THE COMMUNITY ASSOCIATION & FAIR HOUSING

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The State of Nevada is leading the Nation in trying to protect the individual and the consumer by intervening when there are issues that arise within a common interest development. This includes all common interest communities whether a PUD (planned unit development), single family home association, a condo (condominium where the owners typically own just the air space within the units), a town home or a mixed use community where there is commercial property intermixed.

We are fortunate that our legislators were forward thinking enough to adopt, provide funding for, and implement an Ombudsman's Office within the Nevada Real Estate Division. This office was created to intervene when there are disputes among members and members of the Board or anyone else who violates NRS 116. Eldon Hardy, the second Ombudsman, had extensive mediation training and helped to resolve many of the problems with just one phone call. A form seeking intervention by the Ombudsman's office can be reached at: http://www.red.state.nv.us/forms/530.pdf

The Ombudsman has ongoing education for members of the Board. The classes have been held in Carson City, Incline Village, Reno, Laughlin, Mesquite, Pahrump and Las Vegas over the last few years. The funding for these educational seminars is sponsored by the $3.00 per door fee, which anyone who lives in a common interest community must pay annually just for this purpose. There are a few minor exceptions to this requirement, but a clear majority of the communities put this expense in their budget and pay it annually.

As there is currently no mandatory education required of these volunteer members of the Board, attendance is on a voluntary basis and many of the Board members do attend, but a majority of them do not. They feel that they volunteer enough of their personal time to their community association and are not going to take the time to get the education that they feel they don't need or already know. Many of the Board Members do not even understand that there are laws in the State that apply to their "volunteer" position and govern their community with what makes sense to them. The treat their community as any other nonprofit position that they may have held and don't understand that they are serving on a State of Nevada Corporation. They look at their community documents and pick and chose the parts that they wish to look at not realizing that they have a duty under the law to not only read all of their documents along with NRS Chapter 116, but also sign a document that states they individually have read them both and understood them to the best of their ability.

With the State of Nevada requirements to follow the law, free educational classes provided monthly to help education them to do their jobs correctly and owners bringing many of these issues to the Board Members, they are totally unaware of Federal or State

Fair Housing issues. Members of the Board will read their documents when they are challenged by an owner who has a disability, state that there is nothing that they can do, and ignore any requests for accommodation.

One of the most common violations is with parking in the community, particularly condominiums. When an owner comes to the association and requests accommodation, the association will stick by their parking policies, if they have them, and ignore any requests for consideration.

Many of the parking spots are in fact deeded to individual owners and the Board does not have ownership control over the parking spots. They do not search any further to see if any of the owners will "trade" spots to accommodate a person seeking accommodation or simply state that they have a policy in place and they can not make exceptions for anyone.

Our office has had to defend the actions of these uneducated members of the Board who have acted inappropriately and consider them lucky to get them off with substantial fines for inappropriate actions. Because of continued case law, our office continually instructs members of the Board, when they are foresighted enough to seek our advice, that they need to look into the matter, see if any accommodations can be made, and carefully document the actions that they took to try to accommodate the request.

Similarly, when an owner comes to the Board requesting help because another owner is using racial epithets against them or causing similar problems, many members of the Board feel that this is a neighbor vs. neighbor issue and they cannot get involved. Case law has also shown that common interest communities are starting to be treated by the courts as "mini-governments" who have a duty to investigate and see if any steps can be taken to help resolve the issue.

Nevada law, NRS 116.31183, has gone one step further to keep these same members of the Board from retaliating when owners are trying to stand up and defend their rights.

> **NRS116.31183** Retaliatory action prohibited. An executive board, a member of an executive board or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a units' owner because the unit's owners has:
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> 1. Complained in good faith about any alleged violation of any provisions of the chapter or the governing documents of the association; or
> 2. Requested in good faith to review the books, records or other papers of the association. (added to NRS by 2203, 2218)

Even having this provision in State law regarding State of Nevada issues, members of the Board continue to violate the laws and act inappropriately when they feel something is not "fair."

One of the other serious areas where the industry continues to see discrimination is when the association is approached to make modifications to the common area to accommodate a handicapped person.

Members of the Board will, in many cases, tell the requesting owner or resident that the property belongs to the association either in common ownership or as a Nevada Corporation and their hands are tied. They totally fail to take into consideration that there are Federal and State Laws that take precedence over their documents.

In one particular case in Las Vegas, the Board not only took this position, but ridiculed the sister of one of the handicapped residents when she addressed the Board during a meeting. They were also stupid enough to put this horrendous action in their minutes.

Many years ago the legal counsel for these common interest communities would tell their members of the Board, when approached, that if the documents or State law did not address an issue, they had no authority to get involved. This is not the case today. Because of case law and common sense, members of the Board MUST make a reasonable inquiry and accommodation if at all possible. Many owners within a community will cooperate to make switches in parking spots or work with the Association if they are approached and understand the facts. Not attempting to accommodate at all is not an option.

If an action is taken against the Association, the Plaintiff's law firm is the Federal Government with unlimited funds. Be reasonable and work with all of your residents, whether tenants or owners, to reasonably accommodate requests. Remember that the request does not need to be an outright demand for accommodation, but rather something that could almost possibly seem unreasonable on the face of the request. Careful consideration is advisable on any request regardless of how far fetched the request may be. This careful consideration could save your owners from a special assessment to fund the legal expenses required to defend the organization from a lawsuit.

Most members of the Board do not even think about Fair Housing issues when they make alterations to their club house, common area or individual units. Many of the older associations are in violation of current Fair Housing regulations. If alterations are being made, the improvements need to be brought up to current requirements.

If the Association is in construction defect litigation, the ADA issues need to be taken into consideration as they can be a huge part of any problems if the project was not completed in compliance. Make sure that the association gets these issues addressed with any other problem issues rather than having the Association members pay for alterations when reported for non compliance by an owner. This could be a huge special assessment that would burden the owners for some time.