



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
ADVISORY OPINION

Subject: Notices prior to an association's foreclosure proceeding	Advisory No. 14-02-116	2 pages
	Issued By: Real Estate Division	
	Amends/ Supersedes	N/A
Reference(s): NRS 116.31162(4)	Effective Date: June 30, 2014	

QUESTION:

Can a community manager who is not a licensed collection agency issue the notices required by NRS 116.31162(4) (added by Senate Bill 280 (2013)) as prerequisite procedures to the foreclosure process?

SHORT ANSWER:

Yes. The activity of a community manager to perform an association's obligations under NRS 116.31162(4) is not an "act associated with the foreclosure of a lien" and would not fall within the definition of "collection agency" in NRS 649.020(3)(a).

ANALYSIS OF THE ISSUE:

Senate Bill 280 passed in the 2013 Legislative Session and provided an amendment to NRS 116.31162(4) whereby the following language was added:

An association may not mail to a unit's owner or his or her successor in interest a letter of its intent to mail a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail the notice of delinquent assessment or take any other action to collect a past due obligation from a unit's owner or his or her successor in interest unless, not earlier than 60 days after the obligation becomes past due, the association mails to the address on file for the unit's owner:

- (a) A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;
- (b) A proposed repayment plan; and
- (c) A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing.

Subsection 4 requires an association to take certain action before it can start the foreclosure process detailed in subsection 1 of NRS 116.31162. The actions the association must take could obviate the need to initiate foreclosure proceedings. With the new language in NRS 116.31162(4) an issue arose about how NRS 649.020 applies.

NRS 649.020 defines “collection agency,” and subsection 3 specifically includes a community manager performing or offering “to perform any act associated with the foreclosure of a lien pursuant to NRS 116.31162 to 116.31168.”

The association’s foreclosure process is detailed in NRS 116.31162 to 116.31168. The process starts with the mailing of a notice of delinquent assessment detailed in NRS 116.31162(1)(a). Based on NRS 649.020(3), a community manager may not mail the notice of delinquent assessment unless he/she is also licensed under NRS 649 as a collection agency.

Subsection 4 of NRS 116.31162 provides that before taking any action permitted by subsection 1(a), the association must take other action. As quoted above, these actions are not in furtherance of the foreclose process. The association must send a schedule of the fees that may be charged to the unit owner if the past due obligation is not paid. The association must offer a repayment plan and provide notice to the owner of their right to a hearing before the board if they contest the past due obligation. None of these actions are “associated with the foreclosure of a lien,” so they fall outside the definition of collection agency in NRS 649.020(3).

This analysis is consistent with having a procedure in place prior to foreclosure that adds additional notice to homeowners that their account is past due. The procedures look to avoid the necessity to proceed to foreclosure. For example, if an owner decides to accept a repayment plan, no foreclosure process would be necessary. Allowing an owner the right to a hearing if they contest the past due obligation would avoid an owner who has actually paid their assessments from being transferred to collections when there was just an accounting error. The provisions of NRS 116.31162(4) are intended to avoid the foreclosure process. As such it would not make sense to force an association to use a collection agency to issue those notices.

ADVISORY CONCLUSION:

Associations must comply with NRS 116.31162(4) prior to initiating any foreclosure proceeding. The actions required by subsection 4 are not part of the foreclosure process and do not have to be performed by a collection agency. Community managers may assist associations in complying with NRS 116.31162(4) without being licensed under NRS 649.