

Tenants within a CIC



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



Introduction



- ❧ NRS 116 applies to common-interest communities created within the state of Nevada (NRS 116.1201).
- ❧ Common-interest communities are defined by the obligation of **unit owners** [defined in NRS 116.095 & 116.31034(13)] to pay for the maintenance, insurance, etc. of common elements (NRS 116.021).
- ❧ Overall, NRS 116 identifies the rights of unit owners, not tenants. As residents of the community, however, tenants are impacted by the actions of the association; whether regarding the maintenance and upkeep of common elements or the effect of rules and regulations.

Renting in a CIC-

NRS 116.335



- ❧ The association should be aware of all rental units within the community, especially if there are rental caps.
- ❧ If the governing documents require a tenant to register with the association, the association:
 - ❧ May require the unit owner to provide a copy of the lease or rental agreement; and
 - ❧ May not charge a fee for the submission of this information.
- ❧ NRS 116 does not prohibit an association from enforcing any provisions which govern the renting or leasing of units contained in any other applicable federal, state or local laws or regulations.

Rental Agreement -

NRS 118A.200



- ☞ Any written rental agreement must be signed by the landlord and the tenant.
 - ☞ The landlord shall provide one copy to the tenant free of cost at the time the agreement is executed.

- ☞ The agreement MUST contain the following:
 - (a) Duration of the agreement.
 - (b) Amount of rent and the manner and time of its payment.
 - (c) Occupancy by children or pets (CC&Rs).
 - (d) Services included.
 - (e) Required fees and their purpose.
 - (f) Deposits which are required and the conditions for their refund.
 - (g) Charges which may be required for late or partial payment of rent or for return checks.
 - (h) Inspection rights of the landlord.
 - (i) A listing of persons or numbers of persons who are to occupy the dwelling.
 - (j) Respective responsibilities of the landlord and the tenant as to the payment of utility charges.
 - (k) A signed record of the inventory and condition of the premises.
 - (l) A summary of the provisions regarding “public nuisance.”
 - (m) How the tenant may report nuisances or violations of building, safety or health code.
 - (n) Information regarding the right of the tenant to display the U.S. flag.

Disclosure to Tenant –

NRS 118A.260



- ✧ A landlord SHALL disclose to a tenant, in writing, at or before the commencement of the tenancy:
 - (a) The name and address of:
 - (1) The persons authorized to manage the premises;
 - (2) A person authorized to act on behalf of the unit owner for the purpose of service of process and receiving notices and demands; and
 - (3) The principal or corporate owner.
 - (b) A phone number at which a responsible person who resides in the county or within 60 miles of the premises may be called in case of emergency.
 - (c) If the unit is subject to any foreclosure proceedings (NRS 118A.275).
 - (d) *The governing documents of the association* (NRS 116.31031).
 - (e) The date upon which the property will be deemed abandoned and the rental agreement terminated.
 - (f) An address for payment of the rent.

Abandonment –

NRS 118A.450 & 118A.460



- ❧ **NRS 118.195** - A landlord may serve a tenant with written notice of the belief that the property has been abandoned if the tenant has been absent $\frac{1}{2}$ the payment period and has not paid rent after being notified of such.
- ❧ For disposal of personal property abandoned by a tenant:
 - (a) The landlord shall provide for the safe storage of the property for 30 days and may collect reasonable and actual costs of moving and storage before releasing the property to the tenant.
 - (b) After expiration of the 30-day period, the landlord may dispose of the property and recover reasonable costs out of the property value if he or she:
 - ❧ has made reasonable efforts to locate the tenant,
 - ❧ has notified the tenant in writing of his or her intention to dispose of the property, and
 - ❧ 14 days have elapsed since this notice was given.
- ❧ **NRS 118.175** - If a landlord is unable to rent the property after abandonment, the former tenant is liable for any actual damages which may result.

Condition of Unit –

NRS 118A.290



- ☞ The landlord SHALL at all times during the tenancy maintain the unit in a habitable condition.
- ☞ A unit is not considered habitable if it violates any provisions of housing or health codes or if it substantially lacks:
 - (a) Effective waterproofing and weather protection (roof, exterior walls, windows and doors).
 - (b) Plumbing facilities maintained in good working order.
 - (c) A water supply capable of producing hot and cold running water and connected to a sewage disposal system.
 - (d) Adequate heating, ventilating and air-conditioning.
 - (e) Electrical lighting, outlets and wiring maintained in good working order.
 - (f) An adequate number of appropriate receptacles for garbage and rubbish.
 - (g) Clean and sanitary conditions.
 - (h) Floors, walls, ceilings, elevators, stairways and railings maintained in good repair.

Uninhabitable-

NRS 118A.355



- ✧ If a landlord fails to maintain a unit in a habitable condition the tenant may:
 - (a) Terminate the rental agreement immediately.
 - (b) Apply to the court for relief.
 - (c) Withhold rent without incurring late fees or any other charge authorized by the rental agreement until the landlord has remedied, or has attempted in good faith to remedy, the failure.
 - (d) Cause necessary work to be done and deduct from his or her rent the cost of the work; not exceeding \$100 or an amount equal to one month's periodic rent, whichever amount is greater (NRS 118A.360).

- ✧ The tenant may NOT proceed under this section:
 - (a) Unless the tenant has given proper notice and at least 14 days for the unit owner to remedy the situation;
 - (b) For a condition caused by the tenant's own deliberate or negligent act; or
 - (c) If the unit owner's inability to adequately remedy the failure within 14 days is due to the tenant's refusal to allow lawful access to the dwelling.

New Unit Owner –

NRS 118A.244



- ❧ If a unit owner sells his or her home, or the deed is transferred due to death, assignment or otherwise, the unit owner or his or her agent SHALL, within a reasonable time, notify the tenant in writing of the name, address and telephone number of the unit's successor in interest.
- ❧ The unit owner SHALL, before he or she records the new deed, transfer to the successor in writing any portion of a tenant's security deposit or other money held or returned.

Rights of Tenants Living in a CIC



Voting by Proxy –

NRS 116.311



- ❧ Pursuant to the governing documents, EXCEPT for election or removal of a board member, votes allocated to a unit (including those needed for meeting a quorum) may be cast pursuant to a proxy, executed by a unit's owner.
- ❧ A unit owner MAY give a proxy to a tenant who resides in the unit.
- ❧ In this case, the tenant must attend a meeting of the association and disclose at the beginning of the meeting the number of proxies to which he or she will be casting votes. The tenant cannot cast a vote that is contrary to the proxy.
- ❧ The proxy MUST:
 - ❧ be dated,
 - ❧ designate the meeting for which it is to be executed,
 - ❧ designate each specific item on the agenda for which it will be executed, and
 - ❧ designate the vote **on behalf of the unit's owner**.
- ❧ A proxy terminates immediately after the conclusion of the meeting.

U.S. Flag -

NRS 118A.325



- ❧ A tenant shall not be prohibited from displaying the flag of the United States on the premises that the tenant has a right to occupy, except:
 - ❧ the display cannot be used for commercial advertising purposes; and
 - ❧ the placement and manner of the display can be restricted.
 - ❧ Ex: restricting a depiction or emblem of the flag that is made of balloons, flora, lights, paint, paving materials, roofing, siding or any other similar building, decorative or landscaping component.



Political Signs –

NRS 116.325



- ❧ The executive board shall not and the governing documents must not prohibit an occupant of a unit from exhibiting one or more political signs, except:
 - (a) All political signs must NOT be larger than 24 x 36 inches.
 - (b) If the unit is occupied by a tenant, the unit owner may not exhibit any political sign unless the tenant consents, in writing.**
 - (c) All political signs are subject to any applicable provisions of law governing the posting of political signs.
 - (d) A unit owner or occupant may exhibit as many political signs as desired, but may not exhibit more than one political sign for EACH candidate, political party or ballot question.



Trash -

NRS 116.332



❧ An association of a planned community **MAY** adopt rules that reasonably restrict the manner in which containers for the collection of solid waste or recyclable materials are **stored during the time the containers are not within the collection area.**

❧ The rules adopted by the association:

❧ **MUST** allow the unit owner or tenant to store containers *outside* any building or garage; and

❧ May require that containers be screened from view, including rules prescribing the size, location, color and material of any device, structure or item used to screen the containers.

Receiving Services –

NRS 116.2111



❧ An association may not charge a fee or *impose a fine* for a person entering the community to **provide services** to:

- ❧ a unit;
- ❧ a unit's owner;
- ❧ a tenant; or
- ❧ any visitor or guest.



❧ The executive board may not impose a fine for a violation committed by an *invitee* unless the unit owner or tenant:

- (a) Participated in or authorized the violation;
- (b) Had prior notice of the violation; or
- (c) Had an opportunity to stop the violation and failed to do so.

Interruption of Utilities -

NRS 116.345



- ❧ An association may not interrupt any utility service except for the nonpayment of utility charges when due.
- ❧ An association shall in every case send a written notice of its intent to interrupt any utility service to the tenant at least 10 days before.



Parking -

NRS 116.350



- ❧ The governing documents of an association CAN set forth rules that reasonably restrict the parking or storage of recreational vehicles, watercraft, trailers or commercial vehicles in the community.
- ❧ The governing documents of an association must not prohibit a person (*unit owner or tenant*) from parking a utility service, law enforcement, or emergency vehicle if the person is bringing the vehicle home pursuant to his or her employment and for the purpose of responding to emergency requests for service.
 - ❧ An association may require that the person provide written confirmation from his or her employer.
- ❧ “Utility service vehicle” means any vehicle used to repair, maintain or operate any structure necessary for the delivery of public utility services, including the furnishing of electricity, gas, water, sanitary sewer, telephone, cable or community antenna service.

Towing -

NRS 116.3102(1s)



- ❧ The association MAY direct the removal of vehicles improperly parked on any road, street, alley or other thoroughfare in violation of the governing documents.
- ❧ **In addition to complying with the requirements of NRS 487.038**, if a vehicle is improperly parked, 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,
 - ❧ 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 residents of the community.

Assessments –

NRS 116.3115



- ❧ Unit owners are responsible for assessments.
- ❧ If damage to a part of the community or any other common expense is caused by the **willful misconduct or gross negligence** of a tenant, the association may assess that expense exclusively against the unit, even if the association maintains insurance with respect to that damage.
 - ❧ The cost may then be passed on to the tenant pursuant to the rental agreement.
- ❧ A landlord may not increase the rent of a tenant unless the tenant is served with a written notice 45 days in advance of the first rental payment to be increased, advising the tenant of the increase (NRS 118A.300).

Violating the Governing

Documents – NRS 116.31031



- ❧ The association is obligated to mail the fine schedule to the designated mailing address of each unit annually.
- ❧ If a tenant violates any provision of the governing documents of an association, the executive board may, *if the governing documents so provide*, prohibit them, just like a unit owner, from using the common elements.
 - ❧ The association may not prohibit ingress or egress to or from the unit, including any area used for parking.
- ❧ The association MAY impose a fine; whether against the unit directly, or against the individual who committed the violation.

Fining –

NRS 116.31031



- ❧ The executive board may not impose a fine unless the person against whom the fine is imposed:
 - (a) **was provided with the governing documents containing provisions that were violated at least 30 days beforehand; and**
 - (b) has been provided with written notice (mailed to the address on file) specifying in detail the alleged violation, providing a clear and detailed photograph, a proposed action to cure, the amount of the fine, and the date, time and location for a hearing.

- ❧ The executive board **MUST** hold a **hearing** before it may impose the fine, unless the person:
 - ❧ pays the fine before the hearing;
 - ❧ executes a written waiver of the right to the hearing; or
 - ❧ fails to appear at the hearing.

- ❧ If a fine is imposed and the violation is not cured within 14 days, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for each 7-day period or portion thereof that the violation is not cured without providing an opportunity to cure or be heard at a hearing.

- ❧ Any past due fine must not bear interest.

Confidential Information –

NRS 116.31175(5)



☞ The executive board of an association SHALL maintain a general record concerning each violation of the governing documents for which the executive board has imposed a fine.

☞ The general record:

(a) Must contain a general description of the nature of the violation, the type of sanction imposed, and the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or location of the unit.

Tenant Obligations –

NRS 118A.310



❧ A tenant shall:

- ❖ Comply with the terms of the rental agreement;
- ❖ Keep the premises as clean and safe as possible and dispose of all waste in a clean and safe manner;
- ❖ Keep all plumbing fixtures clean and clear;
- ❖ Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators;
- ❖ Not deliberately or negligently render the premises uninhabitable or destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so; and
- ❖ Conduct himself or herself and require other persons invited to the unit to conduct themselves in a manner that will not disturb a neighbor's peaceful enjoyment.

Jurisdiction of the Division

NRS 116.760 & 116.750



- ✧ Any person who is *aggrieved* by an alleged violation of NRS 116 or the interpretation of the association's governing documents may file a complaint with the Office of the Ombudsman.
- ✧ Action can be taken by the CIC Commission against any person who *commits* a violation of HOA law, including any tenant, if the tenant has entered into an agreement with the unit owner to abide by the governing documents of the association and NRS 116.

Retaliation –

NRS 118A.510



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- ❧ If a tenant complains in good faith to a government agency, attorney, fair housing agency, etc., the landlord may not in retaliation:
 - ❧ terminate a tenancy,
 - ❧ refuse to renew a tenancy,
 - ❧ increase rent,
 - ❧ or decrease essential items or services.

Court



- ❧ If a dispute has nothing to do with NRS 116 or the association's governing documents, and
 - ❧ a tenant fails to comply with the rental agreement or their obligations (NRS 118A.420); or
 - ❧ a landlord fails to disclose necessary information or comply with their obligations (NRS 118A.410)...
- ❧ The complaint must be filed with the court.
- ❧ Upon application of either party, the court, after notice and opportunity for a hearing, shall settle all disputes (NRS 118A.490).

Summary



- ☞ Tenants have limited rights under NRS 116.
- ☞ If a tenant wishes to complain to the association about a perceived violation of the governing documents (noise, pets, etc.), the tenant can file a complaint with the association *through the owner of the unit*.
- ☞ If the tenant is the **aggrieved party**, (i.e. the association fined them for violations, towed their vehicle, etc.) and he or she believes NRS 116 or the governing documents were not properly followed, the tenant can file a complaint with the Office of the Ombudsman.
- ☞ If the complaint is against the landlord, or vice versa, and has nothing to do with the association, the complaint should be settled in court, without involvement from the Ombudsman's Office.



Thank You



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