

Failure to observe proper terminology could land you in Court

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I recently had the opportunity to represent a community manager that had the misfortune of finding himself in a misdemeanor trial before a Magistrate Judge, all because of the legal difference between a community manager versus a property manager. Our firm was retained just days before the trial and *after* the community manager had already been found guilty on a similar offense a few months before. All of this could have been avoided if everybody involved had understood, and utilized, proper terminology.

The code enforcement officer for the city (the exact city in Nevada will not be disclosed) had observed that a retaining wall for this particular association appeared to be in violation of the city's ordinances, both in design and structural soundness. Further, branches from the trees were obstructing a corner stop sign. Thus, multiple citations were issued for these violations, all against the association's manager indicating the person was the "property manager" of this particular association. Although the manager felt that he should not be personally responsible or cited in his individual name, at the first appearance he acknowledged that he was the property manager for this property but plead not guilty to the offenses. The Judge set the matters for trial, which in turn prompted the engagement of our firm.

Under Nevada law there is a clear distinction between a "community manager" and a "property manager". Community managers are regulated under chapter 116¹ of the Nevada Revised Statutes whereas property managers are regulated under chapter 645. The Legislature has, through the statutes, created very specific requirements that must be met before anybody can perform as either. A property manager must first be licensed as a real estate broker, broker-salesman, or salesman.² That person must then successfully complete a specific course in property management.³ Further, to be a designated property manager, more requirements must be met.⁴ Likewise, those who can act as community managers are also specifically regulated and must meet specific qualifications. That person must obtain a permit or a certificate prior to such work from the Nevada Real Estate Division and comply with their regulations for practice.⁵ Eventually, all community managers will be required to obtain the certificate to practice.

Unfortunately for this particular community manager, the persons involved in this case did not understand this difference. The enforcement officer who issued the citations against the manager as the "property manager" to the city attorney assigned to the trial and, even the Judge himself. Even more unfortunate was the fact that this particular manager had the bad habit of also referring to himself as a property manager. The distinction, as far as these citations were involved was who has control of the property. The ordinances in question allow for either the owner or the "person in control" to be cited and held responsible for any violations.

A property manager must always have a written agreement with the owner.⁶ That agreement often provides that it is the duty of the property manager for the care and maintenance of the property and allows for the expenditure of the owner's money for such purposes. Normally then a property manager would be a proper person for the enforcement officer to issue a citation to.

A community manager does not have control over the property. Under chapter 116, except to the extent the declaration may provide otherwise, it is the association, and only the association, that has control over the common areas once control has been relinquished by the declarant.⁷ The manager's responsibility is to report to the board of directors and then follow its directives. Even if the manager himself felt that the wall was unsafe, the manager had no authority on his own to take any action. Further, the manager doesn't even have the authority to pay for any repair out of the association's funds as there must be at least two board member signatures on the checks for this type of expenditure.⁸

We have all heard the saying: "all's well that ends well." After the manager had reported these violations to the board, they authorized the necessary action to take care of the problems. At the time of trial I was able to explain to the city attorney and the Judge that the community manager was not a property manager and had no "control of the property" thus, the citations were dismissed. The case ended well for this manager but not without cost.

The moral of this experience is simple. Community managers, who still do this, must break themselves of the bad habit of referring to themselves as property managers. Otherwise, failure could lead to a result not anticipated - having the expense and hassle that go with being named as a defendant in court.

1. The Statutes of Nevada 2005 moves this section to Chapter 494. Thus, depending on publication date, the applicable chapter should be referred to.

2. NRS 645.6052(1).

3.NRS 645.6052(2).

4.NRS 645.6055.

5.NRS 116.700.

6.NRS 645.6056.

7.NRS 116.3107.

8.NRS 116.31153.