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August 24, 2026

Commission for Common-Interest Communities
c/o Nevada Real Estate Division
Nevada State Business Center
3300 W. Sahara Avenue, Suite 350
Las Vegas, NV 89102

Re: LCB File No. R091-25 — Section 3, Fiduciary-Duty affidavits

Dear Commissioners:

Section 3 needs clarification, particularly in light of how this provision has changed during the rulemaking process.

An earlier version stated that a breach of fiduciary duty would be subject to investigation **"only if"** the alleged violation also constituted a failure to comply with a requirement or prohibition established under NRS 116 or NAC 116. The current version no longer uses that explicit limitation. Instead, it provides:

A person who is aggrieved by an alleged breach of the fiduciary duties set forth in NRS 116.3103 and who files a written affidavit with the Division pursuant to NRS 116.760 must specify in such an affidavit any statute, regulation or order that he or she believes the member of the executive board has violated in breach of such a duty.

That change does not resolve the underlying issue. In some respects, it makes the standard more open-ended. If a homeowner alleges facts showing a direct violation of the fiduciary duties imposed by NRS 116.3103 and identifies NRS 116.3103 itself, **is that sufficient?** If so, the regulation should say so.

If Section 3 instead requires the homeowner to identify a separate statute, regulation or order before a fiduciary-duty complaint may proceed, I oppose it. That would appear to narrow the independent duties the Legislature expressly imposed in NRS 116.3103.

Consider a Common Example

A board extends a substantial contract with an existing vendor without competitive bidding, without obtaining meaningful comparative information, and apparently because it prefers the incumbent contractor.

As I understand NRED's position (albeit I disagree) Nevada law does not require competitive bidding in that circumstance because NRS 116.31086 applies "if" an association solicits bids. But NRS 116.3103 still requires directors to act *on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association.*

Now suppose an owner alleges that the board approved the contract without obtaining sufficient information to evaluate price, performance, market alternatives or whether continuing with the incumbent vendor was actually in the association's best interest. What separate statute is that owner supposed to identify? There may not be one.

The alleged violation may be precisely the failure to satisfy the independent fiduciary standard imposed by NRS 116.3103. If Section 3 requires some additional legal violation, the fiduciary standard may be the only meaningful legal protection applicable to the conduct—yet the proposed regulation could prevent that duty from serving as an independent basis for administrative enforcement.

An Affidavit Is Not a Formal Complaint

There is also a more fundamental procedural concern. NRS 116.760 requires an aggrieved person to file an affidavit setting forth the facts constituting the alleged violation. The statutory process then directs the Division to investigate and determine whether good cause exists to proceed. A formal complaint comes later.

That sequence matters. The homeowner provides facts sufficient to raise the alleged violation. The Division investigates those facts, may uncover additional facts, and applies the law. Only then is a decision made whether to proceed with a formal complaint.

Most homeowners filing affidavits are not lawyers. Requiring them at the intake stage to correctly identify every statute, regulation or order implicated by the conduct risks turning an investigative process into a legal pleading exercise.

There is also a related problem with how the requirement to provide facts "constituting the alleged violation" can operate in practice. If the Division concludes that the facts initially supplied by the homeowner are not themselves sufficient to establish the violation, that conclusion can become a basis for closing the matter rather than investigating further.

That risks converting the threshold for initiating an investigation into the evidentiary standard for proving the case.

A homeowner who adequately describes potentially unlawful conduct should not lose access to an investigation because the homeowner failed to identify the precise legal theory—or because the homeowner does not already possess every fact ultimately necessary to establish the violation.

Investigation Must Mean Investigation

There is an important distinction between the homeowner's responsibility to provide sufficient facts to initiate an investigation and the Division's responsibility to conduct that investigation.

An owner should provide enough factual information to present a credible potential violation. But an owner will often not possess all of the evidence necessary to determine whether a violation actually occurred.

Return to the contract example. An owner may know that a substantial contract was extended without competitive bidding and that little comparative information was presented at the board meeting. But the owner may not have access to communications with management, vendor proposals, internal board materials, legal advice, or other information bearing on whether the directors actually made an informed decision.

If those additional facts are necessary to determine whether NRS 116.3103 was violated, obtaining and evaluating them **should be part of the Division's investigation.** The purpose of an investigation should be to determine whether the additional facts necessary to establish good cause exist—not to close the matter because the homeowner did not already possess and present them. Otherwise, the statutory sequence is effectively reversed. **The homeowner is expected to investigate and prove the case before NRED decides whether to investigate the case.**

That should not be the standard.

Section 3 Should Answer Three Questions

Before Section 3 is adopted, the Commission should make clear:

1. Is NRS 116.3103 itself sufficient when the facts alleged constitute a direct breach of the fiduciary duties imposed by that statute?
2. Is Section 3 intended merely to require homeowners to describe fiduciary-duty allegations with reasonable factual specificity, or does it require a nonlawyer homeowner to correctly identify the legal basis of the Division's eventual case before an investigation will begin?
3. Once an affidavit presents sufficient facts to raise a credible potential violation, whose responsibility is it to obtain additional evidence necessary to determine whether good cause exists—the homeowner's or the Division's?

These are not minor drafting questions. They determine whether NRS 116.3103 remains an independently enforceable fiduciary standard and whether the statutory investigative process remains what the Legislature appears to have designed: **a process in which the homeowner reports the facts, the Division investigates, and only then is a decision made whether to prosecute the matter through a formal complaint.**

The regulation should not leave those questions to future Division interpretation.

Respectfully submitted,

Michael Kosor