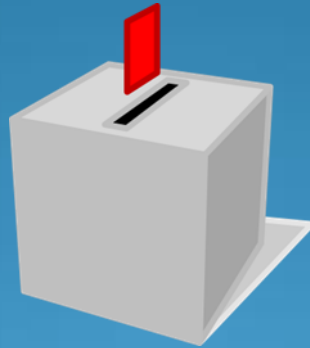


ELECTION PROCESS

NRS 116.31034



Presented by the Training Officer for the Office of the Ombudsman;
Common-Interest Communities & Condominium Hotels Program



Introduction

- Following the period of declarant control, *unit owners* shall elect an executive board of **at least three directors**, all of whom must be unit owners. *The executive board* then selects the officers (president, secretary, treasurer) of the association.
- Members of the executive board and officers of the association shall take office upon election.
- Unless the governing documents provide otherwise, **officers** of the association are not required to be unit owners, in which case they are also not directors, and have no voting rights.
- The term of office of a member of the executive board may not exceed 3 years, and unless the governing documents provide otherwise, there is **no limitation on the number of terms that a board member may serve**.
- The governing documents of the association must provide for **terms of office that are staggered** in such a manner that, to the extent possible, an equal number of directors are elected at each election. This excludes directors on executive boards with 1 year terms.

Declarant Control

[NRS 116.31032]

- For a CIC with:



- Less than 1,000 units
 - not later than 60 days after conveyance of 25% of the units that *may* be created,
 - **at least 1** member and not less than 25% of members of the executive board must be elected by unit owners.
 - 60 days after conveyance of 75% of the units that *may* be created, a period of declarant's control terminates.
- 1,000 units or more
 - not later than 60 days after conveyance of 15% of the units that *may* be created,
 - **at least 1** member and not less than 25% of members of the executive board must be elected by unit owners.
 - 60 days after conveyance of 90% of the units that *may* be created, a period of declarant's control terminates.
- Not later than 60 days after conveyance of 50% of the units that *may* be created, **at least 1/3** of the members of the executive board must be elected by units' owners.
- A period of declarant's control terminates 5 years after any right to add new units was last exercised or 5 years after all declarants have ceased to offer units for sale.

Looking to the Bylaws [NRS 116.3106]

- The Bylaws of an association:
 - state the required **number** of members of the executive board and **titles** of the officers (president, treasurer, secretary, and any other title stated);
 - specify the **qualifications, powers, duties, terms of office and manner** of electing and removing officers of the association and members of the executive board;
 - specify procedures for filling vacancies;
 - specify the powers the board may delegate to other persons or to a community manager;
 - provide procedural rules for conducting elections; and
 - specify the month, time and place that the annual meeting of the unit owners is to be held.

Request for Nomination Forms (Initial Notice)

AT LEAST **30 DAYS** BEFORE THE PREPARATION OF ANY ELECTION BALLOTS...

- The association must mail out **Request for Nomination** forms to all unit owners.

Initial Notice – Association Duties

- The executive board determines whether or not to allow for candidates to be **duly elected**.
- 1. If it is permitted, the **duly elected process** must be explained.
- The association must disclose that:
 - If, at the closing period for nominations, the number of candidates is **equal to or less** than the number of vacancies, then:
 - (a) The association will not prepare or mail any ballots; and
 - (b) The nominated candidates shall be deemed to be duly elected to the executive board at the **meeting of the unit owners** at which ballots would have been opened and counted.

Appointments

- If, at the closing period for nominations, the number of eligible nominees is **less than** the number of vacancies, the executive board may fill remaining vacancies on the executive board by **appointment**, regardless of what the governing documents say, **at a meeting** of the executive board **held after** the annual meeting.
- Any such person **appointed** to the executive board shall serve as a member of the executive board **until the next regularly scheduled election**.
- An executive board member **elected** to a previously appointed position may only be elected to fulfill **the remainder of that term** in order to keep terms appropriately staggered.

Initial Notice – Association Duties

2. **Eligibility requirements** must be explained.

• To be eligible, first, the candidate must be either:

- a unit owner,
 - an officer, employee, agent or director of a corporate owner of a unit
 - a trustee or designated beneficiary of a trust that owns a unit
 - a partner of a partnership that owns a unit
 - a member or manager of a limited-liability company that owns a unit
 - a fiduciary of an estate that owns a unit
- In all events where the potential candidate is not the **record owner**, the person shall file proof in the records of the association that he or she is eligible per the qualifications stated above.



Initial Notice – Association Duties

- To be eligible, **second**, the candidate may NOT:
 - reside in a unit with, be married to, domestic partners with, or related by blood, adoption or marriage to another person who is **also** a member of the executive board or is an officer of the association;
 - This is true unless the number of nominees is less than or equal to the number of vacancies.
 - **stand to gain any personal profit or compensation** of any kind from a matter before the executive board of the association;
 - perform the duties of, or have their spouse, parent or child, by blood, marriage or adoption performing the duties of community manager for that association.



Eligibility – Additional

- A person who owns 75⁰% or more of the units in an association MAY:
 - Be a candidate or an officer of the association; and
 - Reside in a unit with, be married to, domestic partners with, or related by blood, adoption or marriage to another person who is also a member of the executive board or is an officer of the association...

Unless the two board members together would constitute a majority of the board.

Disclosure Statements- Candidate Duties

3. Each candidate must prove their eligibility on the **Nomination Form** and complete a **Disclosure Form** in which the candidate must:
 - Make a good faith effort to **disclose** any financial, business, professional or personal relationship or interest that would result **or appear** to result in a **potential** conflict of interest; and
 - Disclose whether he or she is a member in good standing.
 - A candidate is not in “good standing” if he or she has any unpaid and past due assessments or construction penalties that are required to be paid to the association.
- Both forms are sent by the candidate to the association.
- **Disclosures** of eligible candidates are sent by the association with the ballot. In the event ballots are not prepared, they are sent in the next regular mailing of the association.

Ineligible – Association Duties

- If a person is *NOT* eligible to be a candidate, the association:
 - Must not place his or her name on the ballot; and
 - ***Must prohibit such a person from serving** as a member of the executive board or an officer of the association.

Candidate Informational Statement

- A candidate *MAY* request that the association send, *at the association's expense*, to the designated mailing address of each unit, a **Candidate Informational Statement**.
- **The Candidate Informational Statement:**
 - (1) Must be no longer than a single, typed page;
 - (2) Must not contain any defamatory, libelous or profane information; and
 - (3) *May* be sent with the secret ballot.

Campaigning (Optional)

- To allow the candidate to communicate campaign material directly to unit owners, the association may provide to the candidate a list of **mailing** addresses for each unit, not including any names:
 - in paper format not to exceed the cost per page (25/10 cents),
 - by compact disc for \$5 or less, or
 - by email at no cost.
- If the campaign material will be sent by the association:
 - by mail - the candidate must provide to the association a separate copy of the campaign material and **must pay** the actual costs of mailing before the material is mailed.
 - by email - the candidate must provide to the association one copy in electronic format, and the association will email the material for the candidate.

Campaigning Cont'd



- The candidate must provide a **signed written statement** to the association, stating that the request for addresses is to communicate campaign material only, and nothing else.
- 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.
 - Except that the candidate's campaign may be limited to **90 days** before the date that ballots are required to be returned.

Official Publication



- If an **official publication** (official website, newsletter, bulletin board, etc.) contains any mention of a candidate, the official publication must, upon request and under the same terms and conditions, provide equal space to all candidates.
- The association and its officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person (NRS 116.31035).

Secret Written Ballots

- If the number of candidates is **greater** than the number of vacancies, then the association shall:
 - Prepare and mail ballots to unit owners whose voting rights have not been temporarily revoked; and
 - Conduct an election accordingly.
- The ballot should:
 - describe the number of vacancies to be filled.
 - if the declaration allows for cumulative voting, explain the fact that each voter is allowed as many votes as there are candidates and he or she may give all votes to one candidate or varying numbers to several [NRS 116.2107(4)(b)].
 - contain the names of eligible candidates.
 - specify the time, date and method by which a ballot must be delivered to the association to be counted.

Sending out Ballots

- The secretary or other officer specified in the bylaws shall cause a secret written ballot and return envelope to be sent, prepaid by U.S. mail, to the designated mailing address of each unit.
 - A 3-envelope system can be used to track receipt of the ballot and maintain confidentiality.

An outer envelope mailed to the unit owner will contain two other envelopes:

SECRET BALLOT ENVELOPE

- Do not write your name, account number or other identifying marks on ballot or on this envelope
- After filling out ballot, place it in this envelope
- Seal this envelope
- Insert this envelope into the return envelope included in this mailing or return it to the specified location (if provided)

OFFICIAL USE ONLY
-DO NOT OPEN! This envelope must remain sealed until appropriate time when all ballot envelopes are opened and tallied
-Do not write voters name or other identifying notes on this envelope



Your name
and address

Return Ballot Envelope

Association
address

- There is no statutory requirement that an association provide for or pay for postage for any return ballot (AO).
- Each unit owner must be provided with at least **15 days** after the date the secret written ballot is mailed to return the ballot to the association.

Submitting Ballots [NRS 116.31107]

- A person shall not knowingly or willfully engage in any of the following acts:
 - (a) Changing or falsifying a ballot.
 - (b) Forging or falsely signing a ballot.
 - (c) Fraudulently casting a vote.
 - (d) Rejecting, failing to count, destroying, defacing or otherwise invalidating the ballot of another voter.
 - (e) Submitting a counterfeit ballot.
- A person who violates this section is guilty of a category D felony.

ELECTION

- A quorum is not required to be present when secret written ballots are opened and counted at the meeting of the unit owners.
- Only secret written ballots returned to the association may be counted (no quorum necessary to decide outcome).
- Incumbent members of the executive board and each person whose name is on the ballot may not possess, be given access to, or participate in the opening or counting of the secret written ballots before those ballots have been opened and counted (may use neutral 3rd party).
- Secret written ballots must be opened and counted in plain sight (tallies are taken; ballots and identifying envelopes are placed into piles to become association records).
- Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death, disability or attempted revocation by the person who cast that vote (NRS 116.311).

Once Elected



- Each member of the executive board SHALL, within **90 days** after his or her appointment or election, certify in writing to the association on NRED form 602 that the member has read and understands the governing documents of the association and the provisions of NRS 116 to the best of his or her ability.
- Within **30 days** after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement (NRS 116A.620).

Recalling a Board Member – NRS 116.31036

- Any member of the executive board, other than a member appointed by the declarant, may be removed with or without cause.
- A removal election may be called by at least 10% of unit owners (or any lower percentage specified in the bylaws) who:
 - sign and submit a written petition by mail, return receipt requested, to the association, or
 - serve the executive board or community manager with the petition by process server.
- The petition should include the date and names and addresses of all signatories (names should be printed and signed).
- The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures.



Removal Ballots

- Between **15 and 60 days** after the date on which the petition is received by the association, secret written ballots and return envelopes (3 envelope system) for the removal election must be mailed by the association to each unit owner eligible to vote.
 - Ballots must state the percentage of votes necessary (35%); and
 - Specify the time, date and method by which a ballot must be delivered to the association to be counted.
- Each unit owner must be provided with at least **15 days** after the date the secret written ballot is mailed to return the ballot to the association.
- No later than **90 days** after the date on which the petition was received, the executive board shall hold the special meeting to open and count the secret written ballots.

Removal Election

- The removal election should be conducted pursuant to the provision guiding regular elections [NRS 116.31034(15)].
- Only secret written ballots that are returned to the association may be counted to determine the outcome.
- Incumbent members of the executive board and any member subject to removal may not possess, be given access to, or participate in the opening or counting of secret written ballots returned to the association before those ballots have been opened and counted in plan sight at a special meeting of the association.
- A quorum is not required to be present when the secret written ballots are opened and counted.

Removal

- In order for a board member to be removed:
 - At least 35% of the total number of voting members of the association must cast votes IN FAVOR of removal; and
 - Those votes cast must also represent A MAJORITY of all votes cast.
- *Example:*
 - *If there are 100 units in an association, at least 35 votes must be cast in favor of removal (meets first requirement).*
 - *If 75 total votes are received, 35 votes in favor of removal is not the majority (second requirement), and the member cannot be removed.*

Summary

- When an election is set to take place, initial notice is sent by the association to *all* unit owners, including the Nomination Form and Disclosure Statement Form, which is completed and returned to the association by *interested* unit owners.
- After the forms mentioned above are received by the association, eligible nominees are placed on the secret written ballot. Ballots are then mailed out to unit owners eligible to vote, along with a candidate Disclosure Statement for each nominee.
- Secret written ballots are filled out and returned by unit owners to the association. Ballots are opened and counted in plain sight at the annual meeting.

30 days

At least

15 days

At least

Thank You

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