

Certified Mail - Return Receipt Requested

Date: March 11, 2019

To: Somerset Owners Association Board Members

Tracy Carter, FirstService Residential General Manager
7650 Town Square Way
Reno, NV 89523

Subject: Alleged Violation of NRS 116.3103, NRS 116.31031, NRS 116.31084 & NRS 116.31085

BOARD ACTION(S) OF CONCERN

In the Somerset Owners Association (SOA) Board of Directors meeting on Wednesday, January 23, 2019 agenda item #6(b) the board of directors voted to accept and put into place a new charter for the Community Standards Committee (CSC). The new charter can be found on pages 103 & 104 of the Wednesday, January 23, 2019 board packet.

Also in the Wednesday, January 23, 2019 board of directors meeting, the board voted on agenda item #7A, the members of the Community Standards Committee. The following CSC members were approved by the board of directors;

Anna Koelewyn, Homeowner Representative

Tiffany Roland, Homeowner Representative

Danielle Kirby, Homeowner Representative

Parry Theriot, Homeowner Representative

Terril Retter, Board Liaison

Thomas Fitzgerald, Board Liaison.

These committee members are listed on page 110 of the Wednesday, January 23, 2019 board of directors meeting agenda.

On Wednesday, February 27, 2019 the SOA Board of Directors met, and as part of that meeting they approved the minutes of the Wednesday, January 23, 2019 Board of Directors meeting without any changes to the meeting minutes. Referring to page 5 of the Wednesday, February 27, 2019 board packet, the charter for the CSC, item 6b in the Wednesday January 23, 2019 meeting, was approved by a unanimous vote. Similarly on page 5 of this document it shows that the CSC members were all voted into place. The vote was four board members approving the committee members and board member Jason Roland abstaining from the vote.

NOTE: Board member Jason Roland is the spouse of CSC member Tiffany Roland. Additionally, I attended the Wednesday, January 23, 2019 Board of Directors meeting and I heard the voice vote of SOA BOD on this issue and there was no abstention by Mr. Roland at that time. The SOA home owners have a right and the SOA BOD has an obligation to open board meetings. Secret changes at some point in time after the meeting are unacceptable. A review of the audio recording of this BOD meeting will verify my assertion.

NRS 116.3103 states in part the following;

NRS 116.3103 Power of executive board to act on behalf of association; members and officers are fiduciaries; duty of care; application of business-judgment rule and conflict of interest rules; limitations on power.

1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board acts on behalf of the association. In the performance of their duties, the officers and members of the executive 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. Officers and members of the executive board:

(a) Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule; and

(b) Are subject to conflict of interest rules governing the officers and directors of a nonprofit corporation organized under the law of this State.

NRS 116.31031(8) states the following;

8. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on alleged violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

NRS 116.31034(10)(a)(1) states the following;

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

(1) The person resides in a unit with, is married to, is domestic partners with, or is related by blood, adoption or marriage within the third degree of consanguinity or affinity to another person who is also a member of the executive board or is an officer of the association;

NRS 116.31085(4)(b) states the following;

(b) Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel;

The above listed section of Nevada Revised Statute 116 represent multiple protections for the three-thousand plus members of the Somerset Owners Association. The Community Standards Committee Charter, and approved committee members represent violations of the basic Somerset Homeowner rights to fair and impartial hearings, as well as protections from the unnecessary sharing of collected homeowner information. In short, the current Community Standards Committee members along with the current committee charter represent multiple violations of the “*due process*” clause in NRS 116.31085(4)(b) as well as violation of the other NRS sections listed above.

COMPLAINT/VIOLATIONS

In essence NRS 116.31031(8) says that the Community Standards Committee can only conduct hearings and impose fines. It specifically says that committee can only act for the board under these “limited purposes.”

The following is directly from the newly enacted Community Standards Committee Charter;

Purpose

The purpose of the Community Standards Committee (CSC) is to monitor governing document violations and assess fines in accordance with the approved Compliance policy of the Association.

This statement is overly broad and allows the Community Standards Committee to collect notices of violations issued to Somerset Owners Association homeowners. A practice that has been in place since at least March of 2016. However, this collecting of homeowner notices of violation by the CSC, or even advising the CSC of these violations is clearly outside of the authority allowed to the Community Standards Committee under NRS 116.31031(8). And, the collection/advisal of the CSC of the notices of violation represents a direction violation of NRS 116.31085(4)(b). Specifically, a basic due process tenant is judging each incident on its own merits. No past or future violation notices should ever be part of the CSC deliberation process.

The following statement is taken from the “**RESPONSIBILITIES**” section of the newly enacted Community Standards Committee Charter;

“The CSC makes recommendations to the Board for fine removals from accounts as well as provide Information on actions if a homeowner chooses to appeal any decisions to the Board of Directors.”

This represents a direct violation of the “due process” clause of NRS 116.31085(4)(b) as well as the required board actions for the betterment of the community under NRS 116.3103. The Somerset Owners Association board has a responsibility to all of the homeowners to guarantee that any appeal to the board will receive a fair and unbiased hearing. This cannot occur if the CSC is making a recommendation to the board on a homeowner hearing in front of the board of directors.

The right to “due process” and a fair hearing is further complicated by the current membership of the Community Standards Committee. Specifically, Community Standards Committee member Tiffany Roland is the spouse of Somerset Board

Member Jason Roland. This J. Roland is voting on decisions made by his spouse T. Roland and this is a direct violation of NRS 116.3103 regarding the responsibility of board members to act with respect to the “business-judgement” rule as well as a conflict as noted in subsection (b) of NRS 116.3103. Furthermore, the Community Standards Committee charter is silent on the voting authority of one or both of the SOA board member liaisons.

Consider the following, under the current CSC charter and membership you could have a situation where there are three voting members present and a board member liaison. This would meet the quorum requirements of the charter. Presume Ms. Roland is one of the committee members and a SOA homeowner is found to be in violation of a rule and is fined by the CSC. The homeowner appeals to the BOD. Under current procedures, both the CSC board member liaison and Jason Roland, CSC member Tiffany Roland’s spouse, would be voting on the homeowner appeal. However, both have prior knowledge, information and decision information on this homeowner appeal. Consider the case where only four SOA Board Members are in attendance at the executive session meeting. If Mr. Roland and the CSC board member liaison abstain or recuse themselves from the vote there is not a majority vote available and the homeowner has not received their due process rights.

Another significant issue associated with spousal relationship of CSC member Tiffany Roland and SOA board member Jason Roland, NRS 116.31031(8) specifically states;

“committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.”

NRS 116.31034(10)(a)(1) specifically prohibits a married couple from both being members of the executive board. Since NRS 116.31031(8) requires all of the Somerset Community Standards Committee members to follow all of the duties and requirements of the executive board and a married couple cannot be on the board. Therefore, either CSC member Tiffany Roland, or SOA board member Jason Roland must resign in order for the Somerset Owners Association to be compliant with NRS 116 and SOA homeowners to be afforded their rights under NRS 116.

DAMAGES

Homeowners in the Somerset Owners Association are not being given their most basic due process rights. Specifically, based on the current charter and committee membership, homeowners cannot receive a fair, unbiased appeal, or board of directors review of the CSC decisions. The Nevada Revised Statute 116 has specific sections that would eliminate the due process rights violations that currently exist with the CSC charter and CSC committee membership. However, for reasons unknown at this time, the Somerset Owners Association is choosing to ignore the applicable NRS 116 sections listed in this document and the violations of these NRS 116 sections covered above.

NOTE: During my tenure as a Somerset Owners Association board member during the 2018 calendar year, I brought up the violations covered in this document multiple times, both verbally and in writing. However, my concerns were not addressed.

Furthermore, SOA homeowners have the right to have *ALL* board members acting and making decision for the good of the community in accordance with NRS 116.3103. This is currently not the situation given the recently approved CSC charter and membership.

ISSUES AND CORRECTIVE ACTION

The current Community Standards Committee Charter represents a direct violation of the NRS 116 section that sets the requirements for a Community Standards Committee. Furthermore, the charter is vague and unworkable and as such it represents a direct violation of the due process rights afforded to all Somerset Homeowners. Community Standards Committee member Tiffany Roland is the spouse of Somerset Owners Association Board Member Jason Roland. This represents a direction violation of multiple NRS 116 sections including but not limited to conflict of interest and the violation of homeowner due process rights.

Given the total number of issues and violations associated with the Community Standards Committee Charter and its current members, the only action capable of meeting homeowner rights established in NRS 116 is the complete disbanding of the Community Standards Committee.

HOMEOWNER REQUEST

NRS 116.31087 requires that at my request this matter be placed on the next Somerset Owners Association board meeting. If the SOA management and board do not remedy the violations and issues associated with the this complaint prior to the next Somerset Owners Association board meeting, then I am requesting that this matter be placed on the agenda of the next open SOA BOD meeting.

Respectfully Submitted,

Steven M. Guderian
Somerset Owners Association Homeowner
1385 Del Webb Parkway West
Reno, NV 89523

ADDENDUM

Date: March 18, 2019

To: Somerset Owners Association Board Members

Tracy Carter, FirstService Residential General Manager
7650 Town Square Way
Reno, NV 89523

Subject: Alleged Violation of NRS 116.3103, NRS 116.31031, NRS 116.31084 &
NRS 116.31085

ADDENDUM ITEM

This letter, sent via email, will serve as a correction to my original notice to the Somerset Board of Directors of NRS violations dated March 11, 2019.

The "NOTE" at the top of page 2 of my March 11, 2019 letter talks about Board Member Jason Roland not abstaining from the vote for the CSC committee members. This is an error. I have listen to the audio recording for the Wednesday, January 23, 2019 SOA Board Meeting and Mr. Roland clearly abstained from the vote.

Please allow this addendum to stand as a correction to this one part in my original letter delivered by certified mail.

Respectfully Submitted,

Steven M. Guderian
Somerset Owners Association Homeowner
1385 Del Webb Parkway West
Reno, NV 89523