

RUNNING SUCCESSFUL COMMON INTEREST COMMUNITIES

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Running a successful common interest community in Nevada is not as easy as it was even 5 to 10 years ago. Our industry has been micro-managed by our Nevada Legislature to the extent that just showing up at the board meeting to make decisions no longer works. Education for directors is critical in helping them fulfill their fiduciary duties as directors of their Nevada Not For Profit (the IRS determination of this type of organization) common interest community without running afoul of the many laws that govern our industry.

So what does it take to run a successful common interest community in Nevada and what are the roles of the various parties involved in the process? Let's take a look at just a few of the parties and what should be expected from the same:

A. THE ROLE OF THE DIRECTORS

Right after your election, you were asked to sign a document stating that you had read your documents, NRS 116, and NAC 116 and you *understood them to the best of your ability*. Did you honestly do that? If not, you committed perjury when you signed that form. You are fortunate that the requirement was changed several years ago as the form used to state that you *understood them*. The insurance industry was up in arms and got the above italicized section changed as they were telling directors not to sign the form since attorneys disagree on many provisions in the law and no one can understand some sections.

We know that the documents and the laws are not *light* reading. NRS 116.31034, section 15, however, was put into place for a reason, which was to ensure that volunteers understand exactly what they have volunteered to do. If a director stands in front of the governing body for our industry, the Commission for the Common Interest Community and Condo Hotels, because of failure to comply with the laws, the excuse that you didn't know will not be accepted. You will be asked if you read the laws and your documents as required by law and what educational classes you took to educate yourself as required by NAC 116.405.

In reading those documents and the laws, it will really help directors to make a list of those things that they are required to do and those things that they *may* decide to do. Reviewing that list at a directors meeting to ensure that the mandatory tasks have been completed and/or are in the works, will go a long way in proving that you tried to comply with those requirements that were mandated by the laws or your documents. Your board can't change the laws, but there is a process detailed in most documents as how to change your documents if an action is just not practical or cost effective to complete. Let the owners decide if they want to continue to pay for those services, etc.

In 2011, however, a new law was put into place where directors can make a decision to not enforce some provision, NRS 116.3102, Section 3. (I have only shown that section below for the text, not the whole statute).

NRS 116.3102 Powers of unit-owners' association; limitations.

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3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

- (a) The association's legal position does not justify taking any or further enforcement action;
- (b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;
- (c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or
- (d) It is not in the association's best interests to pursue an enforcement action.

2017 will again be a session where many bills will be proposed to change NRS 116 and some of them will continue to seriously affect your bottom lines. Directors cannot leave this up *to the other guys* to monitor and testify. Our legislators need to hear from the members of the board, not the industry professionals as their testimony is suspect since they make their living from services provided to the common interest communities. Our legislators tend to listen more closely when directors testify helping them to understand how a proposed bill will further affect their bottom line financially or further hamper the directors from getting their jobs done. Each session increases the cost of running your association and at a time when a lot of owners are just hanging in there, do we need to increase that cost further just because one association in Nevada may have done something that sounded atrocious?

B. THE ROLE OF THE OFFICERS

One of the places one of the proposed officers should look when accepting a role as an officer is to the bylaws of the organization. What officer positions are mandatory and what are their duties? *Shall* is not discretionary and must be done whereas the word *may* leaves the action up to the board. As a simple example, if the President *shall* sign all checks and the Treasurer *shall* sign all checks, there is no latitude for the manager to be a signer on the operating account. If the documents allow the manager to sign, it is the manager not the company owner who **MUST** sign any checks. It is not advisable, however, to have a manager sign any of the checks.

Many of the financial provisions in NRS 116 require the whole board to take certain financial actions minimally every 100 days, not just the Treasurer, along with ensuring that there are policies and procedures in place to ensure that the funds of the association are protected. The Treasurer can facilitate this, but is not the only director on the hook to take actions surrounding the association's money.

Second, look at the NRS Chapter that your corporation was formed under. Was it NRS 81 or NRS 82 as there are provisions in these two chapters that require certain actions from the officers and the directors?

C. THE ROLE OF THE MANAGER

What is in the contract? One of the key reasons that managers burn out in this industry is that directors fail to read the management agreement, even before they sign it at times, and expect their manager to do *everything* regardless of what is in the contract.

The manager is a key player on your managing team of your common interest community. It is the board's duty to defend the manager and recognize that they are following the contract and/or the board's direction when taking most actions. Owners continually see the manager as the person responsible for everything as they write the letters and communicate verbally with the owners. If someone is badgering the manager at a meeting of the board, redirecting that individual to speak to the board is advisable as the board is responsible for everything. Yes, by contract, you have given other's authority to take some action, but ultimately the board is *responsible for everything*. Helping owners to understand that will definitely help you keep a good manager on board and will limit the burnout, which continues to happen frequently in our industry.

Having said that, however, the Nevada Real Estate Division holds the manager responsible for what the board does or does not do. If the board is breaking the law, the Division expects the community manager to turn the board in for possible action. If a board continues to see letters from the manager advising them to take some action or stop taking some action, which they continue to refuse to do, the manager is trying to protect themselves from action that they see coming in the near future.

D. THE ROLE OF THE OTHER VENDORS/BUSINESS PARTNERS

As directors, how many of you are going to dedicate the rest of your life to your association? If not, your business partners have the continuity moving forward. History is lost quite often when a new board comes into power, fires all of their contractors including the attorney and the manager, and refuses or doesn't know of the need to get education. Most times, it is the manager who is the continuity who can explain to future boards the whys of what was put into place in your community.

Many directors in their working for pay lives, are lawyers, CPA's, insurance agents, etc., but when serving on the board does their error and omissions insurance cover the advice that they give you while sitting on that board? CPA's, insurance professionals, attorneys and other professionals are just like doctors, they specialize. Are you going to go to a Pediatrician for your cancer? No!!! Professionals in our industry spend many years learning the ins and outs of this tricky business. Do you want to pay them to learn and or help them pay for costly advice that was a mistake? In interviewing the professionals that you surround yourselves with, experience *in our industry* should be one of the critical measures in your process.