

SELF MANAGEMENT OF THE CIC (Common Interest Communities) THE PROS AND THE CONS!

By Sara E. Barry, CMCA PCAM UNLV Certified Paralegal
Director of Operations – Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

Many times members of the Board of Directors decide that, in the interest of saving money, they want to become self managed vs. paying for professional community association management. The current Board feels that it is their job to only save money for the residents vs. taking seriously their major role of protecting preserving and enhancing the assets of their *Nevada Not For Profit Corporation*. (This is an area of discussion for another day as most CIC's are Not for Profit Corporations unless the IRS has given them a special ruling as a true non profit corporation).

The intent of this article is to weigh the pros and the cons of both the concept of self management vs. professional community management. There is no Nevada law that prohibits an association from being self managed, but many documents prohibit the Board from managing themselves. Why would the original developer put this provision into the documents? The answer is really quite simple as self managed boards tend to get themselves into trouble more frequently when they don't have access to a profession and properly licensed Community Manager as part of their team.

There are many self managed CIC's in every state in the USA and some run very well and others don't. The State of Nevada Ombudsman for the Common Interest Community and Condo Hotel industry has stated several times during industry meetings that her office receives more complaints by far from self managed communities than from professionally managed communities. *Nevada is leading the nation in legislation in our area and it really is not something of which we should be proud*. Our legislators have felt that they need to micro-manage CIC's to get them to behave. Can you legislate good behavior? No, regardless of the many attempts through legislation!

What they can do, however, is to legislate the why, when and how's that the volunteer directors must conduct themselves and their activities and our State has tried really hard to do that.

The good intentions of the current Board in the CIC when deciding to go self managed could backfire on them within just a year or so. Does this Board expect to spend the rest of their lives *volunteering their personal time* for this entity? Most directors will answer quite quickly, NO! They will serve their time and then get off leaving the future board to make decisions and make any changes necessary based on the time and talents of the current directors. This is where the issues comes into play.

NAC 116 is very specific about the duties of the directors in a CIC when it lists the shall and shall not's of the executive board (Members of the Board of Directors).

NAC 116.400 states, "**Members of executive board: Responsibilities.** ([NRS 116.3103](#), [116.615](#)) In performing the duties set forth in [NRS 116.3103](#), a member of an executive board **shall:**

1. Comply with all applicable federal, state and local laws and the governing documents of the association;
2. Uniformly enforce the provisions of the governing documents of the association;
3. Ensure that meetings of the executive board are held with such frequency as to properly and efficiently address the affairs of the association;
- 4. Keep informed of new developments in the management of a common-interest community through educational courses;**

5. Ensure that the executive board obtains, when practicable, at least three bids from reputable service providers who possess the proper licensing for any service used by the association;

6. Ensure that the executive board consults with the appropriate professionals as necessary before making major decisions affecting the association;

7. Deposit all money of an association in a federally insured financial institution authorized to do business in this State; and

8. If the association does not employ a community manager:

(a) Maintain an inventory of all records of the association;

(b) At all times ensure that the financial transactions of the association are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;

(c) Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with the provisions of [NAC 116.451](#) to [116.461](#), inclusive;

(d) Make the financial records of the association available for inspection by the Division in accordance with the applicable laws of this State;

(e) Cooperate with the Division in resolving complaints filed with the Division;

(f) Upon written request, make the financial records of the association available to the units' owners during regular business hours for inspection at a reasonably convenient location which must be within 60 miles from the physical location of the common-interest community and provide copies of such records in accordance with the applicable laws of this State; and

(g) Fairly enforce the collection policies of the association and comply with all applicable federal, state and local laws relating to the collection of debt. (Added to NAC by Comm'n for Common-Interest Communities by R129-04, eff. 4-14-2005; A by R205-05, 9-18-2006) [*Emphasis Added*]

NAC 116.405 Members of executive board: Prohibited acts. ([NRS 116.3103](#), [116.615](#)) In performing the duties set forth in [NRS 116.3103](#), a member of an executive board **shall not:**

1. Act outside the scope of the authority granted in the governing documents;

2. Act for reasons of self-interest, gain, prejudice or revenge;

3. Commit an act or omission which amounts to incompetence, negligence or gross negligence;

4. Except as otherwise required by law or court order, disclose confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates; or

5. Impede or otherwise interfere with an investigation of the Division by:

(a) Failing to comply with a request by the Division to provide documents;

(b) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or

(c) Concealing any facts or documents relating to the business of the association. (Added to NAC by Comm'n for Common-Interest Communities by R129-04, eff. 4-14-2005)

[*Emphasis Added*]

Who and where will be the continuity and have the history for your community when this board gets tired of serving their neighbors? Minutes don't normally reflect the total history behind actions that may or may not have been taken. Normally, it is the Community Manager or management company who has this

history so that the wheel doesn't have to be reinvented again, and again, and again.

Our Nevada Legislators feel so strongly about the proper management of the CIC that they adopted a statute that gives the Commission for Common Interest Communities and Condo Hotels authority to fine the Board or force them to get professional management among other things.

NRS 116.790 Remedial and disciplinary action: Audit of association; requiring association to hire community manager who holds certificate; appointment of receiver.

1. If the Commission or a hearing panel, after notice and hearing, finds that the executive board or any person acting on behalf of the association has committed a violation, the Commission or the hearing panel may take any or all of the following actions:

(a) Order an audit of the association, at the expense of the association.

(b) Require the executive board to hire a community manager who holds a certificate.

2. The Commission, or the Division with the approval of the Commission, may apply to a court of competent jurisdiction for the appointment of a receiver for an association if, after notice and a hearing, the Commission or a hearing officer finds that any of the following violations occurred:

(a) The executive board, or any member thereof, has been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs;

(b) The executive board, or any member thereof, has been guilty of misfeasance, malfeasance or nonfeasance; or

(c) The assets of the association are in danger of waste or loss through attachment, foreclosure, litigation or otherwise.

3. In any application for the appointment of a receiver pursuant to this section, notice of a temporary appointment of a receiver may be given to the association alone, by process as in the case of an application for a temporary restraining order or injunction. The hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties.

4. The court may, if good cause exists, appoint one or more receivers pursuant to this section to carry out the business of the association. The members of the executive board who have not been guilty of negligence or active breach of duty must be preferred in making the appointment.

5. The powers of any receiver appointed pursuant to this section may be continued as long as the court deems necessary and proper. At any time, for sufficient cause, the court may order the receivership terminated.

6. Any receiver appointed pursuant to this section has, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided in NRS 78.635, 78.640 and 78.645, whether or not the association is insolvent. Such powers include, without limitation, the powers to:

(a) Take charge of the estate and effects of the association;

(b) Appoint an agent or agents;

(c) Collect any debts and property due and belonging to the association and prosecute and defend, in the name of the association, or otherwise, any civil action as may be necessary or proper for the purposes of collecting debts and property;

(d) Perform any other act in accordance with the governing documents of the association and this chapter that may be necessary for the association to carry out its obligations; and

(e) By injunction, restrain the association from exercising any of its powers or doing business in any way except by and through a receiver appointed by the court. (Added to NRS by 2003, 2217; A 2005, 2621; 2009, 2900) [Emphasis Added]

I personally know that several boards have been required to pay fines, take education and/or were told that they could never serve on the Board again in the State of Nevada because of a breach of their fiduciary duty and not using experts as required in the law. How do I know, they needed certificates of attendance from me to take back to turn into the Division when the classes were completed. These directors felt that they knew better than the "experts" even when they admitted to never taking a single class or seminar as required in NAC 116.400. They had lived in a CIC for 30 years in another State or prior to all the law changes and "that's the way we always did things. Why change?"

As fiduciaries, which is the highest standard of care that there is in the law, board members have a huge job to fulfill as directors when their jobs don't normally include doing the bookkeeping and all of the many other administrative activities that the management companies do for the boards.

Community Managers are required to take 60 hours of pre-licensing education and work under a Supervisory Community Manager who must have at least 4 years of experience in this industry. The Provisional Manager must work under this Supervisory Community Manager for 2 years doing 3,120 hours of very specific activities to help train them to guide their directors, while keeping them in compliance with the laws.

If, as a Director, you choose to get all of this education, make a commitment to do this while not receiving any kind of compensation; commit the rest of your life to the CIC, then go for it. Many Directors don't give this serious thought before they fire the management company and don't understand the long term issues that the association will face with their decisions.

Even if the Board determines that they only want a bookkeeper and they will do the rest, consider the following definition of Community Management:

NRS 116.061 "Management of a common-interest community" defined.

"Management of a common-interest community" means the physical, administrative **OR** financial maintenance and management of a common-interest community, or the supervision of those activities, **for a fee**, commission or other valuable consideration. (Added to NRS by 2003, 2209)

The bottom line: If you are retired, have nothing better to do with your life, are willing to take the educational classes required of Community Managers, keep up to date with all of the new laws, and do all of this for free, go for it. As dedicated as I am to this industry, I sure won't and won't serve on a Board that does not have professionals serving as advisors and doing the behinds the scenes work so that the Board can do what they are supposed to do, which is to set the policy and the management company implements those policies.