

State of Nevada
Department of Business & Industry
Real Estate Division
Common-Interest Communities
and Condominium Hotels Program





Five Hot Topics

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 nor interpret the law. If you feel that the association's governing documents or NRS 116 statutes have been violated you can file a complaint at the NV Real Estate Division



Five Hot Topics

1. Elections–(NRS 116.31034)
2. Agendas–(NRS 116.3108/NRS 116.31083)
3. Records–(NRS 116.31175/NRS 116.3118)
4. Bids–(NRS 116.3103/NAC 116.405/NRS 116.31086)
5. Reserve Studies–(NRS 116.31152 / NAC 116.425)



ELECTIONS

#1

Elections



- ▶ Shall elect an executive board of at least three members, all of whom must be units' owners.
- ▶ The term of office of a member of the executive board may not exceed 3 years
- ▶ Prior to nominations being sent the board may determine to use the “deemed to be duly elected” process
- ▶ Not less than 30 days before the preparation of a ballot for the election of members of the executive board, notice to be given to each unit's owner of the unit's owner's eligibility to serve as a member
- ▶ The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for membership on the executive board 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.



Three Envelope System

Outside
#10



HOA
777 Lucky Lane
Home, NV 89111

John & Jane Owners
123 HOA Avenue
Home, NV 89111

Inside
#9



John & Jane Owners
123 HOA Avenue
Home, NV 89111

HOA
777 Lucky Lane
Home, NV 89111

Inside
#6.5



OFFICIAL BALLOT

Do not put anything in this
envelope except the ballot



#1 Deemed elected process

The number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected

- ▶ Send out nomination forms– allow 30 days to return
- ▶ Send out second nomination forms and allow 30 days to return (also stating on nomination form that if no additional people submit, deemed elected and no election)
- ▶ Deemed elected–no additional names, no formal election
- ▶ Associations sends out additional notification that the members are deemed elected

NRS 116.31034(5)

#1 Election for Membership

- ▶ The number of candidates nominated for membership on the executive board to be greater than the number of members to be elected to the executive board
- ▶ Send out nomination forms– allow 30 days to return
- ▶ Prepare and mail ballots to the units' owners
- ▶ 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
- ▶ Conduct an election for membership on the executive board

#1



Elections–Disclosure

Each person who is nominated as a candidate for membership on the executive board must:

(a) Make a good faith effort to disclose 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 for the candidate if the candidate were to be elected to serve as a member of the executive board; and

(b) Disclose whether the candidate is a member in good standing.

A candidate shall not be deemed to be in “good standing” if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

NRS 116.31034 (8)



#1



Elections

A quorum is not required for the election of any member of the executive board.

Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.

The secret written ballots must be opened and counted at a meeting of the association.

NRS 116.31034(10c,10e)



#1

Elections–Eligibility



Senate Bill 174 Eligibility of Member of the Board

Unless a person is appointed by the declarant:

(a) A person may not be a ***candidate for or*** member 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, or 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 or is an officer of the association;

(2) The person stands to gain any personal profit or compensation of any kind from a matter before the executive board of the association; or

(3) The person, the person's spouse or the person's parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

(b) A person may not be a ***candidate for or*** member of the executive board of a master association or an officer of that master association if the person, the person's spouse or the person's parent or child, by blood, marriage or adoption, performs the duties of a community manager for:

(1) That master association; or

(2) Any association that is subject to the governing documents of that master association.

Effective Oct 1, 2105)



#1



Elections

Senate Bill 174 Eligibility of Member of the Board

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 provision 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.*

(effective October 1, 2015)



#1



Elections

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 116.31034(15)



AGENDA

#2



Agenda:

Meetings of units' owners

Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, notice of meeting and include a copy of the agenda for the meeting

The agenda for a meeting of the units' owners must consist of:

- (a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.
- (b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.
- (c) A period devoted to comments by units' owners regarding any matter affecting the common-interest community or the association and discussion of those comments.

NRS 116.3108

#2

Agenda: Executive board meetings

- Not less than 10 days before the date of a meeting of the executive board
- The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of [NRS 116.3108](#).
- A period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for both the beginning and the end of each meeting.
- Comments by the units' owners and discussion of those comments must be limited to items listed on the agenda

NRS 116.31083(5)



#2



Agenda: Complaints placed on agenda

If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association,

Not later than 10 business days after the date that the association receives such a complaint, the executive board or an authorized representative of the association shall acknowledge the receipt of the complaint and notify the unit's owner that,

if the unit's owner submits a written request that the subject of the complaint be placed on the agenda of the next regularly scheduled meeting of the executive board, the subject of the complaint will be placed on the agenda of the next regularly scheduled meeting of the executive board.

NRS 116.31087

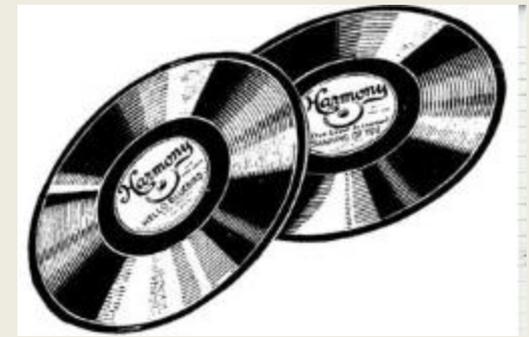
How detailed do executive board agendas need to be when the board meets in executive session?

ADVISORY CONCLUSION:

- ▶ All associations are required to follow the procedures set forth in their governing documents, but at a minimum, the agenda for executive session meetings must include a clear and complete statement of the topics and action to be taken such that it is clear how the item is entitled to be discussed and decided in executive session.
- ▶ Associations may not include confidential information in the executive session agenda, but each executive session agenda item must clearly state how each item for discussion fits in the limited categories listed in NRS 116.31085(3).

RECORDS

#3



Records:

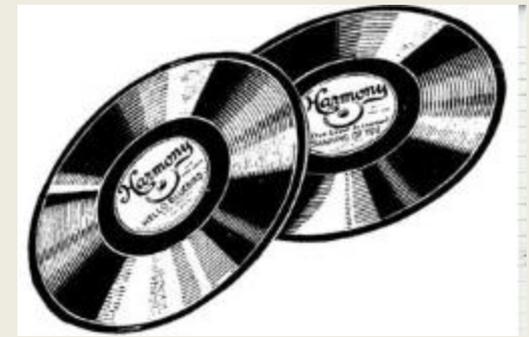
NRS 116.31175 (2)

The executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review at the business office of the association or a designated business location not to exceed 60 miles from the physical location of the common-interest community and during the regular working hours of the association, including, without limitation:

- (a) The financial statement of the association;
- (b) The budgets of the association
- (c) The study of the reserves of the
- (d) All contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party.



#3



Records:

NRS 116.31175 (2)

The executive board shall provide a copy of any of the records to a unit's owner within 21 days after receiving a written request therefor.

Such records must be provided in **electronic format** at **no charge** to the unit's owner or, if the association is unable to provide the records in electronic format,

The executive board may charge a fee to cover the actual costs of preparing a copy, but the fee may not exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.



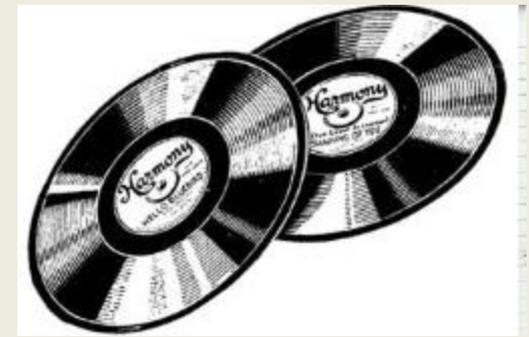
#3

Records requests

NRS 116.31175

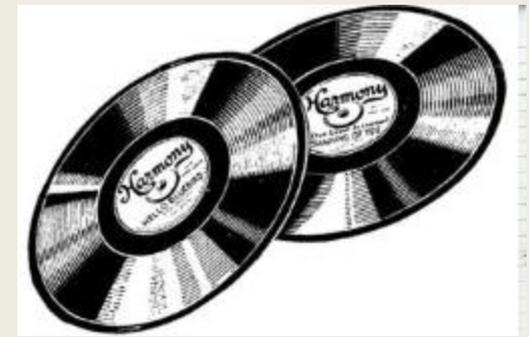
Do **not apply** to:

- (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.



#3

Records:



NRS 116.31175

The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

- ▶ (a) The minutes of a meeting of the units' owners which must be maintained **until the common-interest community is terminated**
- ▶ (b) The minutes of a meeting of the executive board which must be maintained **until the common-interest community is terminated**



#3 Basics of Recordkeeping

- ▶ Identify what records are required per statute.
- ▶ Identify what records require review. Setup a review schedule.
- ▶ Maintain those records in a way that allows all persons who need access to find and retrieve what they need.
- ▶ Remove or destroy records only with authorization; don't retain records authorized for destruction.
- ▶ Keep official records separate from non-record materials.
- ▶ Make someone responsible for the records program.
- ▶ Do all of this in a manner that is as cost effective as possible.

10 COMMANDMENTS OF RECORDS MANAGEMENT, Retrieved from <http://www.doi.gov/archive/ocio/records/tools/questions.html>



#3 Common Association Records

Original Documents

- Public offering statement
- Plats, plans, maps, blueprints
- Geological reports (flood, soil, etc.)
- Articles of Incorporation and all amendments
- Declaration of Covenants, Conditions and Restrictions (CC&Rs) and all amendments

Association's Lifetime Documents

- Bylaws and all amendments
- Rules and regulations, policies
- Meeting
- Elections
- Financials
- Reserve Studies
- Insurances
- Employment
- Contracts
- Required per NRS's Statutes

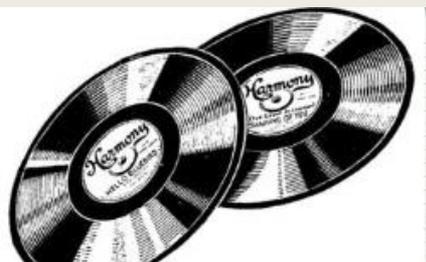


#3 Records of the Association Relating to Another Unit's Owner

- ▶ May the homeowner association's compiled data list of units' owners be made available by the executive board to be sold or provided upon request?

ADVISORY CONCLUSION

- ▶ Although property ownership information may be publically available by search of individual properties on county assessor web sites, the association's compiled data list of unit's owners is not a public record and should not be made available to either another unit owner or another entity upon request.
- ▶ The provisions concerning books, records and other papers of the association which must be made available for review by another unit owner upon request does not apply to the associations compiled data list of unit's owners.



BIDS

#4

Bids:

NRS 116.3103



- ▶ 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.
- ▶ (a) Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule;

NAC 116.405

- ▶ 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;

#4

What does the term “when practicable” mean as it applies to whether the executive board has performed their duty to obtain, when practicable, at least three bids from reputable service providers before purchasing any such service for use by the association?

ADVISORY CONCLUSION:

It is not possible to define or interpret further what “when practicable” means, as used in NAC 116.405 (8) (d), beyond the plain meaning of the language as defined by Black’s Law.

The specific facts surrounding a board’s failure to obtain at least three bids from three reputable service providers before purchasing service for the association will be determined based upon the circumstances around the decision at the time the decision was made.



#4



Bids:

Assembly bill 238

If an association solicits bids for an association project :

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

#4



Bids:

Assembly bill 238

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

The bids must be opened *and read aloud* 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 *professional* services to the association, *including, without limitation, accounting, engineering and legal services.*

NRS 116.31086

RESERVE STUDY



#5



Reserve Study:

The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of 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.

NRS 116.3115 Assessments for common expenses; funding of adequate reserves;



#5



Reserve Study:

1. The executive board shall:
 - (a) At least once every 5 years, cause to be conducted a study of the reserves. (NRS 116.31152)

A detailed analysis of what it will cost a community to repair, replace and restore major components of the common elements and any other portion of the community which it is obligated to preserve



#5



Reserve Study: Exceptions of having a person without a permit

1. Community contains 20 or fewer units and is located in a county whose population is less than 50,000.

(the study may be conducted by any person the board deems qualified to conduct the study)

*no common elements no reserve study is required



#5



Reserve Study:

1. The executive board shall:
 - (a) At least annually, review the results of the study; and
 - (b) At least annually, make adjustments to the association's funding plan which the board deems necessary to provide adequate funding for the required reserves



#5



Reserve Study:

“Adequately funded reserve” means the funds sufficient to maintain the common elements:

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

Without using the funds from the operating *accounts* or without special *or reserve* assessments, except for occurrences that are a result of unforeseen catastrophic events..

#5

Funding Plan—contribute a specific amount of money regularly to the Reserve Fund.

Funding Goal— a specific amount of money intended for the Reserve Fund.



#5



Reserve Study:

Full Funding

100% of the money required to replace the common elements is available when it is needed

Threshold Funding

A specific dollar amount or percentage is set by the board. (70% or greater is considered strong position)

Baseline Funding

The threshold is above zero.



#5



Usage of Reserve Assessments

The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and **must not** be used for daily maintenance.

NRS 116.3115 Assessments for common expenses; funding of adequate reserves;



#5



Reserve Study: Contents

A 30-year schedule which shows:

- (1) The projected increase in assessments that will be required in any given year to provide an adequately funded reserve;
 - (2) The projected inflation and estimated interest income from the reserve fund; and
 - (3) The projected ending balance of the reserve fund;
- (c) The names and credentials of any consultants and other persons with expertise used to assist in the preparation of the reserve study;
- (d) Any written reports prepared by consultants and other persons with expertise;
- (e) If there are any conflicting recommendations of the consultants or other persons with expertise while preparing the reserve study, a written explanation as to which recommendations are selected and the reasons for their selection;

NAC 116.425



#5



Reserve Study: Contents New Regulations (August 2015)

A 30-year schedule which shows:

1) The actual or projected beginning balance of the reserve fund;

(2) The projected increase in reserve contributions to the reserves, adjusted for inflation, that will be required in any given year to provide adequately funded reserves;

(3) The estimated interest income, net of federal income tax, earned in the reserve fund;

(4) The projected expenditures from the reserve fund

NAC 116.425



#5



Reserve Study: Contents New Regulations (August 2015)

- A general statement describing the overall status of the reserves of the association;
- The beginning and ending date for which the reserve study is prepared;
- A listing and detailed description of each major component of the common elements;
- ▶ Using the current replacement cost, a 30-year table that reflects the projected ending reserve fund balance for each year as compared to the fully funded balance for that year;

A detailed description of the type of reserve study that was performed

1. A full reserve study– which is based upon on-site visual observations
2. An update to a previous reserve study– made pursuant to a visit to the site of the common-interest community
3. An update to a previous reserve study made without a visit to the site



#5



Not later than 210 days after the executive board receives a draft of the reserve study, the executive board shall submit a summary of the results of the reserve study to the Division

The Division may post the summary of the results of the reserve studies filed with the Division on its website.

Five Hot Topics Wrap Up

1. Elections–Know requirements (eligibility, required disclosures, procedure for conducting)
2. Agendas– Clear and Understandable
3. Records– Allow unit owners to review
4. Bids–Get one must get three, informed
5. Reserve Studies– every five years, monitor



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

2501 East Sahara Ave., Suite 202, Las Vegas, NV 89104

1818 E. College Parkway, Suite 110 Carson City, NV 89706-7986



Reference

Fire image – 3rd slide

http://search.tb.ask.com/search/AJimage.jhtml?searchfor=google++fire++flames&ts=1440429905007&p2=%5EZO%5Exdm161%5EYYA%5Eus&n=780D139E&ss=sub&st=hp&ptb=6F193CA9-9BA4-4525-ABA3-8751B3ED54B8&si=EL_UTUS_13&tpr=sbt

Home Image:

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Bid Image:

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Records Image:

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Ballots Image:

http://search.tb.ask.com/search/AJimage.jhtml?ts=1440429905007&p2=%5EZO%5Exdm161%5EYYA%5Eus&n=780D139E&ss=sub&st=hp&ptb=6F193CA9-9BA4-4525-ABA3-8751B3ED54B8&si=EL_UTUS_13&tpr=sbt&searchfor=Ballots+images&pn=9&ots=1440434226240

