State of Nevada
Department of Business & Industry
Real Estate Division

Common-Interest Communities
and Condominium Hotels Program

Executive Board Responsibilities & Fiduciary Duties

Disclaimer

This is a general education class based on NRS 116 and related laws and regulations. It is not intended to provide legal advice. The instructor cannot comment on specific cases. If you feel that the associations governing documents or NRS 116 statutes have been violated you can file a claim at the NV Real Estate Division

Learning Objectives

- Upon completion of this class, participants will have a basic understanding of…
  - What the executive board does–
    - Protect, maintain, enhance the common elements
    - Manage the business affairs of the association
    - Ensure compliance
  - How the executive board acts–
    - Fiduciary duty, good faith, honest belief
    - The business judgment rule, duty of care
    - Disclosure and confidentiality

Nevada HOAs…

- Approximately
  - 3,000 Associations
  - 500,000 homes (units)
  - 1.5 – 2.0 million people
  - 79% in urban Southern Nevada
  - 19% in urban Northern Nevada
  - 2% in rural areas

HOAs…

- An HOA is…
  - A self-governing organization of homeowners
  - A specialized business entity
  - Defined and explained in law (NRS 116)
  - Also known as a common-interest community
- An HOA provides…
  - A desirable lifestyle
  - Predictable community standards
  - Common areas/amenities for owners
  - Potential for long-term asset appreciation

NRS 116.3106 Bylaws-Direction

1. The bylaws of the association must:

(a) Provide the number of members of the executive board and the titles of the officers of the association;

(b) Provide for election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;

(c) Specify the qualifications, powers and duties, terms of office and manner of electing and removing officers of the association and members of the executive board and filling vacancies;

(d) Specify the powers the executive board or the officers of the association may delegate to other persons or to a community manager;

(e) Specify the officers who may prepare, execute, certify and record amendments to the declaration on behalf of the association;

(f) Provide procedural rules for conducting meetings of the association;

NRS 116.31034

The units' owners shall elect an executive board of at **least three members**,

all of whom must be units' owners.

The executive board shall elect the officers of the association.

Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners.

The members of the executive board and the officers of the association shall take office upon election.

Elected Board

- The Board is elected by unit owners
  - Vacancies – bylaws or NRS 116.3103
  - Board members can be removed by owners with or without cause
  - Ensure the integrity of the election procedures
- Board Officers are elected by the Board
  - Number and titles defined in governing documents
  - Not less than three (3)
    - President, Secretary, Treasurer
    - Others –Vice President, Assistant Secretary/Treasurer
  - The Board sets policy, officers carry it out

SB174 Eligibility of Member of the Board

- Section 9 Subsection (a)

Section 1. NRS 116.31034 is hereby amended to read as follows:

A person **may not** be a candidate for or member of the executive 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 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

SB174 Eligibility of Member of the Board

Section 9 Subsection(11)

(11.) A person, other than a person appointed by the declarant may,

Be a candidate for or member of the executive board or an officer of the association; and

Reside in a unit with, be married, be domestic partners with or be related by blood, adoption or marriage with the third degree of consanguinity or affinity to another person who is also a board member, **if** the number of candidates nominated for membership on the executive board **is less than or equal** to the number of members to be elected to the executive board.

SB174 Eligibility of Member of the Board

Section 9 Subsection (a) (3) & Section 10 Subsection (a) (b)

(3.) A person, other than a person appointed by the declarant, who owns **75 or more** of the units in an association may:

Be a candidate for or member of the executive board or an officer of the association; and

Reside in a unit with, be married, be domestic partners with or be related by blood, adoption or marriage with the third degree of consanguinity or affinity to another person who is also a board member, **unless** the person owning 75 percent or more of the units in the association would constitute a majority of the total number of seats on the executive board

SB 174 Eligibility of Member of the Board

Section 9 Subsection 12 (a) (b)

(12.) If a person **is not eligible** to be a candidate for or member of the executive board or an officer of the association pursuant to any provisions of this chapter, the **association**:

(a) **Must not** place his or her name on the ballot; and
(b) **Must prohibit** such a person from serving as a member of the executive board or an officer of the association

Read and Understands

Each member of the executive board shall, within 90 days after his or her appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that the member has read and understands the governing documents of the association and the provisions of this chapter to the best of his or her ability.

Board Responsibilities

What the executive board does-

Variation

- HOA Boards vary greatly but all must follow their governing documents and NRS 116
- Large HOAs may meet frequently and assign certain tasks to various committees
  - Architectural Review
  - Budget & Finance
- HOAs may delegate certain functions to a professional Community Manager

Primary Goals

- Protect, maintain and enhance the association's assets (common elements)
- Manage the business of the association in a fiscally sound and ethical manner
- Ensure compliance with the governing documents and NRS/NAC 116/116A

What the board does–

- Manage the business of the association in a fiscally sound and ethical manner:
  - Follow generally accepted accounting procedures
  - Separate operating and reserve accounts
  - Establish adequate controls
    - Two signatures on operating and reserve accounts
  - Prepare and distribute financial reports
  - Prepare and distribute an annual budget
    - Collections & investment policies
    - Schedule of fines for governing document violations

What the board does–

- Beyond the finances…
  - Protect the rights of homeowners
  - Elections
    - Check bylaws & NRS 116
  - Hold regular meetings
    - Trust & transparency
  - Maintain the association's records
    - Available to owners
  - Communicate with Owners
    - Good communications solves many problems
    - Use multiple pathways –Newsletter, website, e-mail, bulletin board…

What the board does–

- Protect, maintain and enhance the assets of the association:
  - Obtain a reserve study every 5 years
  - Review/update the reserve study every year
  - Contract with qualified service providers to ensure all assets receive appropriate maintenance
  - Consult with experts as needed
  - Prepare for emergencies & contingencies

- NRS 116.3115, 31152

Financial Review

NRS 116.31151 Annual distribution to units' owners of operating and reserve budgets

Unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, **prepare** and **distribute** to each unit's owner **a copy** of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

NRS 116.31083 Financial Review

At least once every quarter, and not less than once every 100 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board **shall review**, at a minimum, the following financial information at one of its meetings:

(a) A current **year-to-date financial** statement of the association;

(b) A current **year-to-date** schedule of **revenues and expenses** for the operating account and the reserve account, compared to the budget for those accounts;

(c) A current reconciliation of the **operating account** of the association;

(d) A current reconciliation of the **reserve account** of the association;

(e) The **latest account statements** prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The **current status of any civil action** or claim submitted to arbitration or mediation in which the association is a party.

NRS 116.31151Annual Budget

- Prepared by the board
  - Operating & reserve accounts
  - Compliance account (NRS 116.310315)
  - Special assessments anticipated?
- Distributed to owners
  - Ratified at a owners meeting, unless rejected by the required majority
- Other
  - Collections policy (late fees, interest charges, collection costs, foreclosure), fine/fee schedule, investment policy

Special Financial Issues

- Investments & deposits–NRS 116.311395
  - Authorized to do business in Nevada
  - Properly insured (FDIC, US Government, etc.)
  - Protect the principal
- Surplus Funds–NRS 116.3114
  - Status of reserves, operating funds, contingency
  - Return surplus to owners
- Bids – NRS 116.31086, NAC 116.405
  - Major projects of the HOA
  - At least 3 bids from qualified providers
  - Sealed bids, opened at a regular meeting with owners present

SB238 Solicitation of Bids

Effective July 1, 2015

Section 2 (1)
Sec. 2. NRS 116.31086 is hereby amended to read as follows:

1. If an association solicits bids for an association project *:*

(a) The association must, whenever reasonably possible, solicit at least three bids if the association project is expected to cost:

(1) In a common-interest community that consists of less than 1,000 units, 3 percent or more of the annual budget of the association; or

(2) In a common-interest community that consists of 1,000 or more units, 1 percent or more of the annual budget of the association; and

(b) The bids must be opened *and read aloud* during a meeting of the executive board.

AB238 Solicitation of bids

Section 2 (2)

Sec. 2. NRS 116.31086 is hereby amended to read as follows:

2. As used in this section, "association project" includes, without limitation, a project that involves the maintenance, repair, replacement or restoration of any part of the common elements or which involves the provision of *professional* services to the association*, including, without limitation, accounting, engineering and legal services*.

Reviews & Audits NRS 116.31144

- Independent CPA review or audit
  - Budgets <$45,000, no requirements
  - Budgets > $45,000 but < $75,000/year, review every 5 years
  - Budgets >$75,000 but <$150,000, review every year
  - Budgets >$150,000/year, annual audit

- Governing Documents may be more strict

- Owners can create a written petition for an audit within 180 days of the end of the FY (15%)total number of voting members

NRS 116.31153 Signatures required for withdrawals of certain association funds; exceptions.

Money in the **reserve account** of an association may not be withdrawn without the signatures of at least **two members of the executive board** or the signatures of at least one member of the **executive board** and **one officer** of the association who **is not a member** of the executive board.

Money in the **operating account** of an association may not be withdrawn without the signatures of at least **one member** of the **executive board** or **one officer** of the association **and** a member of the **executive board**, an **officer** of the association or the **community manager**.

Reserve Study Review

NRS 116.31152 Study of reserves

The executive board shall:

(a) At least once every 5 years, cause to be conducted a study of the reserves required to repair, replace and restore the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(b) At least **annually**, review the results of that study to **determine** whether those **reserves are sufficient**; and

(c) At least **annually**, <u>make any adjustments</u> to the association's **funding plan** which the executive board deems necessary to provide adequate funding for the required reserves.

NRS 116.31151 Annual distribution – reserve budgets

Unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

The budget must include, without limitation, the estimated annual revenue and expenditures of the association and **any contributions to be made to the reserve account** of the association.

The estimated annual revenue and expenditures of the association and the budget to provide adequate funding for the reserves

The budget must include, without limitation:

(1) The current **estimated replacement cost**, **estimated remaining life** and **estimated useful life of each major component of the common elements** and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(2) As of the end of the fiscal year for which the budget is prepared, **the current estimate of the amount of cash reserves that are necessary**, and **the current amount of accumulated cash reserves that are set aside**, to repair, replace or restore the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

Collection Fee Review

NRS 116.31151 Collection Fee's

The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner.

The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

NRS 116.31031 Power of executive board to impose fines

The executive board must hold a hearing before it may impose the fine, unless the fine is paid before the hearing or unless the unit's owner

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

Attend Meetings

NRS 116.3109 Requirement of Law

Meetings of the association must be conducted in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*, unless the bylaws or a resolution of the executive board adopted before the meeting provide otherwise

Meetings

- Hold regular meetings
  - NRS requires quarterly meetings
  - At least 2 meetings/year outside of normal business hours (9am-5pm)
  - Notice to unit owners-10 days in advance
    - Meeting time & place
    - If the agenda is not included with the notice, when and where it can be obtained
  - Notice of a unit owner's right:
    - To a copy of the audio recording
    - A copy of the minutes or a summary
    - Right to speak

Closed Meetings

- Closed Meetings (Executive Session)
- NRS 116.31085
  - Hearings (unit owner may request an open meeting)
  - Deliberations
  - Pending litigation
  - Performance of a Community Manager or other employee
  - Delinquent assessments
  - Construction schedules/penalties

Meetings

- Emergency Meetings
  - NRS 116.31083(12)
  - Could not have reasonable been foreseen;
  - Affects health, welfare and safety
  - Requires immediate attention/possible action
  - Makes it impracticable to comply with 10-day notice requirement.
  - Notices should be sent ASAP

Meetings

- Unit Owner Meeting
  - NRS 116.3108
  - At least annually
  - Conduct elections
  - Ratify budget
- Special meetings
  - Identified need
  - Petition by owners (10%)
  - Called by president
  - Called by majority vote of the board

Decorum in Debate

- Confine remarks to the question before the assembly
- Do not attack another's motives
- Address remarks to the chair
- Avoid using members' names
- Do not attack a prior action
- Do not speak against your own motion
- Do not read from reports or books without consent of the assembly
- Yield to the chair
- Do not disrupt the meeting

Abstentions

- Members have a right to abstain under parliamentary law; however Directors should abstain ONLY when there is a conflict of interest
- Regardless of abstentions, the majority still rules
- For example:
  - 30 members in attendance, a clear quorum.
  - If 7 members vote in favor of a motion, 5 opposed, and 18 abstain, the motion passes.
- Governing documents usually require a majority vote of members present, assuming a quorum has been established

Board Responsibilities

Maintain Records

- Minutes & Recordings
- Financial reports/audits
- Bids & Contracts
- Reserve Study
- Legal documents (insurance policies, warrantees)
- Tax documents
- Resale Packages (NRS 116.4109)
  - Governing documents, brochure
  - Financial reports, reserve study/summary
  - Certificate, demand letter

Consult Experts

- Accountants
- Attorneys
- Community Association Managers
- Reserve Study Specialists
- Maintenance Engineers
- Landscape Specialists
- Contractors

- Obtain 3 bids for projects
  - Open at a regular board meeting
  - NRS 116.31086 and NAC 116.405

NRS 116.31183 Retaliatory action prohibited

An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

Recommended the selection or replacement of an attorney, community manager or vendor

Board Responsibilities

How the board acts-

How the board acts–

- Fiduciary Duty
  - Act in the best interest of the association.
  - Disclose any potential conflicts, abstain from voting

  - NRS 116.3103
    - 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. The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation subject to the business-judgment rule.

How the board acts–

- Business-judgment rule
  - Would an ordinarily prudent person make a similar decision under similar circumstances?
- Act on an informed basis
  - Do your homework! Research the topic before making a decision.
- Use experts
  - Know your limitations. Ask an expert.
- Confidentiality
  - Do not discuss privileged information – ever!

How the board acts–

- Duty of Care
  - Exercise ordinary and reasonable care
  - Identify risks and adopt policies to prevent harm
  - Failure to act may be a breach
- Disclosure
  - Disclose any and all potential/actual conflicts of interest
  - A director cannot provide paid services to the association
  - Disclose relationships with potential providers
  - Do not accept gifts, rewards, incentives, gratuities

Board may…..

1. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings

2. 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

3. Elect members of the executive board, but unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association, the executive board may fill vacancies in its membership for the unexpired portion of any term or until the next regularly scheduled election of executive board members, whichever is earlier.

Board may…..determine

The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules,

including **whether to compromise** any claim for unpaid assessments or other claim made by or against it.

The executive board **does not have a duty to take enforcement action** if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

Board may…..enter grounds

The association has provided the unit's owner with notice and an opportunity for a hearing in the manner, the association, including its employees, agents and community manager, **may**, but is not required to, **enter the grounds of the unit**, whether or not the unit is vacant, to take any of the following actions if the unit's owner **refuses or fails** to take any **action or comply** with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.

(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community or public streets;
(2) Threatens the health or safety of the residents of the common-interest community;
(3) Results in blighting or deterioration of the unit or surrounding area; and
(4) Adversely affects the use and enjoyment of nearby units.

Board may…..deny viewing the records of

(a) The **personnel records of the employees** of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees;

(b) The records of the association relating to another unit's owner, including, without limitation, any architectural plan or specification submitted by a unit's owner to the association during an approval process required by the governing documents, except for those records described in subsection 5; and

(c) Any document, including, without limitation, minutes of an executive board meeting, a reserve study and a budget, if the document:

(1) **Is in the process of being developed** for final consideration by the executive board; and

(2) Has not been placed on an agenda for final approval by the executive board.

NRS 116.31175

NRS 116.31183 Retaliatory action prohibited

An executive board, a member of an executive board of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an attorney, community manager or vendor; or

(c) Requested in good faith to review the books, records or other papers of the association.

2. In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:

(a) Compensatory damages; and

(b) Attorney's fees and costs of bringing the separate action.

Expectations

- Prohibited Acts
  - Do NOT–
    - Act outside of the scope of authority granted in the Governing Documents
    - Act for reasons of self-interest, gain, prejudice or revenge
    - Commit an act or omission that amounts to incompetence, negligence or gross negligence
    - (NOTE: NAC 116.405 describes the criteria that can be used to evaluate the performance of a board member)

Board Responsibilities

Compliance

Ensure Compliance with Governing Documents & NRS/NAC 116, 116A

- Governing Documents
  - Covenants, Conditions & Restrictions (Declaration)
  - Articles of Incorporation
  - Bylaws
  - Rules, Policies, Procedures

- NRS / NAC
  - 116, 116A

Compliance/Violation Hearings

- Conduct hearings
  - Potential violations of the governing documents.
  - Closed meetings unless the unit owner requests an open meeting.
  - Due process
    - Notice of violation, **including detailed description and proposed action to cure, clear, detailed photograph**
    - Opportunity to correct
    - Right to a hearing, date time, location, amount of fine
    - Notice of outcome
  - Deliberations are closed.

Reporting Requirements

- Within 90 days of being elected to the Board
  - Complete Form 602
  - Declaration of Certification Common-Interest Community Executive Board Member

- Attest that you have read and understand-
  - Governing Documents
  - NRS 116
  - NAC 116

Summary

- HOAs are complex businesses
- The executive board is elected by homeowners to manage the association
- The board's primary goals are:
  - Protect, maintain and enhance the assets (common elements) of the association
  - Conduct the business of the association in a fiscally sound and ethical manner
  - Ensure compliance with the governing documents and NRS/NAC
- The board has a fiduciary obligation to act in the best interest of the association

Summary- Perform duties

1. Acted within the scope of the authority granted in the governing documents;

2. Acted for no reasons of self-interest, gain, prejudice or revenge;

3. Committed no act or omission which amounts to incompetence, negligence or gross negligence;

4. Keeps confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates;

5. Keeps informed of laws, regulations and developments relating to common-interest communities;

6. Cooperated with the Division in resolving complaints filed with the Division;

Summary- Perform duties

7. Caused the association to:

(a) Comply with all applicable federal, state and local laws and regulations and the governing documents of the association;

(b) Uniformly enforce the governing documents of the association;

(c) Hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association;

(d) Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association;

(e) Consult with appropriate professionals as necessary before making any major decision affecting the association or the common elements;

(f) Deposit all funds of the association for investment in government securities that are backed by the full faith and credit of the United

(g) Maintain current, accurate and properly documented financial records;

(h) Establish policies and procedures for the disclosure of potential conflicts of interest and the appropriate manner by which to resolve such conflicts;

(i) Adopt and fairly enforce the collection policies of the association.

QUESTIONS?

- Web Site
  - www.red.nv.gov
- Phone
  - 702.486.4480/877.829.9907/775.687.4208
- FAX
  - 702.486.4520/775.687.4868
- E-Mail
  - Ombclasses@red.state.nv.us
- Office Locations
  - 2501East Sahara Ave., Suite 202, Las Vegas, NV 89104
  - 1179 Fairview Drive, Suite E, Carson City, NV 89701

Reference Slides

NRS 116.31151 Annual distribution to units' owners of operating and reserve budgets or summaries of such budgets and policy for collection of fees, fines, assessments or costs; ratification of budget.

1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties but not to exceed 60 miles from the physical location of the common-interest community; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

NRS 116.31144 Audit and review of financial statements.

1. Except as otherwise provided in subsection 2, the executive board shall:

(a) If the annual budget of the association is $45,000 or more but less than $75,000, cause the financial statement of the association to be reviewed by an independent certified public accountant during the year immediately preceding the year in which a study of the reserves of the association is to be conducted pursuant to NRS 116.31152.

(b) If the annual budget of the association is $75,000 or more but less than $150,000, cause the financial statement of the association to be reviewed by an independent certified public accountant every fiscal year.

(c) If the annual budget of the association is $150,000 or more, cause the financial statement of the association to be audited by an independent certified public accountant every fiscal year.

2. Except as otherwise provided in this subsection, for any fiscal year, the executive board of an association shall cause the financial statement for that fiscal year to be audited by an independent certified public accountant if, within 180 days before the end of the fiscal year, 15 percent of the total number of voting members of the association submit a written request for such an audit. The provisions of this subsection do not apply to an association described in paragraph (c) of subsection 1.

3. The Commission shall adopt regulations prescribing the requirements for the auditing or reviewing of financial statements of an association pursuant to this section. Such regulations must include, without limitation:

(a) The qualifications necessary for a person to audit or review financial statements of an association; and

(b) The standards and format to be followed in auditing or reviewing financial statements of an association.

NRS 116.3114 Surplus funds. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the units' owners in proportion to their liabilities for common expenses or credited to them to reduce their future assessments for common expenses.

NRS 116.31153 Signatures required for withdrawals of certain association funds; exceptions.

1. Money in the reserve account of an association required by paragraph (b) of subsection 2 of NRS 116.3115 may not be withdrawn without the signatures of at least two members of the executive board or the signatures of at least one member of the executive board and one officer of the association who is not a member of the executive board.

2. Except as otherwise provided in subsection 3, money in the operating account of an association may not be withdrawn without the signatures of at least one member of the executive board or one officer of the association and a member of the executive board, an officer of the association or the community manager.

3. Money in the operating account of an association may be withdrawn without the signatures required pursuant to subsection 2 to:

(a) Transfer money to the reserve account of the association at regular intervals;

(b) Make automatic payments for utilities;

(c) Make an electronic transfer of money to a state agency pursuant to NRS 353.1467; or

(d) Make an electronic transfer of money to the United States Government, or any agency thereof, pursuant to any federal law requiring transfers of money to be made by an electronic means authorized by the United States Government or the agency thereof.

4. An association may use electronic signatures to withdraw money in the operating account of the association if:

(a) The electronic transfer of money is made pursuant to a written agreement entered into between the association and the financial institution where the operating account of the association is maintained;

(b) The executive board has expressly authorized the electronic transfer of money; and

(c) The association has established internal accounting controls which comply with generally accepted accounting principles to safeguard the assets of the association.

5. As used in this section, “electronic transfer of money” has the meaning ascribed to it in NRS 353.1467.

NRS 116.31086 Solicitation of bids for association project; bids to be opened at meeting of executive board.

1. If an association solicits bids for an association project, the bids must be opened during a meeting of the executive board.

2. As used in this section, “association project” includes, without limitation, a project that involves the maintenance, repair, replacement or restoration of any part of the common elements or which involves the provision of services to the association.

NRS 116.31183 Retaliatory action prohibited; separate action by unit's owner.

1. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an attorney, community manager or vendor; or

(c) Requested in good faith to review the books, records or other papers of the association.

2. In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:

(a) Compensatory damages; and

(b) Attorney's fees and costs of bringing the separate action.

(Added to NRS by 2003, 2218; A 2009, 2808, 2895)

NRS 116.31083 Meetings of executive board; frequency of meetings; periodic review of certain financial and legal matters at meetings; requirements concerning minutes of meetings; right of units' owners to make audio recordings of certain meetings.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

NRS 116.31036 Removal of member of executive board.

1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section, the number of votes cast in favor of removal constitutes:

(a) At least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election.

2. A removal election may be called by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. To call a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this subsection and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If a removal election is called pursuant to this subsection and:

(a) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to this section:

(1) The secret written ballots for the removal election must be sent in the manner required by this section not less than 15 days or more than 60 days after the date on which the petition is received; and

(2) The executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots and not later than 90 days after the date on which the petition was received.

(b) The voting rights of the owners of time shares will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 90 days after the date on which the petition is received.

Ê The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Except as otherwise provided in NRS 116.31105, the removal of any member of the executive board must be conducted by secret written ballot in the following manner:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The 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 at a meeting of the association.

NRS 116.31034 Election of members of executive board and officers of association

Each member of the executive board shall, within 90 days after his or her appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that the member has read and understands the governing documents of the association and the provisions of this chapter to the best of his or her ability.

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.

2. The executive board may not act to:

(a) Amend the declaration.

(b) Terminate the common-interest community.

(c) Elect members of the executive board, but unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association, the executive board may fill vacancies in its membership for the unexpired portion of any term or until the next regularly scheduled election of executive board members, whichever is earlier. Any executive board member elected to a previously vacant position which was temporarily filled by board appointment may only be elected to fulfill the remainder of the unexpired portion of the term.

(d) Determine the qualifications, powers, duties or terms of office of members of the executive board.

3. The executive board shall adopt budgets as provided in NRS 116.31151.

NRS 116.3102 Powers of unit-owners' association; limitations.

1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:

(a) Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations.

(b) Shall adopt and may amend budgets in accordance with the requirements set forth in NRS 116.31151, may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395.

(c) May hire and discharge managing agents and other employees, agents and independent contractors.

(d) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

(e) May make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.

(f) May regulate the use, maintenance, repair, replacement and modification of common elements.

(g) May cause additional improvements to be made as a part of the common elements.

(h) May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) May grant easements, leases, licenses and concessions through or over the common elements.

(j) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) May impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) May impose construction penalties when authorized pursuant to NRS 116.310305.

(m) May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) May impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.

(p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) May exercise any other powers conferred by the declaration or bylaws.

(r) May exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) May direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) May exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.

3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

4. The executive board's decision under subsection 3 not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

5. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on the owner of any property in the common-interest community that is exempt from taxation pursuant to NRS 361.125. For the purposes of this subsection, "assessment" does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

NAC 116.405 Executive board: Determination by Commission of whether members have performed their duties ■

(NRS 116.3103, 116.615) In determining whether a member of the executive board has performed his or her duties pursuant to NRS 116.3103, the Commission may consider whether the member of the executive board has:

1. Acted outside the scope of the authority granted in the governing documents;
2. Acted for reasons of self-interest, gain, prejudice or revenge;
3. Committed an act or omission which amounts to incompetence, negligence or gross negligence;
4. Except as otherwise required by law or court order, disclosed confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates;
5. Impeded or otherwise interfered with an investigation of the Division by:

(a) Failing to comply with a request by the Division to provide information or documents;

(b) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or

(c) Concealing any facts or documents relating to the business of the association;

6. Kept informed of laws, regulations and developments relating to common-interest communities;
7. Cooperated with the Division in resolving complaints filed with the Division; and
8. Caused the association to:

(a) Comply with all applicable federal, state and local laws and regulations and the governing documents of the association;

(b) Uniformly enforce the governing documents of the association;

(c) Hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association;

(d) Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association;

(e) Consult with appropriate professionals as necessary before making any major decision affecting the association or the common elements;

(f) Deposit all funds of the association for investment in government securities that are backed by the full faith and credit of the United States or in a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Securities Investor Protection Corporation or a private insurer approved pursuant to NRS 678.755;

(g) Maintain current, accurate and properly documented financial records;

(h) Establish policies and procedures for the disclosure of potential conflicts of interest and the appropriate manner by which to resolve such conflicts;

(i) Establish policies and procedures that are designed to provide reasonable assurances in the reliability of financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in making business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;

(j) Prepare interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive;

(k) Make the financial records of the association available for inspection by the Division in accordance with the applicable laws and regulations of this State;

(l) Cooperate with the Division in resolving complaints filed with the Division; and

(m) Adopt and fairly enforce the collection policies of the association.

(Added to NAC by Comm'n for Common-Interest Communities by R129-04, eff. 4-14-2005; A by Comm'n for Common-Interest Communities & Condo. Hotels by R108-08, 4-20-2010)

NRS 116.31085 Right of units' owners to speak at certain meetings; limitations on right;

An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

NRS 116.3109 Quorum.

1. Except as otherwise provided in this section and NRS 116.31034, and except when the governing documents provide otherwise, a quorum is present throughout any meeting of the units' owners if persons entitled to cast 20 percent of the votes in the association:

(a) Are present in person;

(b) Are present by proxy;

(c) Have cast absentee ballots in accordance with paragraph (d) of subsection 2 of NRS 116.311; or

(d) Are present by any combination of paragraphs (a), (b) and (c).

2. If the governing documents of an association contain a quorum requirement for a meeting of the association that is greater than the 20 percent required by subsection 1 and, after proper notice has been given for a meeting, the members of the association who are present in person or by proxy at the meeting are unable to hold the meeting because a quorum is not present at the beginning of the meeting, the members who are present in person at the meeting may adjourn the meeting to a time that is not less than 48 hours or more than 30 days from the date of the meeting. At the subsequent meeting:

(a) A quorum shall be deemed to be present if the number of members of the association who are present in person or by proxy at the beginning of the subsequent meeting equals or exceeds 20 percent of the total number of voting members of the association; and

(b) If such a quorum is deemed to be present but the actual number of members who are present in person or by proxy at the beginning of the subsequent meeting is less than the number of members who are required for a quorum under the governing documents, the members who are present in person or by proxy at the subsequent meeting may take action only on those matters that were included as items on the agenda of the original meeting.

The provisions of this subsection do not change the actual number of votes that are required under the governing documents for taking action on any particular matter.

3. Unless the governing documents specify a larger number, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the members present is the act of the executive board unless a greater vote is required by the declaration or bylaws.

4. Meetings of the association must be conducted in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*, unless the bylaws or a resolution of the executive board adopted before the meeting provide otherwise.

Example of people required:

6-4, 5-3,4-3,2-1,1-1