

# WELCOME TO YOUR HOA'S BOARD OF DIRECTORS



# Taking Office

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- Congratulations, you have been elected to your association's Board of Directors and have been assigned your officer position [president, treasurer, secretary, director (NRS116.3106)].
- In your candidacy statement, you made a good faith effort, and were honest in disclosing:
  - ▣ whether you are in good standing, meaning that you do not have any unpaid, past due assessments or construction penalties due to the association; and
  - ▣ any financial, business, professional or personal relationship that could result in a potential conflict of interest, meaning that you stand to gain any profit or compensation of any kind from the association. If you stand to gain any money from the association, you cannot be on the board.



# What to Read

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- The first few things you must do in your new position:
  1. Read and understand the association's governing documents (Declaration of CC&Rs, articles, bylaws and any rules created for clarification).
    - NRS 116.3102 - The association *may* adopt and amend rules and regulations without approval of the unit owners.
  2. Read NRS & NAC 116.
  3. If your association has a Community Manager, read and understand the management agreement
    - NRS 116A.620.4. - 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.
  4. Within 90 days, submit to the Division Form 602



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION  
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

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**Declaration of Certification  
Common-Interest Community Executive Board Member**

*Each newly elected or appointed executive board member must complete Form 602 within 90 days of his/her election or appointment and submit a copy of Form 602 to the Division. Only one copy is required, per election or appointment, to be submitted to the Division at the time of registration NRS 116.31034(15).*

I \_\_\_\_\_,  
(print name)  
of the executive board of \_\_\_\_\_\*, a common- interest  
(association's legal name)  
community or condominium hotel, Secretary of State (SOS) File# \_\_\_\_\_,\*  
master association of \_\_\_\_\_\*\*, certify that I have  
(master association's legal name)  
read and understand, to the best of my ability, the governing document of the association  
and the provisions of Chapter 116 or 116B of Nevada Revised Statutes (NRS) and  
Chapter 116 of the Nevada Administrative Code (NAC).

Date of election or appointment to the board \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
month date year

***"I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."***

Executed on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Date Signature

\* Association's legal name and Secretary of State file number as it appears on the Secretary of State's web site at:  
(<http://nvsos.gov/sosentitysearch/CorpSearch.aspx>)

\*\* If the association belongs to a master planned community, list the legal name of master association.

***For office use only***

# of DOCS received: _____	Executive Board Member(s) in Key Mgmt: <input type="checkbox"/> Yes <input type="checkbox"/> No
Date Received: _____	Date Processed: _____ Processed by (initial): _____

# Know Your Fiduciary Duty - NRS 116.3103

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- In the performance of their duties, members of the 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.
- Board members should consult with appropriate professionals as necessary before making any major decision affecting the association.
- In performing their respective duties, directors and officers are to *rely* on information, opinions, reports, statements and other financial data prepared by individuals with professional expertise (NRS 82.221).



# Considerations - NAC 116.405

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- In determining whether a member of the executive board has performed his or her duties, the Division will consider whether the member:
  - ▣ Acted outside the scope of authority granted in the governing documents;
  - ▣ Acted for reasons of self-interest, gain, prejudice or revenge;
  - ▣ Committed an act or omission amounting to incompetence or gross negligence;
  - ▣ Inappropriately disclosed confidential information relating to another individual;
  - ▣ Kept informed of and caused the association to be compliant with all applicable federal and state laws and regulations, as well as the governing documents of the association; and
  - ▣ *Uniformly* enforced the governing documents.

# Confidential Information - NRS 116.31085

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- The **executive session** (or closed meeting) is where the board discusses confidential information regarding an individual.
- An executive board may meet in executive session only to:
  - ▣ Consult with the **attorney** for the association on matters relating to proposed or pending litigation (attorney-client privileged conversations).
  - ▣ Discuss the character, alleged misconduct, professional competence, or physical or mental health of a **community manager** or employee.
  - ▣ Hold a hearing regarding an alleged **violation**, including failure to pay an assessment and failure of a unit owner to adhere to a **construction schedule**.
    - An executive board shall hold a private hearing unless the violator requests *in writing* that an open hearing be conducted.
- Any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the next meeting of the executive board.

# Enforcement- NRS 116.31031

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- If any provision of the governing documents is violated, the executive board may, if the governing documents so provide:
  - (a) Prohibit, for a reasonable time, the unit owner from voting on matters related to the community and using the common elements (excluding prohibiting ingress/egress/parking); and
  - (b) Impose a fine (as described in the fine schedule).
    - If the violation poses an imminent threat to health, safety or welfare, the amount of the fine must match the severity of the violation.
    - If the violation does not pose such a threat, the amount of the fine must still match the severity of the violation AND must not exceed \$100.





# Enforcement Continued

- The executive board may not impose a fine unless:
  - (a) At least 30 days before the alleged violation, the violator had been provided with applicable provisions of the governing documents (unless changes have been made to the governing documents, the resale package received by the unit owner at the time of purchase is sufficient); and
  - (b) The violator received written notice by mail following the violation:
    - Specifying in detail the alleged violation, including the provision violated,
    - Providing a clear and detailed photograph of the alleged violation (when possible),
    - Providing a reasonable opportunity to cure the alleged violation,
    - Providing the amount of the potential fine, and
    - Providing the date, time and location for a *hearing* to contest the alleged violation and fine.

# Enforcement Continued

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- If a fine is imposed and the violation is not *cured* within 14 days, or *any longer period established by the board*, the violation shall be deemed a “continuing violation.”
- Thereafter, the executive board may impose an additional fine for the violation for each 7-day period, or portion thereof, that the violation is *not cured*.
- Any additional fine may be imposed without providing notice and an opportunity to be heard.
- A member of the executive board shall not participate in any hearing or cast any vote relating to a fine if the member has not paid all assessments.
- Any past due fine must not bear interest.



# Violation Record – 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 must:
  - ▣ contain a general description of the nature of the violation and the type of sanction imposed, including the amount of the fine.
  
  - ▣ 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.
  
  - ▣ be maintained in an organized and convenient filing or data system that can be easily searched and reviewed.

# Association Records - NRS 116.31175

- The board is required to maintain current, accurate and properly documented records of the association.
- The board shall, upon the written request of a unit owner, make available the books, records and other papers of the association for **review**, including all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action.
- The board shall provide a **copy** of any financial records or the reserve study within 21 days after receiving a written request therefor. Such records must be offered in electronic format at no charge whenever possible (same for minutes).
- Unit owners do not have the right to see the personal records of another individual or any document still in the process of being developed for final approval by the board.
- Books, records and other papers of the association must be maintained for at least 10 years, aside from meeting minutes, which must be maintained until the community is terminated.

# Notices Sent by the Board



Not all inclusive

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Mandatory

- **Meeting Notices** (*cause notice to all*)
  - ▣ Executive Board Meeting - not less than 10 days before the meeting, notice goes out, including *where* the agenda can be obtained.
  - ▣ Unit Owner Meeting- not less than 15 days or more than 60 days before the meeting, notice goes out, including a *copy* of the agenda.
  
- **Pre-Election Notice of Vacancies/Eligibility Requirements/Nomination Forms** (mailed to all)
  - ▣ Ballots (mailed to all eligible)
  
- **Annual Budget for Ratification/Schedule of Fines** (mailed to all)

# Notices Continued

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- **Amendment to the Governing Documents** (*cause notice to all*)
- **Capital Improvement** (notice sent to all at least 21 days before the meeting where it is discussed)
- **Violation of the Governing Documents/ Invitation to a Hearing** (mailed to individual)
- **Towing** (posted or written notice provided to owner of vehicle 48 hours prior)
- **Abatement** (if a unit is vacant, the owner must be provided with written notice of the hazard and an opportunity for a hearing. A notice of intent to maintain the exterior or abate a public nuisance is then sent before entering the *grounds*)
- **Foreclosure** (60 day notice, notice of delinquent assessment and default and election to sell can be mailed or emailed. A notice of sale must still be mailed, posted in a public place, published, etc.)

When Necessary

# Open Board Meetings - NRS 116.31083

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- The board must hold meetings frequently enough to properly and efficiently address the affairs of the association.
- Meetings of the association must be conducted in accordance with the most recent edition of *Robert's Rules of Order* (unless the bylaws or a resolution of the executive board provide otherwise).
- Unless the governing documents specify a larger number, a quorum, or majority of the executive board must be present to hold a meeting. An affirmative vote of a majority of board members makes an action valid (NRS 116.3109.3).
- Pursuant to the governing documents, members of the board may participate in a meeting through videoconferencing, teleconferencing, etc. (NRS 82.271.3).
- A unit owner may attend any meeting of the association (aside from executive session) and speak at any such meeting (with time limitations).
  - A period devoted to comments by the units' owners and discussion of those comments must be scheduled for both the **beginning** and **end** of each regular board meeting.
- The secretary, or other officer specified in the bylaws, shall cause each meeting of the executive board to be audio recorded (not executive session), and minutes to be taken.

# Open Board Meetings Continued

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- A meeting of the executive board must be held at least once every quarter and not less than once every 100 days. It must be held at a time other than during standard business hours at least twice annually.
  
- At least once every quarter, the executive board shall review the following financial information at one of its meetings:
  - ▣ Financial statements
  - ▣ Bank statements
  - ▣ Revenue and expense reports, compared to the budget
  - ▣ Reconciliations for both the operating and reserve account
  - ▣ The current status of any civil action or claim in which the association is a party.



# Meetings Other than Regular Board Meetings

- [Annual Meeting \(NRS 116.3108\)](#) - **A meeting of the units' owners** must be held at least once each year at a time and place stated in the bylaws.
  - Election results are announced at this meeting, as well as ratification of the budget and discussion of:
    - any proposed amendment to the declaration or bylaws by unit owners,
    - 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.
  - An officer shall cause minutes to be recorded or otherwise taken.
  
- [Executive Session \(NRS 116.31085\)](#) – This is a closed meeting held by the board to discuss litigation with the attorney, the behavior of the community manager, or an alleged violation of the governing documents by a unit owner.

# Other Meetings Continued

- [Emergency Meeting \(NRS 116.31083.12\)](#) – This meeting is held to conduct business of the association and react to any occurrence or combination of occurrences that:
  - Could not have been reasonably foreseen;
  - Affects the health, welfare and safety of residents of the community;
  - Requires the immediate attention of, and possible action by, the executive board;
  - Makes it impracticable to provide *sufficient* notice & agenda, but must still do both.
  
- [Special Meeting \(NRS 116.3108.2\)](#) - This meeting is held to address any matter affecting the community that cannot wait to be discussed at the next regular board meeting (notice and agenda requirements are the same as for a regular meeting). It can be called by:
  - the president,
  - a majority of the executive board, or
  - at least 10% of unit owners, or lower if specified in the bylaws, by signed petition.

# Solicitation of Bids – NRS 116.31086

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- **IF** an association solicits bids for an association project at all, the association must, whenever reasonably possible, solicit at least 3 bids.
  - This is true especially if the project is expected to cost:
    - 3% + of the annual budget (in a community of 1,000 units or less); or
    - 1% + of the annual budget (in a community of 1,000 units or more).



- “Association project” includes a project that involves:
  - The maintenance, repair, replacement or restoration of any part of the common elements, or
  - Using professional services like accounting, engineering, legal, etc.
- Sealed bids must be obtained from reputable service providers who possess proper licensing, and *must be opened and read aloud* during a regular meeting of the executive board.

# Voting by Board Members

- The purpose of directors serving on the board is to cast votes in meetings that result in decisions being made for the association.
- A member of an executive board who *stands to gain* any personal profit or compensation of any kind from a matter before the board cannot vote on the matter and **should not serve on the board**. If the member does not resign, he or she can be removed, at a board meeting, by the majority of the board (NRS 116.31034.9a).
- A member of an executive board who has a family member or friend (not a live-in spouse) who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall **disclose** the matter to the executive board **before voting** on any such matter (NRS 116.31084).

# Reserve Study - NRS 116.31152

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- The reserve study outlines the common elements that the association is responsible for maintaining, repairing, replacing and restoring and the amount of money required to accomplish this task.
  
- The executive board shall:
  - At least once every 5 years, cause to be conducted a study of the reserves;
  - At least annually, review the results of that study to determine whether reserves are sufficient and make any necessary adjustments to the association's funding plan (NRS 116.31152.1).
  
- Spending money in order to acquire *new* common elements that will become part of the reserve study is a capital improvement expense.
  - If the governing documents give the board the authority to initiate a capital improvement, any associated additional assessment must be noticed and discussed at an open meeting. Additionally, a majority of those living within 500 feet of the improvement must provide written consent prior to initialization.

# Retaliation - NRS 116.31183

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- An executive board, a member of the board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because he or she:
  - ▣ Complained;
  - ▣ Made business recommendations; or
  - ▣ Requested to review records.
  
- Upon ***willful*** violation of this section, a unit owner may bring a separate action to recover monetary damages and attorney's fees and costs from the board member directly.
  
- When a board member *does not* act with willful misfeasance or gross negligence and is sued for actions undertaken in his or her role as a member of the board, the association *indemnifies* the member, undertaking all costs of defense (NRS 116.31037).

# Summary

- Unit owners shall elect an executive board of at least 3 members, all of whom must be unit owners. The new executive board then elects officers of the association.
  - Unless the governing documents provide otherwise, officers of the association are not required to be unit owners.
  
- The term of office of a member of the executive board may not exceed 3 years (number of terms may be limitless) and the governing documents must provide for terms that are staggered.
  
- Board members can hire professionals to assist them with their duties, but they are ultimately responsible for carrying out the business of the association.
  
- Unit owners have the right to know how the association is using their money and the association should provide financial records as they are requested.
  
- As a board member, it is crucial to stay transparent, neutral, informed and active in your role and address homeowner complaints as they arise.

# Thank you

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