



# Responsibilities of the Community Manager



## **NEVADA REAL ESTATE DIVISION**

*PRESENTED BY THE TRAINING OFFICER; OFFICE OF THE  
OMBUDSMAN FOR OWNERS IN COMMON-INTEREST  
COMMUNITIES AND CONDOMINIUM HOTELS PROGRAM*

# Disclaimer!

---

- ❑ Staff in the Ombudsman's Office is prohibited from providing legal advice. All materials produced and provided to the public are for informational purposes only and do **not** serve as legal advice.
- ❑ Should confusion arise requiring the interpretation and application of the law to your association's specific circumstances, a legal opinion from a qualified attorney may be necessary.
- ❑ Please review the course calendar, training request form, and presentations published on the training webpage to gain an understanding of additional opportunities for education and training. See our training webpage at [http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/).

# Introduction

---

The Office of the Ombudsman for CICCH regularly receives inquiries regarding the community manager/executive board relationship:

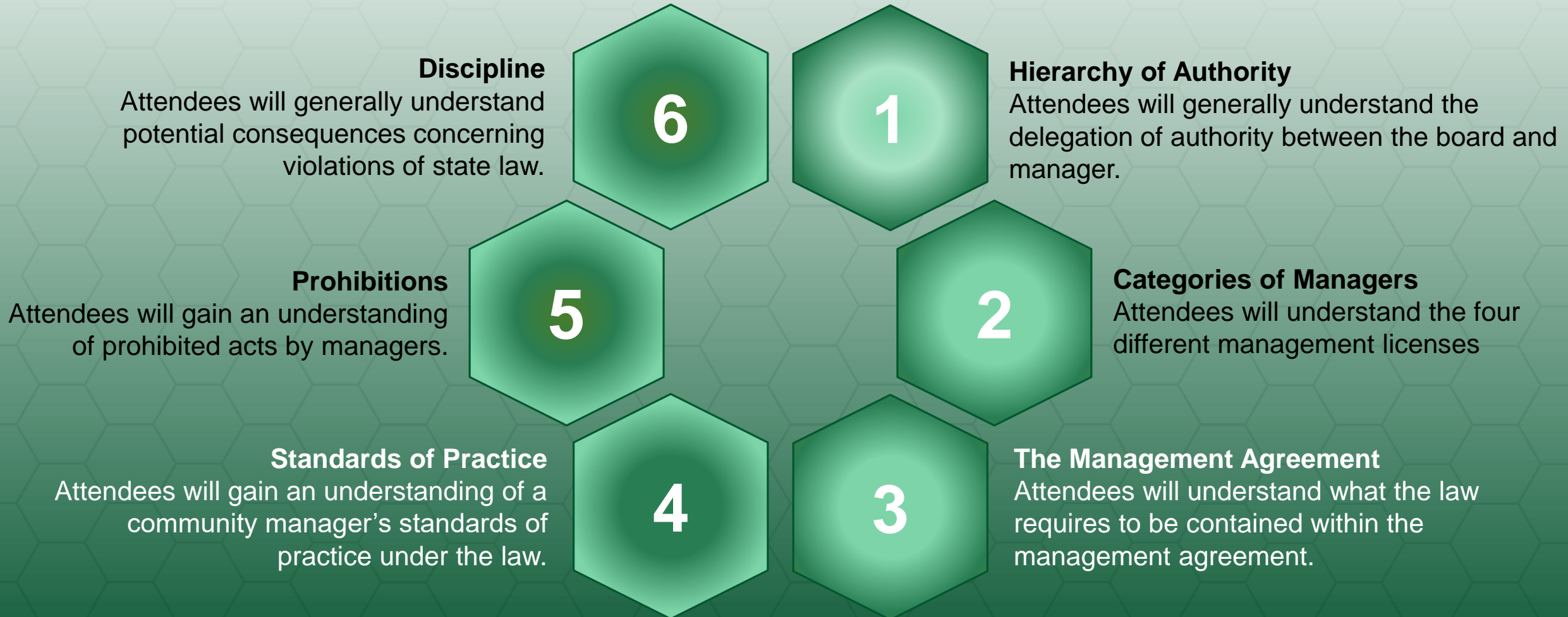
**Unit Owners** *typically ask who they should be referring their questions, concerns and complaints to.*

**Board Members** *typically ask who has the ultimate authority to make business decisions for the association.*

**Community Managers** *typically ask what they can do about an unruly, difficult board.*

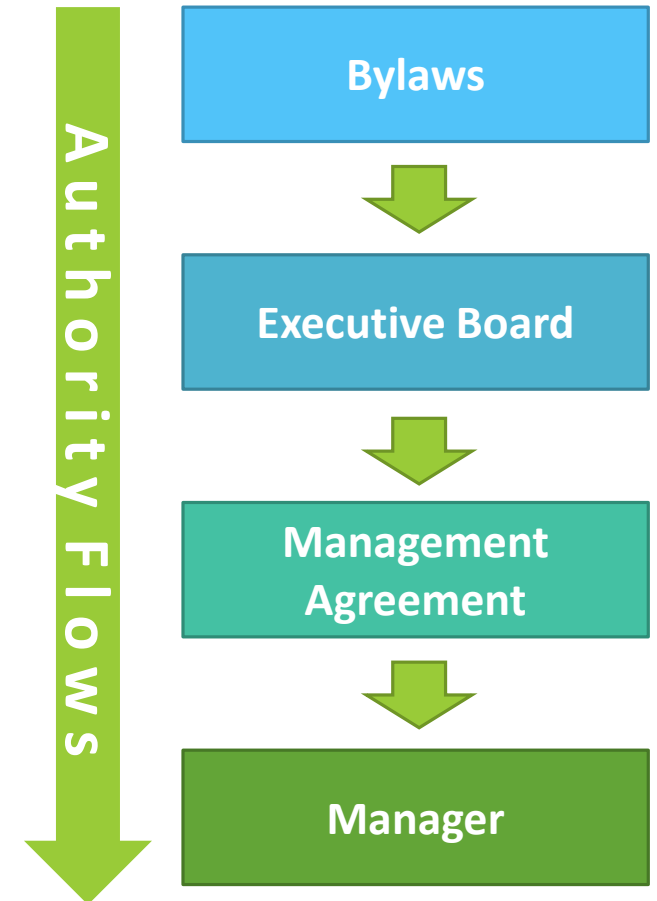


# Learning Objectives



# Delegation of Authority

- ❑ NRS 116 and NAC 116 allocate **all** decision making power within the association to the board of directors elected by unit owners to represent them.
- ❑ **If** the board hires a community manager pursuant to their governing documents, the bylaws of the association specify the powers that the board may delegate to a manager [NRS 116.3106(1)(d)].
- ❑ Manager **duties** are then expressly outlined in the **management agreement**, which must be entered into and signed by the client (executive board) and manager or management company prior to work being commenced [NAC 116A.325].





# The Board's Authority

*NRS 116.3102*

---

- Adopt and amend rules and regulations;
- Hold meetings and elections accordingly;
- Adopt and amend budgets [NRS 116.31151];
- Collect assessments for common expenses;
- Invest funds of the association and maintain records [NRS 116.311395];
- Hire and discharge managing agents and independent contractors;
- Institute, defend or intervene in litigation affecting the common-interest community;
- Make contracts and incur liabilities;
- Regulate the use, maintenance, repair, replacement and modification of common elements;
- Impose charges for late payment of assessments [NRS 116.3115];
- Impose reasonable fines for violations of the governing documents [\$100 cap].



# A Manager's Authority

---

- ❑ To carry out any duties listed in the **management agreement** which **MAY** include to:
  - Enter the grounds [exterior] of a vacant unit, after notice and hearing are provided, to cure a potential health and safety violation [NRS 116.310312];
  - Act on behalf of the association and attempt to collect a past due obligation from a unit owner [NRS 116.310313];
  - Develop written collection policies, approved by the executive board, and provide timely updates and reports as necessary [NRS 116A.630];
  - Post an opinion on an official publication [website, newsletter, bulletin board] concerning an issue of official interest to the association, provide notices to unit owners, and conduct elections [NRS 116.31035];
  - Receive petitions from unit owners to either recall a member of the board or call a special meeting [NRS 116.31036 & NRS 116.3108];
  - Obtain qualified bids for any capital improvement project [NRS 116A.630];
  - Make available the books, records and other papers of the association for review;
  - Deposit or invest all funds of the association in an appropriate financial institution [NRS 116.311395].
  - Withdraw money from the **operating** account of the association for day-to-day services and utilities [NRS 116.31153].

# Types of Employees & Managers

Unlicensed Individual	Temporary Community Manager	Provisional Community Manager	Community Manager	Supervising Community Manager
These are individuals who typically support the manager in an administrative capacity, usually their assistant.	A temporary certificate is issued to an experienced manager with a clean record, perhaps from another state. Expires after 1 year.	An individual who has fulfilled educational requirements for certification but has not fulfilled the experience requirements.	A person who holds a certificate or temporary certificate and who has met the educational and experience requirements.	A community manager who is responsible for the supervision of one or more provisional or community managers.



# Educational Requirements

*NAC 116A.120*

---

- An applicant for a certificate who does not hold a temporary certificate must successfully complete at least **60 hours of instruction** in courses in the **management of a CIC** that have been approved by the **CICCH Commission**.
  - **20 hours** must relate to federal, state and local laws applicable to the management of a CIC. At least 2 relating to federal laws applicable to CICs including the Americans with Disabilities Act, Fair Housing Act, Fair Housing Amendments Act, and Fair Debt Collection Practices.
  - **18 hours** must relate to NRS 116 & 116A and NAC 116.
  - **40 cumulative hours** in the following subjects: legal basics & governing documents; management of facilities and use of experts; accounting; contracts; parliamentary procedures; human resource management; inspection and planning; risk management; insurance; government regulations affecting a CIC including zoning and planning; Nevada Fair Housing Law; NRS 118A (landlord & tenant); real estate disclosures; constructional defects; alternative dispute resolution (ADR); corporate law; industrial insurance; health and safety; and business ethics.

# Types of Community Employees/Managers

---

- **Bulletin #17** – Activities an unlicensed employee may perform:
  - Basic administrative work like creating agendas, recording minutes, mailings, letters, providing resale packages, forms, etc.
  
- Informational bulletins are located at:  
[http://red.nv.gov/Content/Publications/Informational\\_Bulletins](http://red.nv.gov/Content/Publications/Informational_Bulletins)
  
- **NAC 116.065** A “Provisional community manager” has fulfilled the educational requirements for certification [60 hours of instruction – followed by a national exam], but has not yet fulfilled the experience requirements [2 years performing the tasks of a community manager under the supervision of a supervising manager].



# Supervising Community Manager

NAC 116A.165

---

***A supervising community manager is qualified to act as a supervising manager if he or she:***

- Submits the appropriate application to the Division;
- Has been actively and recently engaged in the full-time management of a CIC for at least 4 years, 2 of which were in this State; and
- Is in good standing with an active certificate or permit.

***A supervising community manager is responsible for:***

- Supervising one or more managers or provisional managers;
- Teaching the fundamentals of managing a CIC and the ethics of the profession;
- Supervising the activities and operation of CICs;
- Establishing policies, rules, procedures and systems necessary for supervision;
- Establishing safeguards for the filing, storage, handling and maintenance of client documents; and
- Establishing safeguards for the handling of client money.

# Knowledge Check

---

1. Who has the authority to make decisions on behalf of the association, the board or the manager?
2. Where can you find the duties that an unlicensed individual may perform for a CIC?
3. Where can a unit owner find the duties a community manager owes to an association?
4. How many different types of management certificates are there?
5. At minimum, how many years does it take for a provisional community manager to become a community manager?

# Before the Management Agreement

*NRS 116A.610*

---

- **BEFORE** entering into a management agreement, a community manager shall disclose, **in writing**, to the prospective client:
  - Whether the community manager, or any member of his or her organization, expects to receive any direct or indirect compensation, gifts or profits from any person who will perform services for the client and, if so, the identity of the person and the nature of the services rendered.
  - Any affiliation with any person or business who furnishes any goods or services to the client.
  - Any monetary relationships with any unit owner, member of the executive board or officer of the association.



# Management Agreement

NRS 116A.620



## ***Any management agreement MUST:***

- Be in **writing and be signed by all parties;**
- Be entered into by the association and the community manager or the community manager's employer;
- State the term of the agreement;
- Include the basic consideration for the services to be provided and the payment schedule;
- State any spending limits of the community manager;
- State the identity and the legal status of the contracting parties;

# Management Agreement, Continued

NRS 116A.620

---

***Any management agreement must:***

- Include a complete schedule of all fees, costs, expenses and charges to be imposed by the community manager including:
  - Start-up costs;
  - Fees for services, such as the mailing of collection letters, the recording of liens and foreclosing of property;
  - Fees for setting up the account of a new member [sale of a unit].
  - Portions of fees that the association and the community manager retain.
  
- State any limitations on the liability of each contracting party;
- Include a statement of the scope of work of the community manager;
- Include provisions relating to the grounds and procedures for termination of the community manager;

# Management Agreement, Continued

*NRS 116A.620*

---

## ***Any management agreement must:***

- Identify the types and amounts of insurance coverage to be carried by each contracting party, including, without limitation:
  - A requirement that the community manager or his or her employer shall maintain insurance covering liability for errors or omissions, professional liability, or a surety bond to compensate for losses in an amount of \$1,000,000 or more;
- Include provisions for dispute resolution;
- Acknowledge that all records and books of the client are the property of the client, except any proprietary information and software belonging to the manager;
- State the physical location, including the street address, of the records of the client, which must be within 60 miles of the community;
- State the extent, if any, of the authority of the community manager to sign checks on behalf of the client from an *operating account*.

# Changes to Management Agreement

*NRS 116A.620(5)*

---

- ❑ Any changes to a management agreement must be initialed by the contracting parties.
- ❑ If there are any changes after the execution of a management agreement, those changes must be in writing and signed by the contracting parties.



# After the Agreement

---

- ❑ After signing the agreement, the community manager shall provide a copy to each member of the executive board.
- ❑ The community manager shall provide a new board member with a copy of the management agreement within **30 days** after his or her election or appointment [NRS 116A.620(4)].
- ❑ Not later than **10 days** after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance, including:
  - 1) The names and addresses of all insurance companies;
  - 2) The total amount of coverage; and
  - 3) The amount of any deductible.
- ❑ While the management agreement may allow for a month to month continuation following the end of the term, it may not contain an automatic renewal provision.



# Terminating the Agreement

*NRS 116A.620*

- ❑ **Notwithstanding** any provision in a management agreement to the contrary, a management agreement may be terminated by the client, without penalty, **upon 30 days'** notice following a violation by the community manager of any provision of NRS or NAC 116.
- ❑ Except as otherwise provided in the management agreement, the community manager shall, within 30 days after termination, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client, regardless of any unpaid fees or charges.



# Knowledge Check

---

1. How long does the community manager have to provide the management agreement to a board member after their election or appointment?
2. How much notice does the board have to terminate the management agreement following a violation of NRS 116?
3. Does the manager have to maintain their own insurance?
4. How long does the manager have to provide proof of insurance to each member of the executive board after the effective date of the new agreement?
5. Changes to a management agreement after its execution must be in \_\_\_\_\_ and \_\_\_\_\_ by the contracting parties.

# Fiduciary Duty

NRS 116A.630

---



A community manager **shall:**

- ❑ Act as a fiduciary in any client relationship and exercise ordinary and reasonable care in the performance of his or her duties, at all times.
- ❑ Comply with all applicable federal, state and local laws, regulations and ordinances, as well as lawful provisions of the governing documents of each client.
- ❑ Keep informed of new developments in the management of a CIC through continuing education, including new developments in law, insurance coverage and accounting principles.
- ❑ Advise a client to obtain advice from an independent expert relating to matters that are beyond their expertise.
- ❑ Under the direction of a client, uniformly enforce the provisions of the governing documents of the association.
- ❑ Comply with the directions of a client, unless the directions conflict with the governing documents or applicable laws, at which point a written recommendation to become compliant should be sent.

# A Community Manager Shall NOT

*NRS 116A.640*

---

- Perform the duties of a community manager without such a certificate.
- Except as required by law or court order, disclose confidential information relating to a client.
- Impede or otherwise interfere with an investigation of the Division.
- Commingle money or property of a client with that of another client or use it for personal use.
- Be a signer on a withdrawal from a reserve account.
- Provide or attempt to provide any service for which the community manager is not properly licensed (i.e. legal advice).
- Intentionally apply a payment of an assessment from a unit owner towards any fine, fee or other charge that is due, or refuse to accept the payment because there is an outstanding payment due.
- Collect any fees or other charges from a client not specified in the management agreement.
- Accept any compensation, gift or any other item of material value as payment or consideration for a referral unless the client consents, in writing.
- Refuse to accept a unit owner's payment of any assessment, fine, fee or other charge.

# Manager & Finances

NRS 116A.630



A community manager ***shall*** at all times ensure that:

- The financial transactions of a client are current, accurate and properly documented.
- There are established policies and procedures designed to provide reasonable assurances in the reliability of the financial reporting including:
  - 1) The proper maintenance of accounting records;
  - 2) Documentation of the authorization for any purchases, expenditures or disbursements;
  - 3) Verification of the integrity of the data used in business decisions;
  - 4) Facilitation of fraud detection and prevention; and
  - 5) Compliance with all applicable laws and regulations governing financial records.
- Financial statements or audits are prepared by an independent certified public accountant (CPA) when necessary.
- The financial records of an association are made available to unit owners upon written request.
- Various funds are maintained in separate accounts.



# Board Members & Managers

NRS 116.31034(10)

---

A person ***may not be a candidate for or member of the executive board or an officer of the association*** if:

- The person, the person's spouse or the person's parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

A person ***may not be a candidate for or member of the executive board of a master association or an officer of that master association*** if the person, the person's spouse or the person's parent or child, by blood, marriage or adoption, performs the duties of a community manager for:

- That master association; or
- Any association that is subject to the governing documents of that master association.

# Forms to the Division

---

Oftentimes, the Manager is assigned the duty of submitting required forms to both the Division and Secretary of State in a timely manner.

Examples:

- Annual Association Registration form / 562 with fee.
- Reserve Study Summary form / 609.
- Registration Filing Addendum / 623.



# Ethics

---

***Neither*** a member of the board nor a community manager:

- Can take or encourage another person to take any retaliatory action against a unit owner because he or she complained or requested to review records [NRS 116.31183].
- Can receive, directly or indirectly, any compensation or promise thereof, upon an agreement or understanding that his or her action will be influenced thereby (category D felony) [NRS 116.31189].
- Shall enter into a contract to provide goods or services to the association for compensation [NRS 116B.700].
  - Does not prohibit a community manager from being paid compensation under the terms of a contract for providing management duties.
- Shall not accept, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value which exceeds \$500 per year [NAC 116.482], not to exceed \$100 per entity [NRS 116.31185].
- A community manager shall not solicit or accept any form of compensation that is based, in whole or in part, on the number or amount of fines imposed for violations [NRS 116.31185].

# Executive Session

NRS 116.31085(3)(b)

---

- ❑ An executive board may **NOT** meet in executive session to ***enter into***, renew, modify, ***terminate*** or take any other action regarding a contract.
- ❑ An executive board ***will*** meet in executive session to ***discuss*** the character, alleged misconduct, professional competence, or physical or mental health of a community manager.

# Civil Action

*NRS 116.4117*

---

If the community manager fails to comply with any provisions of NRS 116 or the declaration, any person suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

Such an action may be brought against a community manager:

- By the association; or
- By a class of units' owners constituting at least **10%** of the total number of voting members of the association.

# Knowledge Check

---

1. Managers have a \_\_\_\_\_ duty to their client.
2. A community manager shall always ensure that the financial transactions of a client are \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.
3. A community manager shall ensure that various funds are maintained in \_\_\_\_\_.
4. The executive board SHALL NOT meet in \_\_\_\_\_ to take any action regarding the management agreement.
5. A community manager shall not accept any compensation that is based on a \_\_\_\_\_ for a violation of the association's \_\_\_\_\_.



# Disciplining Managers

*NAC 116A.355*

---

A community manager is subject to disciplinary action by the Division if he or she commits any of the following:

- 1) **Unprofessional conduct** (violates: an order of the Commission, an agreement with the Division, NRS or NAC 116 or 116A; fails to disclose important information to the client; knowingly communicates false, misleading or fraudulent information to the client; makes a false statement of material fact on the application for the certificate, temporary certificate or permit; fails to produce any association document, book or record after request; exceeds the authority granted to him or her by the client);
- 2) **Professional incompetence** (demonstrates a significant lack of ability, knowledge or fitness to perform duties or fails to exercise reasonable skill and care);
- 3) **Negligence**;
- 4) **A felony or any offense involving moral turpitude.**

# Acts by the Commission Against a Manager

*NRS 116A.360*

---

If the Commission finds that grounds for disciplinary action against a community manager exists, it may take one or more of the following actions:

- Revoke or suspend the manager's certificate for at least 1 year;
- Impose a fine of not more than \$5,000 for each violation;
- Refuse to renew or reinstate the certificate, especially if a fine has not been paid [NRS 116A.400];
- Place the community manager on probation;
- Issue a reprimand or censure for public record;
- Require the manager to pay the restitution for the costs of investigation and hearing;
- Require the manager to obtain additional education.

# Acts by the Commission Against a Board Member

NRS 116.790



Unless a board member has ***knowingly and willfully committed a violation***, the association is liable for all fines and costs incurred.

If the Commission finds that the executive board has committed a violation, it may:

- Order an audit of the association
- Order the members removed from office or position
- Require the executive board to hire a certified community manager
- Apply to the court for appointment of a receiver if any of the following violations occurred **[receivership is governed by NRS 32]**:
  - Fraud, collusion or gross mismanagement;
  - Intentional wrongdoing; or
  - Assets of the association put in danger of foreclosure, loss through litigation, or otherwise.

# Statute of Limitations for Discipline

*NRS 116.750(2)*

---



The Commission has jurisdiction to take appropriate action against any person who commits a violation, including any officer, employee or agent of an association or any member of an executive board who currently holds the position or:

- Who held the office, employment, agency or position at the commencement of proceedings against him or her [despite resignation]; or
- Within 1 year after the violation is discovered or reasonably should have been discovered.

There is no statute of limitations to file a complaint against a community manager using Statement of Fact form 514a.

# Allegations/Stipulations of the Commission - Examples

Respondents agree not to serve as a board member or officer of any common-interest community located in the State of Nevada for a period of no less than 10 years from the date of the Order and agree to pay an administrative fine in the amount of \$250 to the Division no later than 30 days from the date of the Order.

Community manager shall pay an administrative fine to the Division in the amount of \$11,516.17 [\$10,000 for violations of law and \$1,516.17 for the Division's attorney's fees and costs].

Community manager certificate revoked for a period of no less than 10 years from the date of the Order, but in no event sooner than the administrative fine of \$15,595.72 [\$13,000 for violations of law and \$2,595.72 for the Division's attorney's fees and costs] is paid to the Division.

Three of the respondents shall be removed from the board and shall not serve as a board member or officer of any common-interest community located in the State of Nevada for a period of no less than 10 years from the date of the Order. The two remaining respondents are to appoint a third board member as soon as possible, hire a community manager, hold an election as soon as possible, and cause audits or reviews to be performed pursuant to NRS 116.31144.



# Record of Complaints Against Community Managers

Find a manager [not a company] by logging into <https://red.prod.secure.nv.gov/Lookup/LicenseLookup.aspx>

The Division shall maintain [NRS 116A.260]:

- All commission rulings or decisions of all complaints filed;
- Any denials of applications.

The Division may refuse to make public, unless ordered to do so by a court [NAC 116.500]:

- 1) Examination scores;
- 2) Files compiled by the Division while investigating possible violations;
- 3) The criminal and financial records of community managers;
- 4) Home addresses and personal telephone numbers.



# Final Knowledge Check

---

1. A community manager is subject to discipline should they commit any of the following:  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, or a  
\_\_\_\_\_.
2. What kind of discipline may the Commission for CICCH impose against a community manager?
3. What kind of offense is bribery considered under NRS 116?
4. Are records of complaints against a community manager available to the public?
5. What records may the Division refuse to make public concerning a community manager?

# Conclusion

---

Board members are volunteers and may not always have the time necessary to carry out all of the responsibilities assigned to them. As such, they often choose to hire professional community managers to assist them with the running of the association.

While a manager should provide guidance and information to the board, board members have the ultimate authority to make decisions for the association.

A community manager should:

- Acquire pertinent facts from verifiable/licensed resources before providing any advice to the board;
- Fully understand and comply with the governing documents, policies and procedures of the association;
- Always act in the best interest of the association;
- Keep the board informed and educated regarding the law;
- Perform duties only when authorized to do so by the board or management agreement.

# Questions?

---

<http://red.nv.gov> – Main Page

[CICOmbudsman@red.nv.gov](mailto:CICOmbudsman@red.nv.gov) – Email Questions

[http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/)