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What Do You Mean We Have to Allow Unit Owners to Publish Information on the Association’s Facebook Page and Newsletter?

by John W. Aylor, Esq.

Associations commonly fail to consider the breadth of the “official publication” requirements of common-interest communities in Nevada, which include the rights of unit owners to publish information on association maintained websites and newsletters. Nevada Revised Statutes (“NRS”) 116.31035(5)(b) defines “official publication” as: “(1) [a]n official website; (2) [a]n official newsletter or other similar publication that is circulated to each unit’s owner; or (3) [a]n official bulletin board that is available to each unit’s owner.” When associations do not have policies and procedures in place to govern what may be placed on an association’s Facebook page or website for example, issues may likely arise when a unit owner requests to publish information on the page that may be offensive, or worse, libelous.

An apparent growing trend among unit owners within common-interest communities appears to

be occurring as unit owners have taken to social media to voice their concerns and/or criticize or even defame an association. In line with this apparent trend, interested unit owners may soon wish to start exercising their rights to publish information to their associations’ membership via the rights provided in NRS 116.31035.

In addition to publications concerning candidacy and ballot questions, the official publication requirements of NRS 116.31035 apply to publications that contain the views or opinions of the association, the executive board, a community manager or an officer, employee or agent of an association concerning “issues of official interest.”

The official publication requirements of NRS 116.31035 apply to any “issue of official interest.” NRS 116.31035(5)(a) defines “issues of official

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If an association maintains a Facebook page/account and/or other social media accounts, it is recommended that the association adopt a social media policy or include rules regarding social media in its official publication policy to avoid disputes over what may or may not be posted on the account.

interest” as: “(1) **Any issue on which the executive board** or the units’ owners **will be voting**, including, without limitation, elections; and (2) The enactment or adoption of rules or regulations that will affect the common-interest community.” NRS 116.31035(5)(a) (emphasis added). NRS 116.31035(2) provides the following addressing official publications and issues of official interest:

If an official publication contains the views or opinions of the association, the executive board, a community manager or an officer, employee or agent of an association concerning an issue of official interest, the official publication must, upon request and under the same terms and conditions, provide equal space to opposing views and opinions of a unit’s owner of the common-interest community.

NRS 116.31035(2). Generally, the executive board of an association votes on any and all substantive issues faced by an association, e.g. entering into contracts and constructing improvements, and as such, those are “issues of official interest.” Furthermore, the statute does not provide any express time constraints concerning when an issue is considered to be one that is subject to the vote of the executive board or units’ owners. Therefore, the discussion of any association issue within an official publication arguably concerns an “issue of official interest.”

When an official publication includes any language additional to the objective identification of an issue of official interest, that language may be considered the “views” or “opinions” of the association, the executive board, a community manager or an officer, employee or agent of an association. Accordingly, the requirements of NRS 116.31035 may easily apply to an association’s official publication.

The requirements of NRS 116.31035 likely apply to an executive board or association management controlled or maintained association Facebook page/account.

If an executive board or association management controls or maintains a Facebook page/account on behalf of an association, that Facebook page/account likely constitutes an “official website” under NRS 116.31035(5). Therefore, the requirements of NRS 116.31035 would apply to any “posts” made on the association’s Facebook page/account by the following: 1) the association itself via the same Facebook account; 2) an executive board member via their personal Facebook account; 3) the association’s community manager via their personal or company Facebook account; or 4) any



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employee or agent of the association via their personal or company Facebook account. NRS 116.31035 would of course apply to any traditional website maintained by an association and would also likely apply to other various social media applications maintained by an association.

If an association maintains a Facebook page/account and/or other social media accounts, it is recommended that the association adopt a social media policy or include rules regarding social media in its official publication policy to avoid disputes over what may or may not be posted on the account.

For instance, the association should have rules in place regarding what “posts” may be made by unit owners and what may be deleted by the association. If the association simply removed or deleted unit owner “posts” at will without any objective grounds in support of its actions, the association may, at a minimum, subject itself to unwanted criticism and attention.

Associations, especially associations that regularly publish official publications, should adopt an official publication policy or rules and regulations governing official publications to prevent disputes over what may be included in a publication and to protect the association from becoming unnecessarily involved in disputes and potential litigation.

Without any objective “terms and conditions” in place, an association’s authority to limit what unit owners may publish

pursuant to their rights under NRS 116.31035 is limited and subject to dispute. In the context of NRS 116.31035, associations that do not maintain official publication policies and regulations arguably do not have any “terms and conditions” to limit what may be published by unit owners. The association could of course argue that the unit owners’ rights under NRS 116.31035 are subject to the same number of words and pages in which the association’s “views or opinions” were addressed. However, without the adoption of a policy identifying such rules, the association’s position would be ripe for dispute and challenge.

NRS 116.31035(4) provides the association, its officers, employees and agents immunity from criminal and civil liability regarding publications made pursuant to their duties under subsections (1-3), i.e. views and opinions of unit owners that they are required to publish. However, the immunity provided under NRS 116.31035(4) does not prevent the association and those protected individuals from being named in frivolous lawsuits or from being required to respond to claims and disputes they may unnecessarily become involved in, e.g. claims that the association published libelous information. In order to prevent the association from becoming subject to disputes over what it may be required to publish in accordance with unit owners’ rights under NRS 116.31035, it is recommended that associations adopt policies setting forth the “terms and conditions” that govern publications made pursuant to NRS 116.31035. ☐

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