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MAR 10 2025

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS
mzallo

Testimony before the CIC Commission 3/11/25

By Mike Kosor

Commissioners, my name is Mike Kosor. I have provided copies of my testimony. I ask it be included in the minutes.

My appearance here this morning marks the eighth anniversary of my appearing at most every quarterly meeting.

The attachment of equitable servitudes to one's home, which form the foundation of what we call HOAs, is premised on the idea HOAs are governed by elected directors accountable to the owners. Should the collective owners seek to change the terms of those servitudes, they can. At least, that's the theory.

Nevadans cherish fundamental freedom. I spent twenty-four (24) years as a military officer and combat fighter pilot, defending this great country's democratic principles. After a second career in the private sector, I moved to Las Vegas where I bought my retirement home- in an HOA. Ironically, one of the principles I spent my military career advancing, democratic governance, was not part of my retirement community.

My HOA was and remains today an autocracy. It is developer controlled and has been for twenty-five (25) years. I believe my HOA stands in violation of the law. The Division is aware but has turned a blind eye, not just in ignoring me, but in ignoring the over 8,000 community owners-- as have you.

In my written testimony is an excerpt from the applicable statute supporting my position-

"NRS 116.31032 Period of declarant's control of association; representation of units' owners on executive board.

1. Except as otherwise provided in this section, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by a declarant, may appoint and remove the officers of the association and members of the executive board. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period and, in that event, the declarant may require, for the duration of the period of declarant's control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earliest of:"

(a) For a common-interest community with less than 1,000 units, 60 days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant;

(b) For a common-interest community with 1,000 units or more, 60 days after conveyance of 90 percent of the units that may be created to units' owners other than a declarant;

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I call your attention to the two underlined phrases- "the declaration may provide" and "terminates no later than the earliest of;". My association's CC&Rs set 75% as the threshold where the declarant's control terminates. This is not disputed. The statute establishes 90% as the no later than termination threshold for my large HOA. As such, it has been my long-held position, the declarant control of my HOA's ends at 75%.

This is **not** just my opinion. Setting aside multiple attorneys agree with me an Order was issued by the Nevada Appeals Court (*Kosor v NRED*) in May 2021 on this point. It found: ***"Both Nevada common-interest ownership law and the master declaration [CC&Rs] required that the Declarant's control over the XXXX [my HOA] would terminate after conveying 75% of the units within the XXXX."*** The association has acknowledged for many years over 8,000 units conveyed, exceeding 75% of the Maximum Units (10,400). The annual Association Registration filled in January 2022 asserts 8,303 units annexed. Nonetheless, my HOA Master Board refuses to act to end the Declarant's control of the association. It does not provide for the owner election of all directors, as required in law.

Nevada law further establishes a fiduciary duty on the part of the association's contracted management company and legal counsel. Instead of acting on behalf of owners, they defend inaction using the purse of the very owners whose rights are being denied.

I have twice formally requested the Administrator clarify the statute (NRS 116.31032). He asserts no ambiguity in the statute exists and refused my requests.

The Administrator and I agree- the statute is unambiguous. An association's CC&Rs can provide, as mine do, for a lessor termination threshold than the 90% maximum noted in the statute. But the Division refused to act. Why? It asserts having conducted multiple investigations into my complaints, but what it found is confidential. Convenient?

Commissioners, you serve as the sole adjudicative body, outside the Courts, for alleged violations of NRS 116. The Division holds no enforcement authority. Its role is investigative. When the Division fails its duty under the law to investigate allegations of wrong doing, or does so selectively, this Commission fails its duty.

It is no secret, HOAs struggle to find owners to serve on boards. During my testimony at the opening of your last meeting, I noted my HOA was suing me for simply applying to be a director. Here again, the Division is aware and does nothing. Imagine what impact this will have when the word spreads simply applying to serve could lead to litigation.

In conclusion, I remind you neither Administrator Chandra or his boss, Director Sanchez, have authority over this body. You were appointed by the Governor. Your charter is statutory and the Commission is not part of the Division. I ask you to stop simply rubberstamping what you are handed each Commission meeting, while ignoring the importance of what you are not given.

When the Division's blind eye fails the people of Nevada, this Commission cannot complete its adjudicative duty to the people. Commissioners, do your duty under the law. End your blind eye. Someone is giving a false account. Is it me or others in this room?