

**COMMISSION FOR COMMON-INTEREST COMMUNITIES TASK FORCE
MEETING MINUTES AUGUST 19, 2020**

VIA WEBEX VIRTUAL MEETING

AUGUST 19, 2020

10:00 A.M.

1-A) Introduction of Commissioners in attendance

Terry Reynolds, Director of the Department of Business and Industry; Sharath Chandra, Administrator for the Real Estate Division; Charvez Foger, Ombudsman for Common-Interest Communities; Peter Keegan, deputy attorney general with the Attorney General's Office; Adam Clarkson attorney with The Clarkson Law Group; Ken Richardson, former training officer for the Real Estate Division and currently teaching HOA management at UNLV.

2) Public Comment

None.

3-A-1) Discussion regarding amendments, additions and deletions to NRS 116 including but not limited to NRS 116.1201(2)(a) regarding limited-purpose associations.

Charvez Foger stated that a limited-purpose association is an association that is guided by the Division but is not regulated. Mr. Foger stated that limited-purpose associations handling landscaping and things of that sort but don't have to following NRS and NAC 116. Mr. Foger stated that limited-purpose associations pay fees to the Division but can not use the Ombudsman's Office for assistance.

Adam Clarkson stated that people have the expectation that limited-purpose associations fall under the purview of the Real Estate Division and that NRS 116 applies to them. Mr. Clarkson stated that the proposed change to NRS 116 is a good direction to have the statute reflect what people expect to practically applies. Mr. Clarkson stated that he is in support of the proposed change and would like to see more detail. Mr. Clarkson stated that the proposed change says "at least these additions" but there are other ones that would be good as well.

Mr. Foger stated that the Ombudsman's Office Education Officer would like the language to mirror NRS 116.1203 for small, planned communities.

Ken Richardson stated that he agrees with Mr. Clarkson. Mr. Richardson stated that limited-purpose associations should be subject to some regulation and be able to take advantage of the informal conferences conducted by the Ombudsman's Office since these associations pay fees to the Division. Mr. Richardson stated that he supports the proposed changes.

Mr. Clarkson stated that if it is intended to craft the language similar to NRS 116.1203 he would want to see the limited-purposed associations include NRS 116.1201(6)(b). Mr. Clarkson stated that subsection (b) states that the limited-purpose associations cannot enforce their association's governing documents against the unit owners.

Sharath Chandra stated that currently there is a proposed change to add NRS 116.3116 and NRS

116.3116(8) to the existing language for limited-purposed associations. Mr. Chandra stated that the Division will dig deeper to make sure that the intent of the limited-purpose association is not overridden by just adding extra sections. Mr. Chandra stated that the Division will look at original legislation that might be from 2005.

3-A-2) Discussion regarding amendments, additions and deletions to NRS 116 including but not limited to NRS 116.31031(1)(b)(2) and NRS 116.31031(2) regarding the fine cap of \$1,000 and fining unit owners for the actions of invitees.

Charvez Foger stated that the Ombudsman's Office would like to amend the language to state, "the amount of the fine must not exceed \$100 for each violation or total amount of \$1,000 per hearing, whichever is less."

Adam Clarkson stated that the proposed revision will be good to clear this up. Mr. Clarkson stated that in the industry, this a majority interpretation. Mr. Clarkson stated that a lot of people have debated if that \$1,000 means that there can be a limit at the hearing or a limit of the fine. Mr. Clarkson stated that the Division has interpreted it as being per hearing.

Ken Richardson stated the current language is confusing and creates a lot of problems. Mr. Richardson stated that he does not know if the language should make clear that the \$1,000 does not include a continuing fine. Mr. Richardson stated that he has had that matter come up in a class where students were told that they cannot do a continuing fine if it is more than \$1,000. Mr. Richardson stated that he supports the proposed language.

Mr. Clarkson stated that this change is being added in the section that does not apply to health, safety welfare violations. Mr. Clarkson stated that there is already a \$100 cap for fines that are not health, safety, welfare violations. Mr. Clarkson stated that the \$1,000 could apply to an overgrown lawn, a disabled car or graffiti spray painted. Mr. Clarkson stated that if a homeowner had eleven violations, there could not have eleven \$100 fines because the it is capped at \$1,000. Mr. Clarkson stated that this is the majority interpretation right now. Mr. Clarkson stated that health, safety and welfare fine is not capped and are sometimes used too frequently.

Sharath Chandra stated that the only proposed change to NRS 116.31031(1)(b)(2) would state "\$1,000 per hearing". Mr. Chandra stated that if there needs to be additional clarification, he will look to the Task Force members for proposed language.

Mr. Clarkson stated that he supports Mr. Richardson comment regarding continuing fines.

Mr. Clarkson stated that the minority position in the industry regarding this matter is that there is a fine of \$100 that can become continuing after 2 weeks. Mr. Clarkson stated that once the homeowner hits \$1,000 that is the limitation. Mr. Clarkson stated that there is not a lot of people supporting that but there have been some investor owners who have done limited litigation with associations over this issue.

Mr. Richardson suggested an advisory opinion addressing continuing fines separate from the proposed changes.

Mr. Foger stated that the Ombudsman's Office has an FAQ on this issue posted on the Division's website.

Terry Reynolds stated that he agrees with Mr. Richardson and stated that it would be important to have clarification aside from proposed statute regarding continuing fines.

Mr. Foger state that the Ombudsman's Office believes that NRS 116.31031(7) addresses that issue.

Peter Keegan stated that NRS 116.31031(7) addresses the issue but if there is going to be a \$1,000 cap, that language could include something that says this does not apply to continuing fines or continuing violations. Mr. Keegan stated that a continuing violation stems from one hearing. Mr. Keegan stated that if they violation is repeated, is the intention to limit the fine to the first hearing of \$1,000 including continuing future violations which would not get another hearing.

Mr. Foger stated that statute currently states that.

Mr. Keegan asked if the continuing violation fines limited to \$1,000 based on the proposed language.

Mr. Foger stated that it is not.

Mr. Keegan suggested stating that in the statute.

Mr. Clarkson agreed with Mr. Keegan that it would be a good clarification to add into subsection 7 and clarify that it is not subject to limitation.

Mr. Reynolds agreed with Mr. Clarkson.

3-A-3) Discussion regarding amendments, additions and deletions to NRS 116 including but not limited to NRS 116.31087 regarding units' owners having certain complaints placed on the agenda.

Adam Clarkson stated that this was added in 2003 and only required a board to place an item on the agenda but not take action on the matter. Mr. Clarkson stated that in 2009 the language was changed to reflect current language. Mr. Clarkson stated that most in the industry would like to delete the entire section. Mr. Clarkson stated that this section is terrible and there are a lot of really good pathways for homeowners to address grievances with the association such as submitting a letter demanding a cure and if the association does not cure, homeowners have the ability to go to the Division. Mr. Clarkson stated that he has never seen this section used for any positive purpose. Mr. Clarkson stated that this section is used to harass the board.

Mr. Clarkson suggested removing section (2).

Charvez Foger stated that the Division is linking this to NRS 116.760. Mr. Foger stated that the Division's vision was to have the respondent given the reasonable opportunity to go over the violations before coming to the Ombudsman's office and filing a complaint.

Ken Richardson stated that he likes the proposed language and agrees with Mr. Foger. Mr. Richardson stated that he agrees that it gives the homeowner an opportunity to discuss issues and gives the board the opportunity to explain their position before it goes to the Ombudsman.

Mr. Clarkson stated this is an allegation of governing documents or allegation of Nevada law, which is a compliance issue and belongs in executive session. Mr. Clarkson stated it should be placed in a forum where it can be discussed confidentially between the homeowner and the board. Mr. Clarkson stated that if you really want it to be a way to open the door to conversation, it is better to be in executive session so that the board can engage in discussing this with the homeowner. Mr. Clarkson stated that talking about his matter in front of all homeowners is not the best course of action because they are discussing something that could expose them to liability if the board did commit a violation.

Mr. Foger stated that the Division believes this is not confidential and wants to board to be able to go back to the unit owners. Mr. Foger stated that this is the reason the language was drafted so that there can be conversation prior to a complaint being filed with the Ombudsman's Office.

Peter Keegan asked if there was an existing provision in NRS 116 that allows the Division upon receipt of a complaint that appears to be overlooked by the board to remand that issue back to the board and require that it be placed on the agenda by the board and addressed.

Mr. Clarkson stated that the statute as written causes these complaints to not be confidential because it forces them to be on the regular agenda for the association board. Mr. Clarkson stated that if the Division truly wants this process to be a process by which the board will engage with the homeowner and try to get something resolved, it must be placed in executive session.

Mr. Foger requested that Mr. Clarkson provide him with a draft of his proposed language to compare his language to the Division's stance.

Terry Reynolds stated that it is important that the task force has some background on these issues and requested Mr. Keegan to look at some of the types of issues and whether it should be public or in executive session.

3-B) Presentation by the Ombudsman for Common-Interest Communities Education section.

Antonio Brown presented the task force with this presentation. Members of the task force were provided with hand outs of the presentation.

4) For Possible Action: Discussion and decision on date, time, place and agenda items for upcoming meeting(s).

Sharath Chandra stated if members of specific items that they would like to discuss, email them. Mr. Chandra stated that the three agenda items that were discussed are potentially going to go before the Legislature. Mr. Chandra stated that any other discussions items could be used for testimony or any future questions.

Terry Reynolds stated that the agenda items discussed today should be placed on the next meeting agenda to take action.

5) Public Comment

Christopher Peitsch, community manager, commented on agenda item 3-A-3. Mr. Peitsch stated that the law significantly changed 8 to 10 years ago dealing with homeowner forums and the way that they now need to be listed on agendas. Mr. Peitsch stated that it used to be that the homeowner forum was a good opportunity at the beginning of a meeting for anybody to ask any question they

wanted to bring up. Mr. Peitsch stated that this changed about 10 years ago to the first homeowner forum there is a requirement that if a homeowner wants to talk, the item has to be on the meeting agenda. Mr. Peitsch stated that he wonders if some pressure would be released and go back to the scenario where any matter could be brought up during that first homeowner forum. Mr. Peitsch stated he sees homeowners who show up who want to discuss something at the beginning of a meeting and the board has to tell them that it cannot be discussed because it is not on the agenda. Mr. Peitsch stated that this causes frustration because the homeowner has to sit through the entire meeting to discuss at the forum at the end of the meeting.

6) For possible action: Adjournment

Terry Reynolds moved to adjourn. Seconded by Ken Richardson. Motion carried. Meeting adjourned at 11:02 p.m. on August 19, 2020.