

# Understanding CIC/HOA Records Keeping

Rev. 03/07/2022

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- 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/).

# Agenda

- Record Keeping practices
- Records Defined
- Records Custodian
- Access
- Failure to provide Records
- Fiduciary Duty

# Record Keeping Practices

- A good record keeping system:
  - Should be well organized, thorough, accurate, reliable and easy to follow;
  - Enables the board to:
    - Easily produce records as needed;
    - Justify expenditures;
    - Monitor progress;
    - Conduct efficient analysis;
    - Make informed decisions (fiduciary duty);
    - Capture the financial status of the association over time; and
    - Remain compliant with the NRS.
- Is a major part of the equation for gaining a maximum return on any investments.

# Records Defined: Governing Documents

NRS 116.049

- The Covenants, Conditions & Restrictions (CC&Rs)/Declaration:
  - The original document that creates the community, recorded against all properties **before** they are sold.
- Articles of Incorporation:
  - The articles that organize the non-profit organization that is the association, submitted to the Secretary of State's office.
- The Bylaws:
  - Contain provisions pertaining to meetings, elections, board officer positions and duties.



# Records Defined: Governing Documents continued

NRS 116.049

## ➤ Rules & Regulations

- Created by the board to clarify provisions of the governing documents that already exist

## ➤ Any other documents governing the operation of the association:

- Reserve Study, architectural review guidelines, collection policy, fine schedule, *Robert's Rules*, resolutions, etc.

NRS 116.12065 & NRS 116.31068

## ➤ Within 30 days after a change is made to the governing documents:

- The secretary or designated officer SHALL prepare and cause a copy of the change(s) to be delivered to the unit owners' designated mail OR email address.



# Records: Financial Statements

- These provide information about the financial position, performance and changes in financial position of the association.
- May be prepared using fund accounting or single-column presentation and must:
  - Be in compliance with the Guide and FASB/ASC 606 Guidance
  - Present a balance sheet reflecting the operating, reserve and any other funds of the association.
  - List the assets, liabilities and fund balances or
    - Members equity if a single-column format is used.

NAC 116.451



# Records: Financial Statements continued

- May be prepared using fund accounting or single-column presentation and must: NAC 116.451
  - Include, a month-to-date AND year-to-date presentation of:
    - The statement of revenues and expenses for all operating, reserve and other activities, presenting information about all assessments, revenues and expenses;
    - A schedule comparing the actual expenses with the budgeted expenses;
    - And changes in the fund balances
      - Presented on the balance sheet or statement of revenues and expenses, and
    - A footnote or disclosure which states that the association is in compliance with reserve fund requirements.
  - Be prepared using accrual basis accounting in accordance with GAAP.
  - Be prepared by, or under the supervision of, a person with accounting knowledge and experience.
  - Be distributed monthly to the treasurer, CAM, and all board members.





# Records Defined: Financial Records

- The financial or transaction records necessary to support the financial statements of an association, including: NAC 116.0433
  - Receipts,
  - Bank statements,
  - Income tax reports,
  - Contracts,
  - Inventories of properties,
  - Financial obligations,
  - Depreciation in property or equipment,
  - Contingent liabilities, and
  - Any other records deemed necessary by the Division or by the accountants or auditors of an association.
- The association shall keep financial records sufficiently detailed to enable the association to comply with NRS 116.4109. NRS 116.3118



# Records Defined: Minutes

NRS 116.3108(5)&(6) & NRS 116.31083(8)&(9)

- The minutes of each meeting **must** be taken and include:
  - The date, time and place of the meeting;
  - Members of the executive board who were present and absent (board meetings);
  - The substance of all matters proposed, discussed or decided;
  - A ***record of each member's vote*** on any matter decided (board meetings); and
  - The substance of remarks made by any unit owner who addresses the executive board if the owner so requests (if the owner has prepared and submitted written remarks, a copy can be included).



# Records Defined: Minutes continued

NRS 116.31085(6)

- Any specifics discussed by the executive board when it meets in **executive session** are confidential, but the matters discussed must be generally noted in the minutes of the next meeting of the executive board, thus becoming records of the association.
- The executive board shall maintain minutes of any decision made concerning an alleged violation and, upon completion of the hearing, provide a copy of the decision to the person who was subject to the hearing.



# Records Defined: Record of Violations

NRS 116.31175(5)

- The executive board of an association shall maintain a general record concerning each violation of the governing documents for which the executive board has imposed a fine or other sanction.
  - Not including a failure to pay an assessment
- The general record **must**:
  - Contain a general description of the nature of the violation and the type of sanction imposed.
    - If the sanction imposed was a fine or construction penalty, the general record must specify the amount;
  - Not contain the name or address of the person or any other personal information which may be used for identification;
  - Be maintained in an organized and convenient filing or data system for easy search and review.

GENERAL RECORD OF POST-HEARING VIOLATIONS			
Association Name: _____			
Date Range Reported: _____			
This record is maintained in accordance with NRS 116.31175(5) and will be made available for a unit owner to search and review, unless requested.			
Unit Number	Description of Violation (as specified in the First Subchapter)	Amount of Fine or Construction Penalty	Sanction Type(s)
			<input type="checkbox"/> Fine <input type="checkbox"/> Revoked Use of Common Elements
			<input type="checkbox"/> Construction Penalty <input type="checkbox"/> Revoked Voting Rights
			<input type="checkbox"/> Fine <input type="checkbox"/> Revoked Use of Common Elements
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			<input type="checkbox"/> Fine <input type="checkbox"/> Revoked Use of Common Elements
			<input type="checkbox"/> Construction Penalty <input type="checkbox"/> Revoked Voting Rights

# Records Defined: Complaints

NRS 116.757

- Any written complaint filed with the Division is considered confidential until a decision is rendered, and a final letter is sent to the association.
  - This final letter becomes a record of the association.



# Records Defined: “Other Records”

NRS 116.31038 & NRS 116.31175(5)

- Financial audits
- A copy of any plans and specifications used in the construction of improvements
- All insurance policies and any claims
- Renewable permits issued by governments bodies
- Written warranties still in effect
- A roster of unit addresses and proof of mailing for any notices sent out
- Election materials: return envelopes, tally sheets, nomination forms, etc.
- Lease agreements for tracking of rental units for cap requirements
- Notices and any waivers sent to unit owners, newsletters, meeting agendas, any business conducted by email, etc.



# Records Custodian

NRS 116.31175(1) & NRS 116A.620(1)(n)

- The person responsible for maintaining the records at their physical location.
  - Physical records **MUST** be within 60 miles of the community (NAC 116.620.)
- This individual is identified on the Division’s Annual Registration form 562.



**Reserve Study (NRS 116.31152 and NRS 116B.605)**

Has a site reserve study even been conducted: ☐ Yes ☐ No  
Date of Site Inspection: (M/D/YR) \_\_\_\_/\_\_\_\_/\_\_\_\_  
If a reserve study has not been conducted, is the executive board confirming that the community has no major components in accordance to NRS 116.0605: ... **If no, attach explanation to why a reserve study has not been conducted** ☐ Yes ☐ No  
Was the most recent study adopted by Board: ☐ Yes ☐ No  
Date the board adopted the recent study: (M/D/YR) \_\_\_\_/\_\_\_\_/\_\_\_\_  
If a reserve study was conducted pursuant to NRS 31152, was Form 609 submitted to the Division: ☐ Yes ☐ No  
Date Form 609 was submitted to the Division: (M/D/YR) \_\_\_\_/\_\_\_\_/\_\_\_\_  
Name of Reserve Study Specialist (or person, pursuant to NRS 116.31152(2)) who conducted study: \_\_\_\_\_  
Reserve Study Specialist Registration number or the title of the person: \_\_\_\_\_  
Has the executive board performed its annual review of the reserve study pursuant to NRS 116.31152 (1)(b): ☐ Yes ☐ No  
Has the executive board made the necessary adjustments after the review pursuant to NRS 116.31152 (1)(c): ☐ Yes ☐ No  
Required reserve account balance as of the end of the current fiscal year, per the most recent adopted reserve study: .....\$ \_\_\_\_\_  
Projected reserve account balance as of the end of the association's current fiscal year: .....\$ \_\_\_\_\_  
Is there currently a Reserve Assessment in effect: ☐ Yes ☐ No  
If yes, how long is the Reserve Assessment in effect: \_\_\_\_\_

**Board/Management/Declarant**

Current number of board members: \_\_\_\_\_  
Per the governing documents, how many board members are required \_\_\_\_\_  
Have all executive board members signed a Form 602 within 90 days of appointment/election per pursuant to NRS 116.31034(19) or NRS 116B.445(9): ☐ Yes ☐ No

Executive Board	President	Secretary	Treasurer	<input type="checkbox"/> Vice President <input type="checkbox"/> Director
Board Member's Name				
Physical address: Number & Street City / State / Zip Code				
Telephone Number				
E-mail Address				
	Director	Director	Director	<input type="checkbox"/> Hotel Unit Owner <input type="checkbox"/> Director
Board Member's Name				
Physical address: Number & Street City / State / Zip Code				
Telephone Number				
E-mail Address				

*Please use a separate sheet of paper for additional board members and attach to this form.*

	Management Company and Manager's name	Custodian of Records	Attorney (if applicable)	Declarant
Business Name				
Contact Name				
Address: Number & Street City / State / Zip Code				
Telephone Number				
Fax Number (optional)				

*The person signing this form must be the Declarant, Board Member or assigned Community Manager who is attesting to the accuracy of the information provided, regardless of whether they completed the form.*

The person signing is ☐ Declarant ☐ Board Member (Position \_\_\_\_\_) ☐ Community Manager (License # \_\_\_\_\_)

Authorized Name \_\_\_\_\_ Authorized Signature \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**This form can only be submitted by hand delivery, mail or fax and will not be accepted by email.**

# Form 562

*Please use a separate sheet of paper for additional board members and attach to this form.*

	Management Company and Manager's name	Custodian of Records	Attorney (if applicable)	Declarant
Business Name				
Contact Name				
Address: Number & Street City / State / Zip Code				
Telephone Number				
Fax Number (optional)				

*The person signing this form must be the Declarant, Board Member or assigned Community Manager who is attesting to the accuracy of the information provided, regardless of whether they completed the form.*



# Records Custodian continued

NRS 116A.620

- This individual is often the community manager.
  - Any management agreement **MUST** acknowledge that all records and books of the association are the property of the association.
  - Upon termination or reassignment of the management agreement, the community manager **MUST**, within 30 days, transfer possession of all books, records and other papers back to the association, or to the next manager, regardless of any fees or charges still due by the association.



# Records Custodian: Community Manager

NRS 116A.630

- A community manager **shall**:
  - At all times ensure that:
    - The financial transactions of a client are current, accurate and properly documented; and
    - There are established procedures to provide reasonable assurances in the reliability of the financial reporting, including:
      - Proper maintenance of accounting records;
      - Documentation of the authorization for any purchase orders, expenditures or disbursements;
      - Facilitation of fraud detection and prevention; and
      - Compliance with all applicable laws and regulations governing financial records



# Knowledge Check



1. True/False: Governing Documents are not considered “records.”
2. True/False: Financial statements are used to support the financial records of the association.
3. True/False: Meetings held in executive session are confidential and therefore no documentation is required.
4. The general record of violations must contain what 2 pieces of information?
5. The general record of violations must not contain what information?
6. Physical records **MUST** be kept within \_\_\_\_ miles of the community.

# Access: Resale Package

NRS 116.4109

- The first record that any potential purchaser of a unit obtains from the association (via the seller) comes in the form of a **RESALE PACKAGE** containing the following:
  - A copy of the declaration, bylaws, rules and regulation and the information statement “Before you purchase, did you know?”
  - A statement of demand setting forth the amount of the monthly assessment and any unpaid obligation of any kind, including fees, fines, interest, etc., currently due from the seller.
  - A copy of the current operating budget and current year-to-date financial statement, including a detailed summary of the reserves.
  - A statement of any unsatisfied judgements or pending legal actions against the association and the status of any pending legal actions.



# Access: Resale Package continued

NRS 116.4109

- The first record that any potential purchaser of a unit obtains from the association (via the seller) comes in the form of a **RESALE PACKAGE** containing the following:
  - A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.
  - A statement describing fine policies, late charges, penalties, interest rates on delinquent assessments, and any additional costs for collecting past due fines and charges.
- Must be provided by the association to the unit owner within 10 days after request.

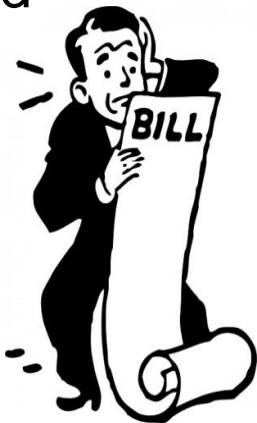


# Access: Resale Package Fees and Charges limits

AB237, NRS 116.4109(4)

Effective June 1<sup>st</sup>, 2021

- An association shall not charge any fee not authorized in NRS 116.4109.
- An association shall not charge any fee in an amount which exceeds any limits set forth in NRS 116.4109.
- Fee limits will increase annually with CPI
- Violations of these limits may be reported via form 910
  - Upon receipt of a valid form 910, the Division will contact the board/CAM and request a written response.
  - Failure to respond within 30 days automatically equals an admission of guilt and is punishable by an administrative fine of \$250.



# Access: Resale Package Fees and Charges limits continued

Form 910

TYPE OF DOCUMENT/ACTION	MAXIMUM AMOUNT THAT CAN BE CHARGED (NRS 116.4102 & 116.3102)	AMOUNT ACTUALLY CHARGED
<b>Resale Certificate</b>	<b>\$185</b> (+ \$100 to expedite)	\$ <input type="text"/> Expedite fee charged \$ <input type="text"/> (if applicable):
<i>Includes a statement of any unsatisfied judgments or pending legal actions against the association, including status, any other fees associated with the resale of a unit, and all current and expected fees or charges for each unit. This fee must be based on the actual costs the association incurs in preparing the certificate.</i>		
<b>Demand Statement</b>	<b>\$165</b> (+ \$100 to expedite)	\$ <input type="text"/> Expedite fee charged \$ <input type="text"/> (if applicable):
<i>Sets forth the amount of monthly assessment needed for common expenses and any unpaid obligation of any kind currently due from the selling unit's owner.</i>		
<b>Opening/Closing a File</b>	<b>\$350</b>	\$ <input type="text"/>
<i>This fee must be based on the actual cost the association incurs to open or close any file. It may only include fees authorized by the governing documents, including transfer fees, inspection fees, processing fees, and any OTHER fees used to cover association resale costs. Prepaid assessments do not fall under this cap.</i>		
<b>Governing Documents/ Information Statement</b>	<b>\$0</b> To be provided electronically at no fee. (In the event an association is unable to provide these documents electronically, it may charge up to 25 cents per page for the first 10 pages, and 10 cents thereafter).	\$ <input type="text"/>
<i>Includes the CC&amp;Rs, bylaws, rules and regulations; a copy of the current operating budget and current year-to-date financial statement, including a summary of the reserves; and the "Before You Purchase...Did You Know?" statement.</i>		
<b>TOTAL:</b>	<b>\$700</b> (or \$900 to expedite)	\$ <input type="text"/>

NOTES: Fees may increase on an annual basis by a percentage equal to the percentage of increase in the Consumer Price Index (All Items). Both a sub-association and Master association (if applicable) have the authority to charge these fees.

# Access: Review

NRS 116.31175(1)

- The executive board or a community manager of an association shall, upon written request of a unit’s owner, make available the books, records and other papers of the association for review at:
  - The business office of the association; or
  - A designated business location **not to exceed 60 miles** from the physical location of the common-interest community;
  - And during the regular working hours of the association.
    - A period of at least 4 consecutive hours per week.

NAC 116.440





# Access: Review continued

NRS 116.31175 & NRS 116.3118

- The association must at least allow review of:
  - All contracts to which the association is a party;
  - All records filed with a court relating to a civil or criminal action to which the association is a party; and
  - Other non-confidential records of the association.
- All financial and other records of the association must be:
  - Made reasonably available for any unit's owner and their authorized agents to
    - Inspect,
    - Examine,
    - Photocopy, and
    - Audit.



# Access: Review continued

NRS 116.3118

- The executive board shall not require a unit owner to pay an amount in excess of \$10 per hour to review any books, records, contracts or other papers of the association on site.



# Access: Copies

NRS 116.31175

- The board must **provide** a **copy** of the following records to unit owners upon request:
  - Financial statements,
  - Budgets,
  - Reserves Study, and
  - The audio recordings, minutes or a summary of the minutes of an association meeting upon request (made available not more than 30 days after the meeting).

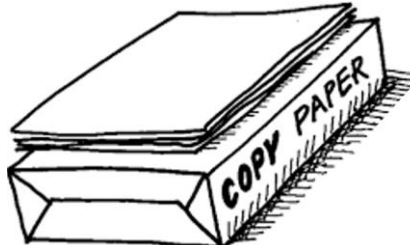
NRS 116.31083(8)



# Access: Copies continued

NRS 116.31175

- Any records required to be copied and provided **MUST** be provided in electronic format, at no charge to the unit owner whenever possible, within 21 days of a written request (30 days for minutes).
- If the association is unable to provide records in electronic format, the executive board may charge a fee to cover the actual costs of preparing a copy.
  - The fee may not exceed 25 cents per page for the first 10 pages and 10 cents per page thereafter, or
  - The actual cost of the individual CD, thumb drive or similar device.



# Access: Confidential Records

NRS 116.31175(4)

- The Board shall **NOT** provide:
  - The personnel records of employees of the association,
    - EXCEPT for those records relating to the number of hours worked and the salaries and benefits of those employees;
  - Any records relating to another unit's owner,
    - including any architectural plan or
      - specifications submitted to the association during an approval process;
  - Any document, aside from minutes, if it is in the process of being developed and has not yet been placed on an agenda for final approval by the executive board.



# Access: By Board Members

NRS 116.31031(1) & NAC 116.405(2)&(8)

- Board member's do not lose their rights as a unit owner to access records.
- Board members have a fiduciary obligation to make informed decisions.
- Board members have a right and obligation to access records in a timely and convenient manner as to ensure their ability to comply with their fiduciary obligations.



# Access: By Board Members

NRS 116.31031(1) & NAC 116.405(2)&(8)

- A board or CAM who actively prevents or impedes a board member from meeting their fiduciary duties could be in violation of their own fiduciary duties to “act in good faith and in the honest belief that their actions are in the best interest of the association.”
  - If a board member must follow a formal records request process, then all board members must follow the same process.
- \* Confidentiality still applies and board members are only entitled to the confidential records necessary for them to perform a specific task or cast a specific vote.



# Access: Records Maintenance

NRS 116.31175(7)

- All meeting minutes **MUST** be maintained until the CIC is terminated (indefinitely).
- The books, records and other papers of an association **MUST** be maintained for at least 10 years.





# Access: 2021 Legislative Update

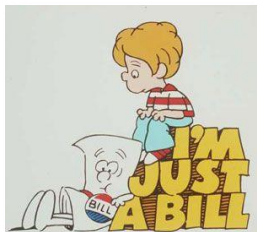
SB-186

## Effective January 1, 2022

- Each association with 150 or more units will be required to maintain a website or electronic portal for unit owners to access:
  - The governing documents;
  - The most recent Declaration;
  - The annual budget and any proposed budgets;
  - The notices and agendas for upcoming meetings; and
  - Any other documents that may be required by law.

## Effective January 1, 2023

- The required website or portal must also allow unit owners the ability to pay assessments electronically.



# Failure to Provide Records

NRS 116.31087 & NRS 116.760

- If a unit owner submits a written request to an association for access and/or copies of the books, records and other documents of the association pursuant to NRS 116.31175, and the association fails to comply within 21 days,
- The unit owner may then pursue the complaint process by:
  - Sending written notice of a complaint to the board for violation of NRS 116.31175.
    - Sent certified mail, return receipt requested.
  - If the records are not provided within 10 day of the complaint,
    - File a form 530 or form 514a.



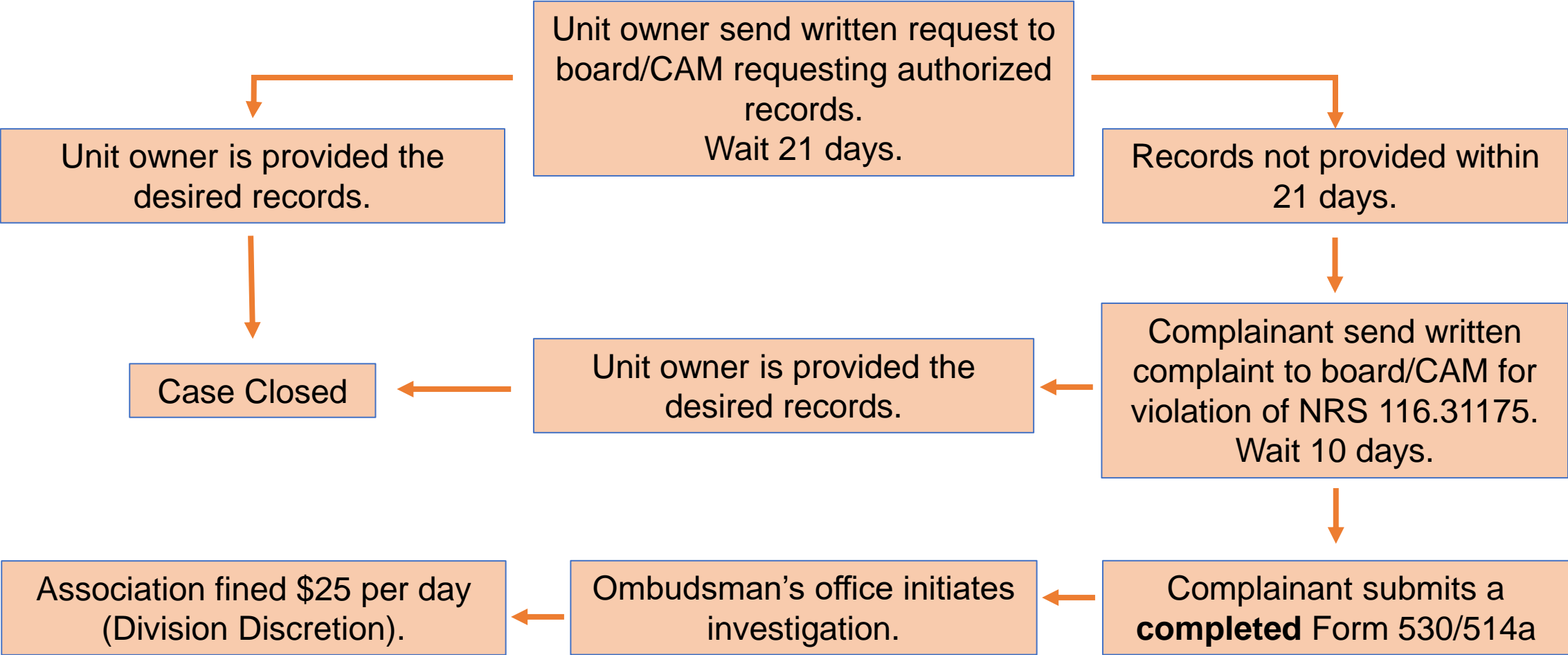
# Failure to Provide Records continued

NRS 116.31175

- If the Division receives a properly completed complaint form, they will send a formal notice to the association requesting the specified records be supplied within 14 days, and
  - Initiate an investigation regarding the possible violation for failure to provide those records.
- If the records are not provided within 14 days, the board may be fined \$25 for each day they are not provided.



# Request for Records: Flow Chart



# Fiduciary Duty

NAC 116.405

- In determining whether a member of the executive board has performed their duties, the Commission may consider whether the member:
  - Disclosed confidential information and records without consent;
  - Failed to comply with a request by the Division to provide information or documents;
  - Supplied false or misleading information to the Division;
  - Failed to make the financial records of the association available for inspection by the Division;
  - Concealed any facts or documents relating to the business of the association; or
  - Failed to cause the association to maintain current, accurate and properly documented financial records, including proper documentation of the authorization for receipts and disbursements and verification of the integrity of the data used in making business decisions.



# Fiduciary Duty: Violations

NRS 116.785 & NRS 116.790

- If the Commission or hearing panel finds that a respondent has committed a violation, they may take any or all of the following actions:
  - Issue an order to cease, desist, and/or correct unlawful behaviors;
  - Order the respondent removed from their office or position;
  - Impose a fine up to \$1,000 for each violation;
  - Order respondent to repay costs of proceedings and attorney's fees;
  - Order the board to hire a community manager; and/or
  - Refer criminal charges to a court of competent jurisdiction (when applicable).



# Knowledge Check



1. What is the first record that purchasers receives from an association?
2. True/False: The board/CAM shall make the books, records and other papers available for review at a business location not to exceed 30 miles from the community.
3. Does a unit owner have the right to inspect, examine, photocopy, and audit records of the association?
4. True/False: Unit owners have a right to receive a copy of any association record, free of charge.
5. If a unit owner is denied access to records to which they have a right, what form should be filed with the division?

# Conclusion!



- Record Keeping practices
- Records Defined
- Records Custodian
- Access
- Failure to provide Records
- Fiduciary Duty



# 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/)