

RECORD KEEPING



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



Introduction

- For any organization, it is extremely important to maintain good record keeping practices.
- A record keeping system should be thorough, accurate, reliable and easy to follow.
- For an association, good record keeping allows the board to: justify expenditures, monitor progress, conduct efficient analysis, make informed decisions, and capture the financial status of the association over time.
- Maintaining good records is a major part of the equation for gaining a maximum return on any investments.

Recording the Declaration

- The first thing that any new community must record as part of the records of the association is the declaration of covenants, conditions and restrictions, or CC&Rs. This declaration is created and recorded by the declarant.
- A common-interest community is created only by recording this declaration in every county in which any portion of the common-interest community is located.

Recording Amendments

- The declaration, including any plats, may be amended only by vote or agreement of at least a majority of unit owners. This is true unless the declaration specifies a different percentage.
- If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.
- Any amendment made to the CC&Rs is not effective until a certified copy is recorded by a designated officer of the association in the county in which the community is located.
- Not later than 30 days after the date on which the amendment is recorded, the association shall deliver to all unit owners a copy of the recorded amendment.
- No action to challenge the validity of an amendment may be brought more than 1 year after the amendment is recorded.

What else must be recorded?

- A lien for *unpaid assessments* is extinguished unless a Notice of Default is recorded with the county by the association [NRS 116.3116].
 - To be able to collect 9 months of past due assessments after a unit has been foreclosed by the bank, the board must have properly recorded the notice of default.
- The association shall, before selling a unit due to foreclosure, give notice of the time and place of the sale by recording the Notice of Sale with the county recorder [NRS 116.311635].



Custodian of Records



- A custodian of records is the person responsible for the records at their physical location.
- This individual is identified on the Division's Annual Registration form 562.
- This individual is often the community manager.
 - Any management agreement entered into between the association and a community manager must acknowledge that all records and books of the association are the property of the association.
 - Upon termination or reassignment of the management agreement, the community manager must, within 30 days, transfer possession of all books, records and other papers back to the association, or to the next manager, regardless of any fees or charges still due by the association.

Maintaining Records

- 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 the **minutes** of a meeting which must be maintained until the common-interest community is **terminated**.

Availability of Records

- The executive board or a community manager 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.

Providing Records



- Any records required to be copied and provided pursuant to NRS 116.31175(1) must be provided in electronic format, at no charge to the unit owner whenever possible, within 21 days.
- If the association is unable to provide records in electronic format, the executive board may charge a fee to cover the actual costs of preparing a copy.
 - The fee may not exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.
- The executive board shall not require a unit owner to pay an amount in excess of **\$10 per hour to review** any books, records, contracts or other papers of the association on site.

What records MUST the board make available upon written request?

- A COPY or REVIEW of records must be afforded to unit owners.
- The association must provide **a copy of** (in electronic format at no charge whenever possible [NRS 116.31175(2)]):
 1. Financial statements of the association;
 2. Budgets of the association;
 3. Study of the reserves; and
 4. The audio recording, minutes or a summary of the minutes of an association meeting upon request (made available at least 30 days after the meeting).
- The association must at least allow **review of**:
 1. All contracts to which the association is a party;
 2. All records filed with a court relating to a civil or criminal action to which the association is a party; and
 3. Other non-confidential records of the association.

Financial Records for Review

- Financial records, unlike financial statements, do not have to be copied and provided to unit owners.
- Financial records are any records necessary to *support* the financial statements of an association which include:
 - receipts,
 - bank statements,
 - income tax reports,
 - contracts,
 - inventories of properties,
 - financial obligations,
 - depreciation in property or equipment,
 - contingent liabilities, and
 - any other records deemed necessary by the Division or by the accountants or auditors of an association.

Other Records:

- Articles of: incorporation, association, organization
- Certificate of: registration, limited partnership, or trust
- Bylaws and any rules or regulations which may have been adopted
- Financial audits
- A copy of any plans and specifications used in the construction of improvements
- All insurance policies and any claims
- Renewable permits issued by government bodies
- Written warranties still in effect
- A roster of unit addresses and proof of mailing for any notices sent out
- Election materials; return envelopes, tally sheets, nomination forms, etc.
- Lease agreements for tracking of rental units for cap requirements
- Notices and any waivers sent to unit owners, newsletters, meeting agendas, any business conducted by email, etc.

General Record of Violations

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

Liens and Record of Fees

- The association shall keep a record of any costs and interest charged against a unit that has a lien on it for any unpaid amount (fine or assessment). This includes:
 - Collection fees
 - Filing fees
 - **Recording fees** [NAC 116.470]
 - Fees related to the preparation or delivery of a lien
 - Fees for postage or delivery
 - And any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation.



The board shall NOT provide:

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

Transparency of Records

- Any specifics discussed by the executive board when it meets in executive session are confidential, but the matters discussed must be generally noted in the minutes of the next meeting of the executive board, thus becoming records of the association [NRS 116.31085(6)].
- Any business conducted by the board outside of an open, noticed meeting must be approved through signed written consent of a quorum of the board. This written consent becomes record of the association [NRS 82.271(2)].
- Any written complaint filed with the Division is considered confidential until a decision is rendered and a final letter is sent to the association [NRS 116.757]. This final letter becomes a record of the association.

Records Request Form 781

- If a unit owner has not received required records within 21 days after request, he or she can:
 - Complete form 781 to have the Ombudsman's Office request the records on the unit owner's behalf.
 - Form 781 requires:
 - A copy of the written request that was initially submitted to receive records
 - The specific records that were requested
 - The person that the request was sent to
 - A signature and all original documentation submitted by mail
- The Division may take up to 10 working days to process this request.

Failure to Provide Records to the Division

- If the Ombudsman's Office is denied access to permissible books and records:
 - The Ombudsman can issue a subpoena for their production.



Failure to Provide Records Cont'd

- If a person fails to comply within 20 days after receiving a subpoena, the Commission can petition the district court for an order compelling compliance.
- If still not compliant, the court can order the person subpoenaed to appear before the court within 20 days to show why they have not complied.
- Upon failure of complying with this second order, the person shall be dealt with as for contempt of court (\$25/day fine for each day records were not provided).



Your Duty to Comply with the Division

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

Summary - Welcome to the HOA



- The first record that any potential purchaser of a unit obtains from the association (via the seller) comes in the form of a RESALE PACKAGE containing the following:
 - A copy of the declaration, bylaws, rules and regulations and the information statement (“Before you purchase, did you know?”)
 - A statement of demand setting forth the amount of the monthly assessment and any unpaid obligation of any kind, including fees, fines, interest, etc., currently due from the seller.
 - A copy of the current operating budget and current year-to-date financial statement, including a detailed summary of the reserves.
 - A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions.
 - A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.
 - A statement describing fine policies, late charges, penalties, interest rates on delinquent assessments, and any additional costs for collecting past due fines and charges.
- Must be provided by the association to the unit owner within 10 days after request.

Summary

- Records are initially created by the declarant and transferred to the board elected by unit owners.
- The association then provides records to unit owners either through the resale package or by written request.
- Unit owners are entitled to at least review all records of the association, excluding any record containing the personal information of another individual or any documents still in process.
- Any board member or community manager who refuses to make records of the association available to unit owners upon request is in breach of their fiduciary duty and can be brought before the Commission for Common-Interest Communities for appropriate discipline.

Thank You

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