

Understand your legal obligations as HOA board member

Is your association or management company next to face Nevada Real Estate Division at a commission hearing? Here are some of the allegations or violations that were heard by the commission:

Operating without the statutory required three-board members per Nevada Revised Statutes 116.31034 (1). This is a problem for many associations when homeowners do not want to serve on the board. No excuse from the commission.

Signing checks without the appropriate two signers on checks in violation of NRS 16.31153. How about failing to provide proof of an annual audit for three years, a violation of NRS 116.31144. Remember as directors of your association you have a fiduciary responsibility to your homeowners. Money and how it is spent is a big-ticket item.

Speaking about money, this violation is a big one for NRED, failure to adequately fund your reserve and maintain its budget in accordance with the reserve study per NRS 116.3115. Recently, there has been media attention where associations had significant increases in their assessments, much because of the major, major increases in their insurance policy and funding reserves because of shortages. Too many association boards do not want to raise their assessments because of the push-back from homeowners, consequently they fall behind in their reserve accounts.

Don't think that financial accounting is solely the responsibility of your management company. Failing to maintain current, accurate and properly documented financial records per Nevada Administrative Code 116.405(5)(8)(e)(g)(j) is a violation. NAC are the regulations in addition to NRS the state laws. Again, as a director, you have a fiduciary responsibility to make sure you are carefully reviewing your monthly financial reports. Some associations have a financial meeting with their

community manager prior to holding their board meeting to review the report where questions can be asked and verification of information. If you do hold such a meeting, make sure you have documented minutes. Record keeping is a requirement of NRS 116.31151 (1)(a). Your association must create, retain and/or maintain proper record-keeping. Another similar violation is failing to have proper recordkeeping and regularly transferring reserves per NAC 116.415.

Speaking of records, it's more than the financial ones. Failure to produce any or all of your meeting minutes or summaries of meetings is a violation of NRS 116.31083 (9)(c)(11). Remember under the law, an association shall maintain the meeting minutes until the association is terminated.

There are many times that a board needs to consult the appropriate professionals but do not because of cost. When things go wrong because decisions were made by the board for not consulting a professional is not only costly but is also a violation of NAC 116.405 (5)(8)(e)(g)(j).

As a director, you have the responsibility to exercise ordinary and reasonable care by establishing policies and procedures for the operations of your association. Besides hefty fines placed on the association and the individual board members, the commission can have you removed as a board member and can have you barred from serving as an association member in the State of Nevada for 10 years.

What does it boil down to? Get educated. There are too many monthly seminars held by the local Community Associations Institute chapter and by the division to help you understand your legal obligations. Many are held on the weekends. Contact Christina Snow at info@caineveda.org for the calendar of educational events or the NRED's website under community associations.

Don't be the next board invited to a commission party. You won't like it!

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