Staff in the Ombudsman’s Office is prohibited from providing legal advice. All materials produced and provided to the public are for informational purposes only and do **not** serve as legal advice.

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/).
• Members of the board of directors collectively represent and act on behalf of the association.
• Decisions are made by board directors through the expression of their opinion in the form of a vote at a board meeting.
• Unless the association’s declaration requires a greater number of votes, a vote of the majority of the members present is the act of the executive board (NRS 116.3109[3]).
• Board members have a fiduciary duty to the association, which will be explored throughout this presentation.
LEARNING OBJECTIVES

- Defining Fiduciary Duty
- Acting on an Informed Basis
- Limitations on Board Authority
- Role of the Manager
- Behavioral Prohibitions
- Discipline
FIDUCIARY DUTY DEFINED

• Black’s Law Dictionary defines fiduciary duty as: “a duty to act for someone else’s benefit, while subordinating one’s personal interests to that of the other person.”

• A fiduciary is an individual in whom another (unit owners) has placed the utmost trust and confidence to manage and protect property or money (the association).

• A fiduciary duty is an obligation to act in the best interest of another party, such as the common-interest community (CIC).
CANDIDATE DISCLOSURES  
NRS 116.31034(9)

• Before being elected to the board, board members are required to make a good faith effort to disclose in writing with the nomination form:

  • Whether they are in “good standing”, meaning that they do not have any past due assessments or construction penalties owed to the association; and

  • Any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest, meaning the member stands to gain any personal profit or compensation from the association.

• This is important because:

  • If a board member is delinquent in their assessments and they participate in a hearing concerning a violation of the association’s governing documents, any action taken at the hearing is void (NRS 116.31031[9]).

  • If the member currently stands to gain any personal profit or compensation from the association, they cannot serve on the board (NRS 116.31034[10]).
Executive Board members are fiduciaries and shall act:

- In good faith and in the honest belief that their actions are in the best interest of the ASSOCIATION.

Board directors in a CIC are entrusted with the association’s property, money, and its general safety.

While acting as board members, individual members represent the interests of the association and not their own.

Nothing about serving on the board of directors is personal. Decisions are made which benefit the association.
PURPOSE OF SERVING ON THE BOARD

• As previously stated, the purpose of directors serving on the board is to express their opinions through the casting of votes in meetings that result in decisions being made for the association.
  • These decisions are captured in the form of meeting minutes (a written record of what occurred during the meeting) and an audio recording, with both becoming an official record of the association (NRS 116.31083). Meeting minutes are maintained indefinitely, from the beginning of the association until its termination.
  • Except as otherwise provided in the CC&Rs, the bylaws, or NRS 116, the executive board acts on behalf of the association (NRS 116.3103).
  • A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the board cannot vote on the matter and may not serve on the board.
  • If the member does not resign, he or she can be removed, at a board meeting, by the majority of the board pursuant to NRS 116.31034(10)(a)(2) & NRS 116.31034(13)(b).
  • A member of an executive board who has a family member or friend who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall disclose the matter to the executive board before voting on any such matter (NRS 116.31084).
  • In most circumstances, personal profit or compensation to a spouse of a board member is personal profit or compensation to the board member. Such a conflict must be disclosed and the board member must abstain from voting. NRS 116.31084(1), and the association must prohibit the person from serving on the board or as an officer (http://red.nv.gov/Content/CIC/Program_Training/FAQs/).
SO WHAT GOES INTO A VOTE?

• Executive Board members are **fiduciaries** and shall act:
  o *On an informed basis*

  NRS 116.3103

• In determining whether a member of the executive board has performed his or her duties, the Commission may consider whether the member has:
  o Caused the association to consult with appropriate professionals as necessary **BEFORE** making any major decision affecting the association (NAC 116.405[8][e]).

• **In performing their respective duties, directors and officers are to:**
  o Rely on information, opinions, reports, books of account or statements presented by professionals reasonably believed to be reliable and who exhibit expert competence.

  NRS 82.221
MAKING INFORMED DECISIONS

• Each board member **must** read and understand NRS 116 & NAC 116 to the best of his or her ability.

• Each board member **must** read and understand their association’s governing documents (CC&Rs, Bylaws, Articles, Rules & Regulations, & any other document used to govern the CIC) to the best of his or her ability.

• Each member of the board **must** certify that he or she has done both on the Declaration of Certification CIC Executive Board Member / form 602. Each form 602 **must** be kept and maintained as part of the association’s records. The association **should not submit** this form to the Division **unless requested to do so**.

• The form 602 is available at: http://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/602.pdf

NRS 116.31034(19)
In the performance of their duties, officers and members of the executive board, in addition to the aforementioned:

- **May NOT** act to *amend* the declaration or terminate the CIC;
- **May NOT** *elect* members of the executive board except through appointment when there becomes a vacancy outside of an election period;
  - An appointment only *lasts the duration* of the *unexpired portion of the term* or *until the next regularly scheduled election* (whichever occurs sooner).
- **May NOT** act to determine the qualifications, powers, duties or terms of office of members of the executive board.

- **SHALL** adopt and amend *budgets*.

NRS 116.3103(2)
INDEMNIFICATION

• The association is required to maintain directors and officers insurance that is a nonprofit organization errors and omissions policy in a minimum aggregate amount of not less than $1,000,000, naming the association as the owner and the named insured.

• The coverage must extend to the members of the executive board and the officers, employees, agents, directors, volunteers, the community manager, and any employees while acting as agents as insured persons under the policy terms.

  NRS 116.3113(1)(d)

• If a board member is named or sued for liability for actions undertaken in his or her role as a member of the board, the association shall indemnify the member for losses or claims, and undertake all costs of defense;

• Unless it is proven that the member acted with willful or wanton misfeasance or with gross negligence.

• If it is so proven, the association is no longer liable and may recover the costs from the board member directly.

  NRS 116.31037
1. What does fiduciary duty mean?

2. What happens when a board member makes an honest mistake and is sued?

3. Board members are required to make ________________ decisions.

4. What is the purpose of serving on the board?

5. When does the board need to consult qualified and reputable professionals?
THE COMMUNITY MANAGER

- **All** decision-making authority lies with the executive board of directors.

- The bylaws of the association specify the powers that the board may delegate to a community manager pursuant to NRS 116.3106(d). These delegated duties are expressed in the management agreement.

- The manager is **bound** to the duties listed in the management agreement.
ROLE OF THE MANAGER

A community manager **SHALL** (not all inclusive):

- At all times act as a **fiduciary** in any client relationship;
- Comply with **all** applicable federal & state laws and **lawful** provisions of the governing documents of each client;
- Keep informed of new developments in the CIC industry through **continuing education**;
- **Advise** a client to obtain advice from an independent expert relating to matters that are **beyond their expertise**;
- At all times ensure that the financial transactions of a client are current, accurate and properly documented and maintain internal accounting controls.
- **Comply** with the **directions of a client, unless the directions conflict with the governing documents or applicable laws of this State**.

NRS 116A.630
MANAGER’S AUTHORITY

To carry out any duties listed in the management agreement, which *may* include to:

- enter the grounds (exterior) of a vacant unit, after notice and hearing are provided, to cure a potential health and safety violation (NRS 116.310312);
- act on behalf of the association and attempt to collect a past due obligation from a unit owner (NRS 116.310313);
- develop written collection policies, approved by the executive board, and provide timely updates and reports as necessary (NRS 116A.630);
- post an opinion on an official interest to the association, provide notices to unit owners, and conduct elections (NRS 116.31035);
- receive petitions from unit owners to either recall a member of the board or call a special meeting (NRS 116.31036 & 116.3108);
- obtain qualified bids for any capital improvement project (NRS 116A.630);
- make available the books, records and other papers of the association for review;
- deposit or invest all funds of the association in an appropriate financial institution (NRS 116A.630);
- withdraw money from the *operating* account of the association for day-to-day services and utilities (NRS 116.31153)
A community manager shall at all times ensure that:

- The financial transactions of a client are current, accurate and properly documented.
- There are established policies and procedures designed to provide reasonable assurances in the reliability of the financial reporting, including:
  1) Proper maintenance of accounting records;
  2) Documentation of the authorization for any purchase, expenditures or disbursements;
  3) Verification of the integrity of the data used in business decisions;
  4) Facilitation of fraud detection and prevention; and
  5) Compliance with all applicable laws and regulations governing financial records.
- Financial statements or audits are prepared by an independent certified public accountant when necessary.
- The financial records of an association are made available to unit owners upon written request.
- Various funds are maintained in separate accounts.
- The manager shall not be a signatory on a withdrawal from a reserve account (NRS 116A.640)
A community manager **SHALL NOT**:  

- Except as otherwise required by law or court order, disclose confidential information relating to a client, including the business affairs and financial records of the client, unless the client agrees to the disclosure in writing.

- Impede or otherwise interfere with an investigation of the Division by:
  1. Failing to comply with a request of the Division to provide documents;
  2. Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or
  3. Concealing any facts or documents relating to the business of a client.

- Commingle money or other property of a client with the money or other property of another client, another association, the community manager or the employer of the community manager.

- Use money or other property of a client for his or her own personal use.

- Except as otherwise permitted by the provisions of the court rules governing the legal profession, establish an attorney-client relationship with an attorney or law firm which represents a client that employs the community manager or with whom the community manager has a management agreement.
• A community manager **SHALL NOT**: 

• Provide or attempt to provide to a client a service concerning a type of property or service:
  a) That is outside the community manager’s competence without the assistance of a qualified authority unless the fact of his or her inexperience or incompetence is disclosed fully to the client and is not otherwise prohibited by law; or
  b) For which the community manager is not properly licensed.

• Intentionally apply a payment of an assessment from a unit’s owner towards any fine, fee or other charge that is due.

• Refuse to accept from a unit’s owner payment of any assessment, fine, fee or other charge that is due because there is an outstanding payment due.

• Collect any fees or other charges from a client not specified in the management agreement.

• Accept any compensation, gift or any other item of material value as payment or consideration for a referral or in the furtherance or performance of his or her normal duties **UNLESS**:
  a) Acceptance of the compensation, gift or other item of material value complies with the provisions of NRS 116.31185 or 116B.695 and all other applicable federal, state and local laws, regulations and ordinances; and
  b) Before acceptance of the compensation, gift or other item of material value, the community manager provides full disclosure to the client and the client consents, in writing, to the acceptance of the compensation, gift or other item of material value by the community manager.
KNOWLEDGE CHECK

1. Can the manager use the association’s money for their own personal use?

2. Can the manager disclose the current financial status of the association to their preferred vendor list without written consent from the board?

3. Can the community manager be a signer on a withdrawal from the reserve account?

4. When can the manager choose not to comply with directions from the board?

5. Where can a unit owner find the manager’s duties owed to the association?
BOARD MEETINGS

• Actions of the executive board that impact the community must be taken at a board meeting and comply with NRS 116.31083.

• Notice must be provided, an agenda must be prepared/adhered to and minutes must be taken and maintained.

• There is nothing that prevents an executive board from having more than the minimum number of meetings required to address association business (at least once every quarter).

• As fiduciaries, the executive board should apply common sense when determining whether a meeting is necessary and what should be included on the agenda.

   NRS 116.31083(6)
MEETING DUTIES

The latest edition of Robert’s Rules of Order must be followed unless otherwise specified in the bylaws or a resolution of the executive board before the meeting.

NRS 116.3109(4)

A period of time must be provided that is devoted to comments by unit owners and discussion of those comments must be scheduled for both the beginning and the end of each meeting. At a board meeting, the period of time devoted to comments by unit owners at the beginning of the meeting must be limited to items listed on the agenda.

NRS 116.31083(6)

The secretary or other officer specified in the bylaws shall cause each open meeting of the executive board to be audio recorded.

Not more than 30 days after each meeting, the secretary or other officer specified in the bylaws shall cause the audio recording, minutes, or a summary of the minutes to be made available to unit owners; in electronic format whenever possible, free of charge.

NRS 116.31083(8)
A quorum must be present for purposes of determining the validity of any action taken at a meeting of the executive board.

Unless the governing documents specify a larger number, a quorum exists only if individuals entitled to cast a majority of the votes on the board are present at the time a vote regarding any action is taken.

If a quorum is present, the affirmative vote of a majority of the members validate the action to be taken.

- **NO board member can act alone to make decisions for the association.**

NRS 116.3109
A person **MAY NOT** be a candidate for or member of the executive board if the person stands to gain any profit or compensation of any kind from a matter before the board.

NRS 116.31034

A member of the executive board who has a relative by blood, adoption or marriage who stands to gain any personal profit or compensation of any kind from a matter before the executive board, shall *disclose* the matter to the board *before voting*.

NRS 116.31084
ACCEIVING COMMISSION OR COMPENSATION

• A member of an executive board or an officer of an association shall not:
  a) Enter into a contract with the association to provide financing, goods or services; or
  b) Accept any commission, personal profit or compensation of any kind from the association.

NRS 116.31187
A member of the executive board or an officer of an association shall not solicit or accept any form of compensation that:

a) Would improperly, or appear to improperly influence the decisions made by those persons; or

b) Would result, or appear to a reasonable person to result in a conflict of interest for those persons.

A member of an executive board or an officer of an association shall not accept, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value from:

a) Any one attorney, law firm, declarant, affiliate of the declarant or vendor exceeding $100 per year.

NRS 116.31185
PUNISHMENT FOR B Bribery

• A member of the executive board or community manager who asks for or receives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his or her vote, opinion or action will be influenced thereby, is guilty of a category D felony (punished as provided in NRS 193.130).

• A person who offers the bribe is also guilty of a category D felony.

NRS 116.31189

• Felony offenses are NOT enforceable by the Division!
An executive board shall not take, or direct or encourage another person to take, any retaliatory action against a unit owner because he or she has:

a) Complained in good faith about any alleged violation of NRS 116 or the governing documents of the association;

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

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

NRS 116.31183

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.
A member of the board shall not willfully threaten, harass, or otherwise engage in a course of conduct against any other person in the community which:

a) Causes harm or serious emotional distress; or
b) Creates a hostile environment for that person.

A person who violates this law is guilty of a misdemeanor, which is not enforceable by the Division.

NRS 116.31184

This provision is not defined as a violation pursuant to NRS 116.745, therefore complaints consisting solely of this nature should not be filed with the Division.
KNOWLEDGE CHECK

1. Is a board member allowed to enter into a service contract with the association?

2. Does the law allow a board member to offer to pay another board member to vote a certain way?

3. Can the Division enforce NRS 116.31184 (threats & harassment)?

4. What can happen if a board member engages in retaliatory action against a unit owner?

5. What is a quorum requirement?
AMENDMENTS TO CC&RS

NRS 116.2117(1) – The declaration, including any plats, may be amended only by vote or agreement of a majority of units’ owners, unless the declaration specifies a different percentage.

NRS 116.2108(1)(2) – Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration and with the consent of the units’ owners whose units are affected.

An amendment which prohibits or materially restricts the permitted uses of a unit, or the number or other qualifications of persons who may occupy units may not be enforced against a unit owner who was the owner on the date of the recordation of the amendment as long as he or she remains the owner of that unit.
Rules CAN be created or amended by the executive board, but they must:
• Be sufficiently explicit in their prohibition, direction or limitation of any action required for compliance (used to clarify).
• Be consistent with the governing documents.
• Not be adopted to evade any obligation of the association.
• Be uniformly enforced under the same or similar circumstances against all units’ owners.

NRS 116.31065

An association shall not adopt any rule or regulation:
• That has the effect of prohibiting or unreasonably interfering with a candidate in the candidate’s campaign for election (NRS 116.31034[16]); or
• Which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition (removal election/special meeting)(NRS 116.31036[2][b]).
The executive board has a fiduciary duty to ensure that any institution which holds money of the association:

1. Is located in this State;
2. Is qualified to do business in the State of Nevada; or
3. Has consented to be subject to the jurisdiction of the courts of this State.

NRS 116.311395(1)

Except as otherwise provided by the governing documents, in addition to the requirements above, an association shall deposit, maintain and invest all funds of the association:

a) In a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation;

b) With a private insurer approved pursuant to NRS 672.755; or

c) In a government security backed by the full faith and credit of the Government of the United States.

NRS 116.311395(2)
REQUIRED SIGNATURES FOR TRANSACTIONS

• Money in the **reserve account** of an association may not be withdrawn without the signatures of at least two members of the board. The community manager shall not be a signer on a withdrawal from the reserve account (NRS 116A.640).

• Money in the **operating account** may not be withdrawn without the signatures of at least two members of the board or one member of the board and the community manager.

NRS 116.31153

• Money in the operating account may be withdrawn without signatures to:
  a) Transfer money to the reserve account at regular intervals;
  b) Make automatic payments for utilities;
  c) Make an electronic transfer of money to a government agency ($10,000 or more).

NRS 353.1467
An association **may use electronic signatures** to withdraw from the **operating account** if:

a) The transfer is made pursuant to a written agreement entered into between the association and financial institution;

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 (GAAP)** to safeguard the assets of the association.

NRS 116.31153
REVIEW OF FINANCES

At least once a quarter, and not less than once every 100 days, the board reviews the following at one of its meetings (NRS 116.31083[7]):

1. A **current** YTD financial statement.
2. A **current** YTD schedule of revenues and expenses compared to the budget.
3. A **current** reconciliation of the operating and reserves.
4. The **latest** bank statements for all the association’s accounts.
5. **Current** status of any civil action or claim submitted to arbitration or mediation.
FUNDING PLAN

The executive board creates a funding plan designed to determine and prepare for the costs of running the association.

The executive board has a **DUTY** to provide for the maintenance, repair, and replacement of common elements (NRS 116.3107), and shall establish adequate reserve funds for this upkeep.

Adequately funded reserves means having funds sufficient to maintain the common elements:

a) At the level described in the governing documents and reserve study; and

b) Without using funds from the operating accounts or imposing special or reserve assessments (NAC 116.425[2][b]).

The executive board **SHALL**:

a) At least once every **5 years**, cause to be conducted a study of the reserves.

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

c) At least annually, make any necessary adjustments to the association’s funding plan.
RECORDS

• The executive board shall, upon the written request of a unit owner, make available the books, records and other papers of the association including:
  • The financial statement;
  • The budgets;
  • The study of the reserves;
  • The general violation record;
  • All contracts to which the association is a party; and
  • All records filed with a court to which the association is a party.

• 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.

• The executive board shall provide a copy of financial statements, budgets and the reserve study within 21 days after receiving a written request from a unit’s owner.

NRS 116.31175(2)
ENFORCEMENT DUTIES
NRS 116.3102(3)(4)

• The executive board may determine whether to take enforcement action for a violation of the governing documents, including whether to negotiate fines and fees.

• The executive board may decide NOT to take enforcement action if it determines that:
  a) The association’s legal position does not justify taking the action;
  b) The covenant or rule being enforced is inconsistent with current law;
  c) The violation is not objectionable to a reasonable person to justify expending the association’s resources; or
  d) It is not in the association’s best interests to pursue enforcement action (i.e. worth expending the association’s resources).

• The executive board’s decision 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.

• A member of the executive board shall not participate in any hearing or cast any vote relating to a fine if the member him or herself has not paid all assessments due to the association (NRS 116.31031).
• According to Black’s Law Dictionary, an arbitrary and capricious decision means, “a willful and unreasonable action without consideration or in disregard of facts or law or without determining principle.”

• Determining principle refers to comprehensive rules or doctrines which furnish a basis of origin for others (precedence).

• In the performance of their duties, the officers and members of the executive board are fiduciaries and shall act on an informed basis pursuant to NRS 116.3103(1).
Acts such as disclosing confidential information, not holding meetings properly, not maintaining or making available financial records of the association, gaining any profit or compensation from the association, acting autonomously as a single board member, are all breaches of a board member’s fiduciary duty.

These are also violations of other provisions of the NRS or NAC 116.

As a board member, it is crucial that you abide by your fiduciary duty. If you do not, you are not only automatically violating the law, but are most likely violating multiple areas of the law.
CONSIDERATIONS, BOARD DUTIES

In determining whether a member of the executive board has performed his or her duties, the Commission will consider whether the member:

1. Acted outside the scope of authority granted in the governing documents;
2. Acted for reasons of self-interest, gain, prejudice or revenge;
3. Committed an act of omission amounting to incompetence or gross negligence.
4. Inappropriately disclosed confidential information relating to a unit owner, member of the executive board, or an officer, employee or authorized agent of the association;

NAC 116.405
CONSIDERATIONS, BOARD DUTIES

5. Impeded or otherwise interfered with an investigation of the Division by:
   a) Failing to provide information or documents
   b) Supplying false or misleading information; or
   c) Concealing any facts or documents relating to the business of the association;

6. Kept informed of laws, regulations and developments relating to CICs;

7. Cooperated with the Division in resolving complaints filed; and

NAC 116.405
8. Caused the association to:
   • Comply with all applicable federal and state laws and regulations and the governing
documents of the association;
   • Uniformly enforce the governing documents of the association;
   • Hold meetings of the executive board with such frequency as to properly and efficiently
address the affairs of the association;
   • Obtain, when practicable, at least three bids from reputable service providers who possess
the proper licensing;
   • Consult with appropriate professionals as necessary before making any major decisions
affecting the association;
   • Maintain current, accurate and properly documented financial records;
   • Establish policies and procedures for the disclosure and resolution of potential conflicts of
interest; and
   • Make the records of the association available for inspection.

NAC 116.405
If the Commission finds that a respondent has committed a violation, the Commission may take any or all of the following actions:

- Issue an order directing the respondent to cease and desist.
- Issue an order directing the respondent to take action to correct conditions resulting from the violation.
- Impose an administrative fine of not more than $1,000 for each violation.

If the Commission finds that a member of the executive board knowingly and willfully committed a violation, the Commission may:

- order the respondent removed from his or her office or position if the removal is in the best interest of the association; and
- Require the respondent to pay all fines and costs imposed.

If the respondent violates any Commission order, the Commission may impose an administrative fine of not more than $1,000 for each violation.

If disciplinary action is taken, the Commission may order the respondent to pay the costs of the proceedings incurred by the Division, including without limitation, the cost of the investigation and reasonable attorney’s fees.
1. Who can amend the declaration of CC&Rs?

2. How often does the board need to be reviewing the association’s bank statements?

3. When would it be considered an abuse of a board’s discretionary authority to enforce or not enforce a provision of the governing documents?

4. How many signatures need to be on an association’s financial transactions?

5. What does arbitrary and capricious mean under the law?
Every contract or duty governed by NRS 116 imposes an obligation of good faith in its performance or enforcement (NRS 116.1113).

In a CIC, the executive board acts on behalf of the association.

In the performance of their duties, 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** (NRS 116.3103).

If a member of an executive board is sued for actions undertaken in his or her role as a member of the board, the association shall undertake all costs of defense, **UNLESS** it is proven that the member intentionally violated the law, abused his or her power, or acted with gross negligence (NRS 116.31037).