

Infighting splitting community into two segments

Q: I read your column every Sunday in the R-J, and am always impressed with your knowledge regarding homeowners associations, etc. We have a unique situation where I reside, and I am reaching out to you to see if you can point me in the right direction to find a resolution.

Our HOA consists of two clusters of homes separated by two blocks of large lots of land (horse property). The west side consists of 37 houses, and the east side has 59 houses for a total of 96 homes. For the past five years, the three board members were from the east-side neighborhood. An election was held last November, and a new president was elected from the west side.

Neighbors in the west side have been complaining about an equestrian fence outside of the complex, which has fallen into disrepair (missing rails, broken caps, etc.) for over four years, yet nothing had been done. There used to be a line item in the budget with respect to the fence, but it has disappeared for unknown reasons.

The two board members from the east side informed the new president that they will always vote against anything she votes for (seriously, one board member actually put that in writing). They (the east-side board members) have ignored west-side homeowners' requests for bids to fix the fence; have refused to review bids for landscapers (the current one had been operating under an expired contract); failed to pay bills on time, thus incurring late fees; and have changed property management companies four times in the past five years. The past board members also had a 30-year reserve study done, which triggered a \$20.86 "special assessment" that has been billed to all homeowners since January of 2024 with no end in sight.

The current property management company has advised that they are canceling the contract after only nine months because of the current infighting between the board members. Our new president has been going over all the contracts, billing, etc., and has raised some serious concerns.

My question is this: Can we, the homeowners in the west side, annex and/or separate ourselves from the east side? If so, how do we go about that? West-side homeowners are fed up and want no part of being lumped in with the east side. For years, the board worked harmoniously together for the best interests of both communities; however, for the past four years, it has become apparent that the current east-side board members are working solely for themselves and neglecting the needs of the west side. Elections are coming up in July, and the two east-side board members have indicated that they will run again for a board position and since they have the majority of the homeowners on their side, the chances of them being re-elected are good.

Any advice that you can give me would be greatly appreciated.

A: You will need the assistance of legal counsel to determine if the governing documents have a procedure that would allow a separation of the west-side homes from the east-side homes. In essence, where one association currently exists, there would be two associations. This is not a simple solution especially where the east side has more homes that could vote against the reorganization of the existing association.

There are procedures to terminate an association under Nevada Revised Statutes 116.2118 that an attorney would need to review to see if applicable to the current problem.

In addition to a legal solution, there would need for both “sides” to agree as to the financial separation of the common areas, if possible.

Obviously, this could be a costly, long-dragging process.

Now, a formal complaint can be made to Nevada Real Estate Division against the two obstinate board members, who appear to be violating various sections of NRS 116, such as NRS 116.3103, the powers of the board to act on behalf of the association. Under subsection 1, in the performance of their duties, the officers and members of the board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. Under NRS 116.3103 (1a) and (1b), board members are required to exercise the ordinary and reasonable care of officers and directors subject to the business-judgement rule and are subject to the conflict-of-interest rules governing the officers and directors of a nonprofit corporation.

Not paying bills on time or reviewing contracts would violate the east-side board members’ fiduciary responsibilities.

Under NRS 116.3107 (1), an association has the duty to provide for the

maintenance, repair and replacement of the common areas.

Not fixing the equestrian fence would be in violation of both sets of laws.

You should contact NRED.

Barbara Holland, CPM, CMCA, AMS and IREM chapter president-elect, is an author, educator and expert witness on real estate issues pertaining to management and brokerage. Questions may be sent to holland7440@gmail.com.