I will walk in tomorrow if nothing else can be arranged. Hopefully someone can assist me so as my trip will not be for nothing. I have listed subjects I wish to office help me understand below:

NRS 116.4117

NRS 116.31032

NRS 116.31034(10)(a)(2) and (13)

Regards

Mike Kosor

[REDACTED]