

# HOA BOARD ELECTION / REMOVAL PROCESS



[NRS 116.31034 and 116.31036]

- The Bylaws of an association: specify the manner of electing and removing members of the board, specify procedures for filling vacancies, specify officer duties, provide procedural rules for conducting elections and specify the month, time and place that the annual meeting of the unit owners is to be held.
- The executive board must be comprised of at least three members, all of whom must be unit owners.
- Members of the executive board and officers of the association shall take office upon election.
- The term of office of a member of the executive board may not exceed 3 years.
- Unless the governing documents provide otherwise, there is no limitation on the number of terms a person may serve.
- The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an equal number of members of the executive board are elected at each election.
- If, at the closing period for nominations, the number of candidates is **less** than the number of vacancies, the executive board may fill remaining vacancies by **appointment** at a meeting of the executive board held after the candidates are elected. Any such person appointed to the executive board shall serve as a board member until the next regularly scheduled election.
- Directors on the board can fill vacancies regardless of any provision of the governing documents to the contrary (SB 195).
- An executive board member elected to a previously appointed position may only be elected to fulfill the remainder of that term.
- Within **30 days** after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement (NRS 116A.620).

## BEFORE THE ELECTION

1. At least **30 days** before the preparation of a ballot, the secretary or other officer specified in the bylaws of the association shall cause **NOTICE** to be given to each unit owner, including:
  - 1) Number of vacancies
  - 2) **Eligibility requirements** – being a unit owner; corporate owner of a unit; trustee or designated beneficiary of a trust that owns a unit; partnership that owns a unit; limited-liability company that owns a unit; or fiduciary of an estate that owns a unit.
    - a. If a person is **NOT** eligible to be a candidate, the association must not place his or her name on the ballot or appoint him or her.
  - 3) If the executive board makes the determination to allow candidates to be **DULY ELECTED**, disclosure that:
    - a. If at the closing period for nominations, the number of candidates is **equal to or less** than the number of vacancies, the association will not prepare or mail any ballots and candidates shall be deemed duly elected to the executive board at the annual meeting of unit owners at which ballots would have been counted [SB 195].
    - b. SB 195 removes the requirement of sending out a second notice, giving unit owners another opportunity to nominate themselves in order to have an election.
2. To be **QUALIFIED** as a candidate, the person may **NOT**:
  - a. stand to gain any personal profit or compensation from a decision before the board;
  - b. perform the duties of, or be related by blood, marriage or adoption to the community manager for that association; or
  - c. reside in a unit with, be domestic partners with, or related by blood, adoption or marriage to another person who is also a member of the executive board or is an officer of the association, **UNLESS**:
    - i. the number of candidates is less than or equal to the number of vacancies; or
    - ii. a candidate owns 75% or more of the units in an association; as long as this candidate and their relative, etc. do not constitute a majority of the board.
3. Each unit owner who is **eligible and qualified** to serve on the board may nominate him or herself by submitting a **NOMINATION FORM** to the association within **30 days** after notice:
  - a. disclosing any relationship that would result or appear to result in a potential conflict of interest; and disclosing whether they are a member in good standing, without any unpaid or past due assessments or construction penalties required to be paid to the association.
  - b. All disclosures must be submitted in writing and the association **SHALL** distribute the disclosures to each unit owner with the ballot or, in the event ballots are not prepared and mailed, in the next regular mailing of the association.
4. A candidate who has submitted a *nomination form* **MAY** request that the association send to each unit, at the association's expense, a **CANDIDATE INFORMATIONAL STATEMENT**:
  - i. No longer than a single, typed page;
  - ii. Must not contain any defamatory, libelous or profane information; and
  - iii. **MAY** be sent with the ballot or in a separate mailing.
5. To allow the candidate to communicate **CAMPAIGN** material directly to unit owners in a separate mailing, the association can provide a list of mailing addresses of each unit. This list must **NOT** include the names of owners or tenants and the candidate must submit a signed written statement to the association stating that he or she will not use the information for any other purpose.
  - a. Campaigning may be limited to **90 days** before the date that ballots are required to be returned.
  - b. If an official **PUBLICATION** (official website, newsletter, bulletin board, etc.) contains any mention of a candidate, the official publication must, upon request and under the same terms and conditions, provide equal space to all candidates.
  - c. The association and its officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person (NRS 116.31035).

## THE ELECTION

If, at the closing period for nominations, the number of candidates is **greater** than the number of vacancies, the association *shall* conduct an election accordingly.

1. Each unit owner who is qualified to serve as a member of the executive board should have his or her **name** placed on the ballot along with the names of eligible nominees selected by members of the executive board or a nominating committee.
  - a. Ballots should also:
    - i. Define the proposed action/purpose of the ballot (including number of vacancies);
    - ii. Indicate the number of responses needed (during removal);
    - iii. Specify the time, date and method by which a ballot must be delivered to the association to be counted.
2. The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and return envelope to be sent, prepaid by U.S. mail, to the designated mailing address of each unit owner.
  - a. There is no statutory requirement that an association provides for or pays for postage for any return ballot (AO).
  - b. Once ballots are mailed, no changes can be made.
3. Each unit owner must be provided with at least **15 days** after the date the secret written ballot is mailed to return the ballot to the association.
4. Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.
  - a. Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death, disability, or attempted revocation by the person who cast that vote (NRS 116.311).
5. Incumbent members of the executive board and each candidate may not possess, be given access to, or participate in the opening or counting of ballots that are returned before those secret written ballots have been opened and counted.
6. Secret written ballots must be opened and counted at *the* annual meeting of units' owners (or duly elected members to the executive board must be announced).
7. A quorum is not required to be present when the secret written ballots are opened and counted and is not required for the election of any member of the executive board.
8. Each member of the executive board shall, within **90 days** after his or her appointment or election, certify in writing to the association on NRED form 602 that the member has read and understands the governing documents of the association and the provisions of Chapter 116 to the best of his or her ability.

## REMOVAL

Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board may be removed, with or without cause.

1. A removal election may be called by unit owners constituting at least 10%, or any lower percentage specified in the bylaws.
2. Unit owners must submit a written petition, signed by the required percentage, mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association.
3. Between **15 and 60 days** after the date on which the petition is received, secret written ballots and return envelopes for the removal election must be sent by the association to each unit owner.
4. Each unit owner must be provided with at least **15 days** after the date the secret written ballot is mailed to return the ballot to the association.
5. No later than **90 days** after the date on which the petition was received, the executive board shall set the date for the meeting to open and count the secret written ballots.
6. Incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted.
7. Only the secret written ballots that are returned to the association may be counted to determine the outcome.
8. Secret written ballots must be opened and counted at a special meeting of the association.
9. A quorum is not required to be present when the secret written ballots are opened and counted.
10. In order for a board member to be removed:
  - a. At least 35% of the total number of voting members of the association must cast votes IN FAVOR of removal; and
  - b. Those votes cast must represent A MAJORITY of all votes cast.

*Example:*

*If there are 100 units in an association, at least 35 votes must be cast in favor of removal (meets first requirement).*

*If 75 total votes are received, 35 votes in favor of removal is not the majority (second requirement), and the member cannot be removed.*