SIX THINGS NEW CONDO DIRECTORS NEED TO KNOW NOW IN NEVADA

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Congratulations On getting elected to the condo board! Now the fun begins. For first-time directors, there is an overwhelming amount of new information to digest. While it may seem like everything must be learned at once, it may be more realistic to take a gradual approach and take as many classes as you can. Here are six quickly need to know topics to get you on your journey.

I. Is the Association for which you are going to serve in good standing to protect you from personal liability?

You are serving on a Nevada Corporation board of directors, which has huge responsibilities that go along with it. There are very few truly non-profit home owner associations in Nevada, which means unless you have filed with the IRS to be a true Non-Profit corporation, you pay taxes and must comply with NRS 82 or NRS 81 (if you were formed under that corporation). You can go to this link to see your status as a corporation, but you will need to work with your CPA to see if you are exempt. http://nvsos.gov/sosentitysearch/

Does your association have an expiration date? Many of the communities in the North and some down south have an expiration date. Many things need to be done to have it continue on so check at this website to see if it expires and plan ahead by a couple of years to get the process in motion to renew the corporate statute.

II. Preserve the Corporate Record.

This might sound like a bizarre idea, but consider the homeowners association kike a living being; the records serve as its memory. Nevada requires that you keep ALL records for 10 years and the minutes of the association for the life of the Association.

Directors and Community Managers are the key creators of the corporation's memory, but change on a regular basis. Directors leave at the end of their term, resign because of ill-health, sell their unit to move and/or are removed by the owners. In some cases the entire board gets removed by a vote of the owners. Relying totally on the community management company and their managers is not a good idea, either. Managers also leave, get replaced or retire.

It is the board's responsibility to make sure the corporate memory is always preserved and up-to-date. Community Managers have an important role to play in creating and preserving the records, but the board must provide oversight and make sure this "memory" is created and immediately accessible. Start preparing now because changes are difficult to predict! If directors and managers wait until these events occur, it may be too late. Memories fail, e-mails remain in personal in boxes and handwritten notes get misplaced.

New directors and managers rely on good records to provide this memory. Poor or missing records leave directors and managers in the dark, wasting time trying to understand why a specific decision was made and wasting money because a high-value renovation contract has gone awry.

III. Act in the Corporation's Best Interests

From the very first meetings new directors attend, they must make decisions based on the principle of fiduciary responsibility. What does this mean? Simply put, directors must act in the best interest of the Nevada Corporation and not in their own interests, which includes what neighbors may be bugging them about.

This is an incredibly important distinction to understand. It's normal for people to want to act in their own self-interest. However, for directors, the corporation's interest replaces self-interest. The corporation is like a living entity and continues to exist as directors and community managers come and go. Directors serve the corporation and must ensure that the corporation stays financially and physically healthy.

An example will help to explain. The board in The Yellow Condos is preparing to undertake a much-needed window replacement project. After reviewing finances, the three-member board realizes that a special reserve assessment will be needed to pay for the work as prior boards have not properly funded the reserves according to the reserve study.

One of the director's votes against the project because he does not have the money to pay for the special reserve assessment. Another director also votes against the project because she is planning on selling her condo and doesn't want to have to spend money on a special assessment at this point. (She totally doesn't remember that she is going to have to disclose this issue to a potential buyer.)

The decision has been make; the window preplacement project is postponed for another year. This is a very poor decision for the condominium corporation as a whole and a good example of directors failing in their fiduciary responsibilities.

IV. Review the Transfer Disclosure Requirements Regularly.

NRS 116.4109 Resales of Units is where you would find the requirements on what needs to be disclosed. NRS 116.41095 is also a document that buyers have to initial when they purchase their units. This has been in place since August of 1997. Here are the links to those requirements.
https://www.leg.state.nv.us/NRS/NRS-116.html#NRS116Sec4109 and
https://www.leg.state.nv.us/NRS/NRS-116.html#NRS116Sec41095

Please make sure that the packages that your community management company is giving out complies with the laws.

Potential buyers need to know any financial or physical problems facing the association. If these details are missing from the disclosure package, the association is at risk of an unhappy new condo owner who could sue the association if they find out, for example that the above mention substantial special assessment is due. Ensuring that all required disclosures are current and accurate helps to mitigate this risk.

V. Manage the Corporation's Money Responsibly.

Looking after money is obviously very important and, in Nevada, directors have responsibilities to go over the financials every 100 days. NRS 116.31083 Section 6 details what must be done. Make sure you are covered in your minutes as you do this to cover yourself should an audit be conducted by the Nevada Real Estate Division.

New directors need to know how the association's finances have been managed in the past and consider whether this is an acceptable process while in accordance with the laws. Just because a board has done it in a certain way before doesn't mean that it is the right way or that it can't be improved to protect the finances of the corporation.

Directors are responsible for making independent decisions and not simply following along with past practices. Ask about the process of signing checks, check the association document to see who is supposed to sign. Just because the manger has been as signor in the past, doesn't mean that they have the right to do so if the Bylaws detail certain officers are required to sign all checks and documents.

Nevada law requires two signatures on the checks and the actual community manager who manages your community can be one, but only if the documents allow it. New community managers are taught that they should not sign anything as they are not officers in that corporation and their own Errors and Omissions insurance many not cover them if something goes south.

VI. Follow the Governance Hierarchy

The Nevada Revised Statute 116 and the accompanying administrative Code are complicated and hard to read, but each director is required by law to read these laws and their governing documents and fill out a form that goes into the Nevada Ombudsman's Office stating that you have done so. Don't perjure yourself by signing the form thinking that you will do it later. It is call perjury.

Read and understand them all to the best of your ability knowing that attorneys fight over what the laws mean. <u>It is the law that you do so</u>.

All associations are governed by the Nevada Real Estate Division and the Ombudsman for the Common Interest Communities and Condo Hotels. You don't want to find yourself in front of them because you simply decided it wasn't important to read those documents. You are expected to read them so that you can keep out of trouble. Nevada has more laws and requirement than any other state in the Nation. SO, if you moved here from another state having served on a board for a long period of time, you can't assume you know Nevada.

Remember that there are other State of Nevada statutes that apply, Federal Laws that apply along with City and County laws.

In summary, NAC 116.405 requires that you as a director keep up to date with the laws in Nevada among other things. (Print this section out and review it periodically to ensure you are in compliance.) In the eyes of the Nevada Real Estate Division, that section means attending classes when you can do so to learn as much as you can. Remember to begin your term with creating and protecting the association's memory; always act in the best interest of the association; review the disclosure packages regularly; manage the association's funds responsibly; and follow the governing documents. If a new director does these six things well, he or she is off to a good start in becoming an effective and responsible director.