

Welcome to the Board

Rev. 03/07/2022



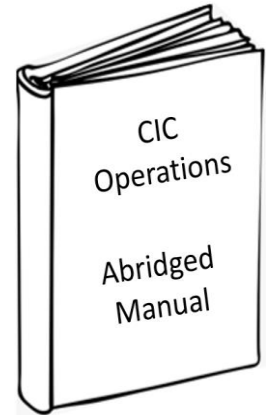
Disclaimer

- 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/.

INTRODUCTION

This class serves as an introduction to executive board operations and board member's duties and responsibilities.

Every topic addressed in this class is covered in greater depth and detail in other classes.

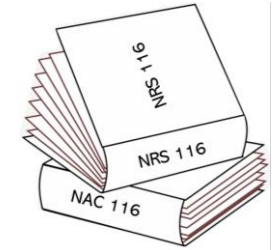


Agenda



- Laws & Governing Documents
- Board Organization
- Board Authority
- Board Meetings
- Unit Owners' Meetings
- Finances
- Records
- Violations, Fines & Hearings
- Threats & Harassment
- Retaliation

Laws & Governing Documents



- **Nevada Revised Statutes (NRS):** Laws passed by the NV legislature
- **Nevada Administrative Code (NAC):** Codified administrative regulations of the Executive Branch of the State of Nevada. (116 by CICCH)

Most Common Referenced

- 116: Common – Interest Ownership (CIC)
- 116A: CIC CAM and Other Personnel
- 116B: Condominium Hotel Act
- 38: Mediation & Arbitration
- 82: Nonprofit Organizations

Other Possibly Applicable

- 84: Corporations Sole
- 86: Limited-Liability Companies
- 87: Partnerships
- 88A: Business Trusts
- 89: Professional Entities and Associations

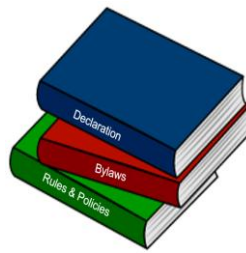
- If a conflict exist between NRS 116 and another law, 116 wins.

NRS 116.11085

Laws & Governing Documents continued

NRS 116.049

- The Declaration of Covenants, Conditions & Restrictions (CC&Rs):
 - The original document that creates the community, recorded against all properties **before** they are sold.
 - May only be amended by vote of unit's owners. NRS 116.3104 & NRS 116.3103
- Articles of Incorporation:
 - The articles that organize the non-profit organization that is the association, submitted to the Secretary of State's office.



Laws & Governing Documents continued

NRS 116.049

➤ The Bylaws:

- Contain provisions pertaining to meetings, elections, board officer positions and duties.
- May be amended by unit's owners. NRS 116.3106
- May be amended by the board. NRS 116.3102(1)(a)
 - May not amend qualifications, powers, duties or terms of office. NRS 116.3103(2)(d)

➤ Rules & Regulations

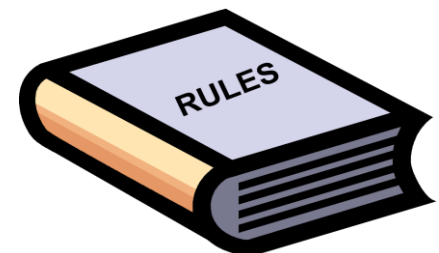
- Created by the board to clarify provisions of the governing documents that already exist
- Any other documents governing the operation of the association:
 - Reserve Study, architectural review guidelines, collection policy, fine schedule, *Robert's Rules*, resolutions, etc.



Laws & Governing Documents: Read and Understand

NRS 116.31034(19)

- Within 90 days of joining the board, each board member must read and understand, to the best of their ability, all laws and governing documents.
- Sign form 602 and keep with association's records.



Board Organization: Directors vs Officers

NRS 116.31034

- Board directors (members of the executive board) are elected by unit owners.

- These are the decision makers and vote casters.

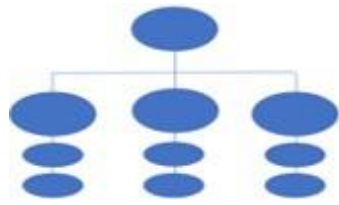
- Board must have at least 3 members. Exact number is found in the bylaws.

- At an executive board meeting following the election, directors appoint officers in accordance with the bylaws.

NRS 116.3106

- Unless the governing documents say otherwise, officers need not be unit owners or voting board members.

- Non-board member officers have no voting rights.



Board Organization: Community Association Manager (CAM)

NRS 116A

If an association employs a CAM:

- All decision-making authority lies with the executive board.
- The bylaws of the association specify the duties and powers that MAY be delegated to a CAM.
 - Delegated duties must be expressed in the management agreement.
 - CAM is bound to the duties listed in the management agreement.



Board Authority

NRS 116.3102

- Subject to the provisions of the declaration, the board may:
 - Adopt and amend rules and regulations
 - Adopt and amend budgets
 - Collect assessments for common expenses
 - Invest association's funds
 - Hire and discharge managing agents and independent contractors
 - Institute, defend or intervene in litigation affecting the CIC
 - Make contracts and incur liabilities
 - Regulate the use, maintenance, repair, replacement and modification of common elements
 - Impose charges for late payment of assessments
 - Impose reasonable fines for violations of the governing documents



Board Authority: Fiduciary Duty

NRS 116.3103

- A Fiduciary Duty is an obligation to act in the best interest of another party, such as the common-interest community (CIC).
- 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.
- The association indemnifies members for any action against them unless and until it is proven the member acted with willful or wanton misfeasance or gross negligence.
- Fiduciary Duty considerations are outlined in NAC 116.405.

NRS 116.31037



Board Authority: Remedial/Disciplinary Action

NRS 116.785

- If the Commission finds that a respondent has committed a violation of NRS/NAC 116, the Commission may take any or all of the following actions:
 - Issue a cease-and-desist order;
 - Issue orders directing specific actions be taken to correct/amend the violation;
 - Impose a fine not to exceed \$1,000 for each violation.
- If the Commission finds that a board member knowingly/willfully committed a violation, the Commission may:
 - Order that member removed from their position/office; and
 - Require them to pay all fines and costs imposed.



Knowledge Check



1. True/False: NRS 116 is the only law regulating association business.
2. True/False: The board may not amend the declaration.
3. True/False: Only the unit owners may amend the bylaws.
4. Withing 90 days of election/re-election/appointment to the board, board members shall complete and sign the form ____.
5. What is the minimum required number of board members?
6. If a community employs a CAM, who holds all decision-making authority?
7. What is a fiduciary duty?

Board Meetings

NRS 116.31083

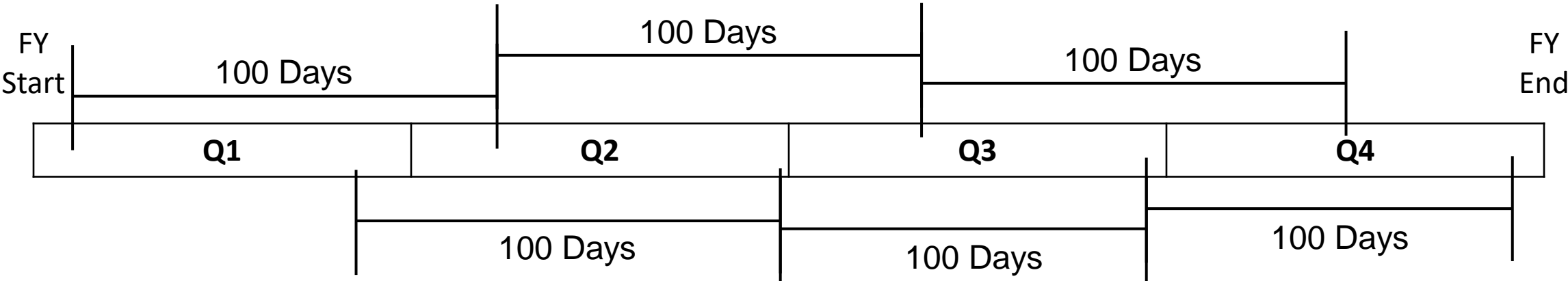
- All association meetings **must** be conducted in accordance with the most recent (**12th**) edition of Robert's Rules of Order; NRS 116.3109
 - Unless the associations bylaws specify another procedure.
- All decisions made by the board on behalf of the association must be conducted by vote, at an OPEN board meeting.
- All actions upon which the board may take action must be detailed on that meeting's agenda.
- All votes taken must be detailed in that meeting's minutes, including how each member voted.



Board Meetings: Frequency

NRS 116.31083(2)

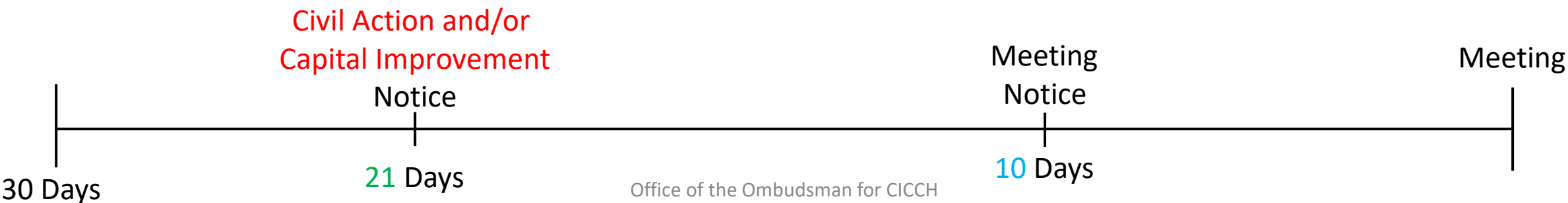
- Board meetings must be held at least once every quarter, not less than 100 days
 - Two of which, must be at a time other than normal business hours (9am-5pm).



Board Meetings: Notices

NRS 116.31083(2)

- **Standard board meetings:** Notice must be sent at least 10 days prior to the meeting.
- **Civil Action/Capital Improvement:** Notice must be sent at least 21 days prior to the meeting.
- Notices must be sent to each owners’ designated mailing OR email and must include:
 - The agenda for the meeting or a statement describing when and where an agenda may be obtained.



Board Meeting: Emergencies

NRS 116.31083(4)

- An emergency is defined as any occurrence that:
 1. Could not have been reasonably foreseen; **and**
 2. Affects the health, welfare, safety of residents; **and**
 3. Requires immediate attention of and possible action by the executive board:
and
 4. Makes it impracticable to comply with notice and agenda requirements.
- Notice must be sent prepaid US mail. If this is not possible, notice must be:
 - Hand delivered or
 - Posted in a prominent place(s) within the CIC.



Board Meetings: Content

NRS 116.31083(7)

- At each [quarterly] meeting, the board SHALL review the following minimal financial information:
 - A current year-to-date financial statement;
 - A current year-to-date schedule of revenues and expenses of all operating and reserve accounts, compared to the budget for those accounts;
 - A current reconciliation of the operating and reserve accounts;
 - The latest account statements issued by the financial institutions where the funds are maintained; and
 - The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.



Board Meetings: Executive Sessions (private)

NRS 116.31085

- An executive board may meet in executive session **ONLY** to:
1. Consult with the attorney for the association on matters covered by attorney-client privilege;
 2. Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association;
 3. Discuss a violation of the governing documents, including failure to pay an assessment;
 4. Discuss the alleged failure of a unit's owner to adhere to a construction schedule.



Unit Owners' Meetings

NRS 116.3108

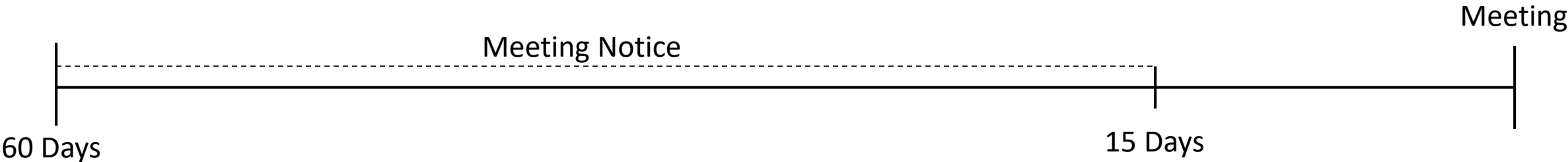
- A meeting of the units' owners must be held at least once each year at a time and place stated in the bylaws.
- If the governing documents do not designate an annual meeting date, the meeting must be held one (1) year after the date of the last meeting.
- If units' owners have not held a meeting for one (1) year, the meeting must be held on the following March 1st.



Unit Owners’ Meetings: Notices

NRS 116.3108(3)

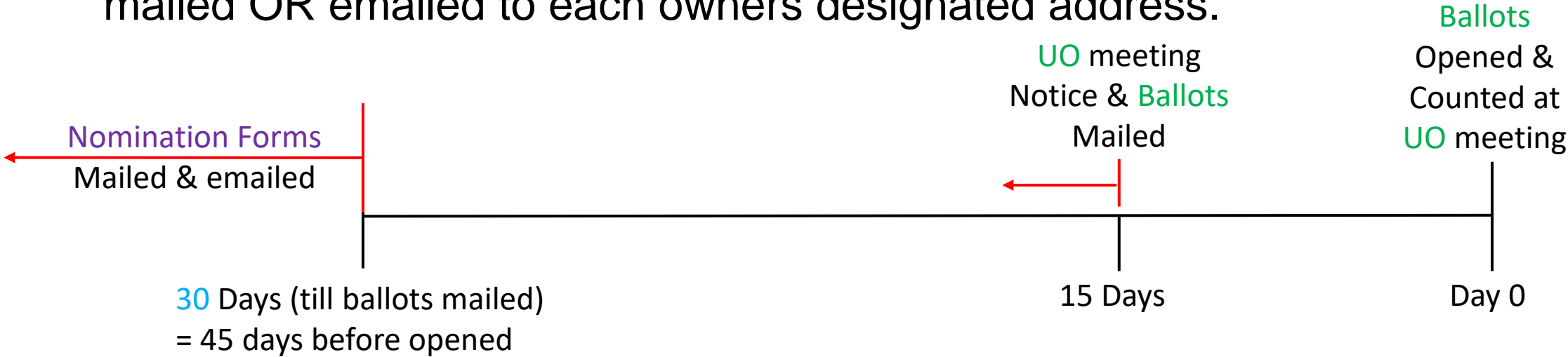
- Between 15 and 60 days before the meeting, the specified officer shall cause notice to be delivered to each owners’ designated mail OR email address stating the time and place of the meeting. Notice includes:
 - A copy of the agenda (any amendments to CC&R, fees or assessments to be imposed or decreased, budgetary changes, proposal to remove a board member, etc.);
 - Notice of a unit owner’s right to have a copy of the minutes or a summary of the minutes provided upon request; and
 - Notice of a unit owner’s right to speak to the association or executive board.



Unit Owners’ Meeting: Elections Timeline

NRS 116.31034

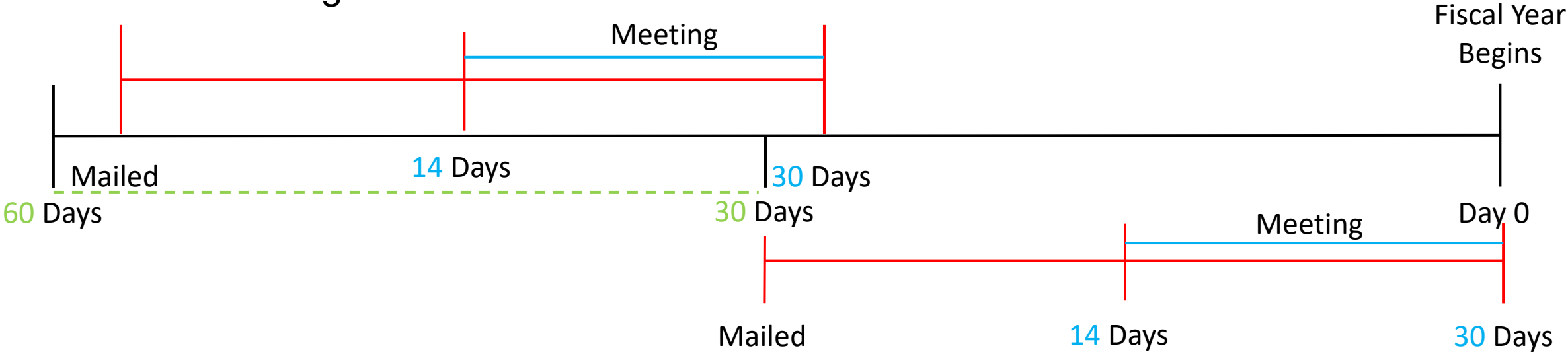
- At least 15 days before the **Ballots** are opened, they are distributed.
 - Often sent with the **Unit Owners** Meeting notice
- Not less than **30** days before ballots are prepared, **nomination forms** are mailed OR emailed to each owners designated address.



Unit Owners' Meeting: Budget Ratification Notices (Annual)

NRS 116.31151(1)

- Unless the declaration imposes more stringent standard, 30 to 60 days before the beginning of the fiscal year of the association:
 - The board shall prepare and distribute a copy of the daily operation budget, the reserve budget, fine schedule (NRS 116.31031(3) and collection policy (NRS 116.31151(4)).
 - Sent to the owners' designated mail OR email address.
 - Not less than 14 days or more than 30 days after mailing, shall set a date for a meeting of the unit's owners to consider ratification.



Finances: Banking

NRS 116.31195

- An association SHALL deposit or invest all funds of the association at a financial institution which:
 - Is located in, qualified to conduct business in, or has consented to be subject to the courts of Nevada
- All accounts MUST be insured:
 - By the FDIC, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation;
 - With a private insurer approved via NRS 678.755; or
 - In a government security backed by the full faith and credit of the Government of the United States.



Finances: Operating Funds

NRS 116.3115(1) & NAC 116.453

- Funded through assessments in accordance with association's FY budget.
- Used for the normal day-to-day maintenance and service operations of the association.
 - Division & SOS Fees
 - Insurance (premiums/deductible), Vendors, contractors, employees, CAM etc.
 - Capital improvements
 - Website maintenance (effective 1 Jan '22 & '23)
- Withdrawals requires 2 signatures.
 - 2 directors, 1 director & 1 officer, 2 officers or a director/officer & the CAM.
 - **Exceptions**: transfers to Reserves; automatic utility payments; e-transfers to banks or government agencies.



Finances: Reserve Funds

NRS 116.3115(2)(b)

- Funded through assessments in accordance with reserve study, funding plan, & FY budget.
 - The reserves may **ONLY** be used for:
 - the repair, replacement and restoration of the major components of the common elements and
 - any other portion of the common-interest community (CIC) that the association is obligated to maintain, repair, replace or restore, including:
 - roofs, roads & sidewalks
 - Withdrawals requires 2 signatures.
 - 2 directors or 1 director & 1 officer
- NEVER THE CAM! (NRS 116a.640(5))**

➤ Reserves are **NOT**:

- For daily (routine) maintenance.
- A discretionary account
- A capital improvement fund.
- An association “slush” fund.



Finances: Solicitation of Bids

NRS 116.31086

- If an association solicits bids for a project, the association MUST, whenever reasonably possible, solicit at least 3 bids:
 - If the project is expected to cost:
 - For associations with less than 1000 units: 3% or more of the annual budget
 - For associations with 1000 units or more: 1% of the annual budget

NAC 116.405(8)(d)

- The executive board has a fiduciary obligation to obtain, when practicable, at least 3 bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association.
 - Practicable: That which may be done, practiced or accomplished; that which is performable, feasible, possible.

Black's Law & AO 11-02



Finances: Solicitation of Bids

NRS 116.31086(2)

- “Association Project” includes:
 - The maintenance, repair, replacement or restoration of common elements, or
 - Professional services (accounting, engineering, legal, etc.)

- Bids **MUST** be obtained sealed and then opened and read aloud at an open meeting.



Finances: Capital Improvements

AO 16-01

- The Division considers a capital improvement for an association an expense for the acquisition or construction of new common element components.
 - Funded from the Operating account, never the Reserve.
- The board may initiate capital improvements ONLY if authorized by the governing documents.
 - May use surplus funds only if authorized by the declaration.
- Proper budget process is required.
 - Board cannot simple re-appropriate funds for a new project.



Knowledge Check



1. Are board meetings required to follow Robert's Rules of Order?
2. At a minimum, how frequently must the board hold meetings?
3. What are the 4 reasons a board may meet in executive session?
4. How long before the election must Nomination forms be mailed?
5. What is the operating fund used for?
6. What is the purpose of the reserve fund?
7. May the CAM sign association reserve checks?

Records: Maintenance

NRS 116.31175(7)

- All meeting minutes **MUST** be maintained until the CIC is terminated (indefinitely).
- The books, records and other papers of an association **MUST** be maintained for at least 10 years.



Records: Financial Statements

- These provide information about the financial position, performance and changes in financial position of the association.

NAC 116.451

- May be prepared using fund accounting or single-column presentation and must:
 - Be in compliance with the Guide and FASB/ASC 606 Guidance
 - Present a balance sheet reflecting the operating, reserve and any other funds of the association.
 - List the assets, liabilities and fund balances or
 - Members equity if a single-column format is used.



Records: Financial Statements continued

NAC 116.451

- May be prepared using fund accounting or single-column presentation and must:
 - Include, a month-to-date AND year-to-date presentation of:
 - The statement of revenues and expenses for all operating, reserve and other activities, presenting information about all assessments, revenues and expenses;
 - A schedule comparing the actual expenses with the budgeted expenses;
 - And changes in the fund balances
 - Presented on the balance sheet or statement of revenues and expenses, and
 - A footnote or disclosure which states that the association is in compliance with reserve fund requirements.
 - Be prepared using accrual basis accounting in accordance with GAAP.
 - Be prepared by, or under the supervision of, a person with accounting knowledge and experience.
 - Be distributed monthly to the treasurer, CAM, and all board members.



Records: Financial Records

- The financial or transaction records necessary to support the financial statements of an association, including: NAC 116.0433
 - 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.
- The association shall keep financial records sufficiently detailed to enable the association to comply with NRS 116.4109. NRS 116.3118



Records: Minutes

NRS 116.3108(5)&(6) & NRS 116.31083(8)&(9)

- The minutes of each meeting **must** be taken and include:
 - The date, time and place of the meeting;
 - Members of the executive board who were present and absent (board meetings);
 - The substance of all matters proposed, discussed or decided;
 - A ***record of each member's vote*** on any matter decided (board meetings); and
 - The substance of remarks made by any unit owner who addresses the executive board if the owner so requests (if the owner has prepared and submitted written remarks, a copy can be included).



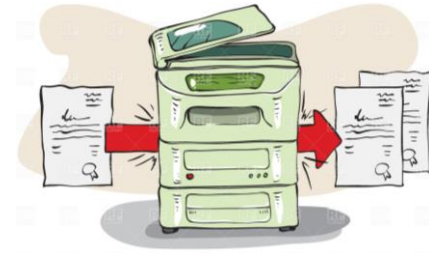
Records: Review by Unit Owners

NRS 116.31175(1)

- The executive board or a community manager of an association shall, upon written request of a unit's owner, make available the book, 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.
 - A period of at least 4 consecutive hours per week. NAC 116.440
- All financial and other records of the association must be:
 - Made reasonably available for any unit's owner and their authorized agents to
 - Inspect, Examine, Photocopy, and Audit



Records: Copies



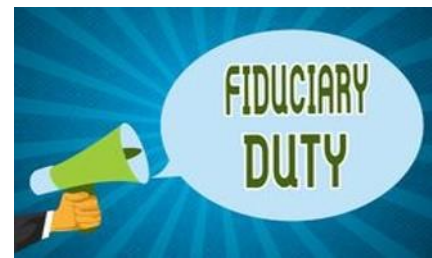
NRS 116.31175

- The board must **provide** a **copy** of the following records to unit owners within 21 days of receiving a written request:
 - Financial statements,
 - Budgets,
 - Reserves Study, and
 - The audio recordings, minutes or a summary of the minutes of an association meeting upon request (made available not more than 30 days after the meeting).
- NRS 116.31083(8)
- Fees and costs for copies must be in compliance with NRS 116.31175(2)

Access: By Board Members

NRS 116.31031(1) & NAC 116.405(2)&(8)

- Board member's do not lose their rights as a unit owner to access records.
- Board members have a fiduciary obligation to make informed decisions.
- Board members have a right and obligation to access records in a timely and convenient manner as to ensure their ability to comply with their fiduciary obligations.



Access: By Board Members

NRS 116.31031(1) & NAC 116.405(2)&(8)

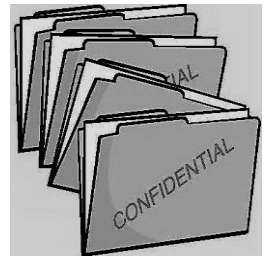
- A board or CAM who actively prevents or impedes a board member from meeting their fiduciary duties could be in violation of their own fiduciary duties to “act in good faith and in the honest belief that their actions are in the best interest of the association.”
 - If a board member must follow a formal records request process, then all board members must follow the same process.
- * Confidentiality still applies and board members are only entitled to the confidential records necessary for them to perform a specific task or cast a specific vote.



Records: Confidentiality

NRS 116.31175(4)

- 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
 - specifications 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.



Violations, Fines & Hearings

NRS 116.31031

- The rules adopted by an association MUST be uniformly enforced under the same or similar circumstances. NRS 116.31065
- In order to impose a fine, the association must have a “schedule of fine” and well-defined fine policy.
 - Schedule must be more detailed than “All violations” Commission
- Any accused violator must first be given an opportunity to cure the violation, a notice of the violation and a hearing on the violation before any fine or sanction may be imposed.
 - Violator must be afforded all due process.
- Fine limits must comply NRS 116.30131 and NAC.



Threats & Harassment

NRS 116.31184

- No community member shall willfully threaten, harass, or otherwise engage in a course of conduct against any other person in the community which:
 - Causes harm or serious emotional distress; or
 - Creates a hostile environment for that person.

This is a criminal misdemeanor and not enforceable by the Division.



Retaliation

NRS 116.31183

- A board shall not take, or direct or encourage another person to take, any retaliatory action against a unit owner because they have:
 - Complained in good faith about an alleged violation of NRS or the governing documents;
 - Recommended the selection or replacement of an attorney, CAM or vendor; or
 - Requested in good faith to review the books, records or other papers of the association.
- 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:
 - Compensatory damages; and
 - Attorney's fees and costs.



Knowledge Check



1. How long must the association keep meeting minutes?
2. How long must the association keep all other records?
3. Are there any qualification requirements for creating the Financial Statements?
4. Can the division investigate and enforce Threats & Harassment?
5. Can the division investigate and enforce Retaliation?

Conclusion!



- Laws & Governing Documents
- Board Organization
- Board Authority
- Board Meetings
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Questions?

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- CICOmbudsman@red.nv.gov – Email Questions
- http://red.nv.gov/Content/CIC/Program_Training/