



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
ADVISORY OPINION

Subject: What does “voting members” mean as used in NRS 116?	Advisory No. 19-01	4 pages
	Issued By: Real Estate Division	
	Amends/Supersedes	N/A
Reference(s): NRS 116.31031(1)(a)(1), NRS 116.31036(1), NRS 116.311(11)	Effective Date: December 17, 2018	

QUESTION:

Does “voting members” as used in NRS 116 include members who are temporarily suspended from voting according to NRS 116.31031(1)(a)(1)?

SHORT ANSWER:

No. If an association’s board suspends a unit’s owner from voting, the unit’s owner cannot vote and cannot be called a “voting member” at the time their rights are suspended.

ANALYSIS OF THE ISSUE:

NRS 116 uses the term “voting members” seven times. It relates to removal elections (NRS 116.31036), owners requesting special meetings (NRS 116.3108) and audits (NRS 116.31144), quorum requirements for owner meetings (NRS 116.3109), and owners collectively initiating a civil action for damages against the manager (NRS 116.4117). The complete text refers to the “total number of voting members of the association.” The issue of how to compute the total number of voting members of the association came as a question to the Division in the context of a removal election. The

association in question had twenty-five owners whose voting rights were suspended by the board. As this large amount of suspended owners changed the outcome of the removal election in the association depending on whether or not suspended owners are *voting members*, the Division found it necessary to clarify this issue for all associations in the same situation.

NRS 116 does not provide a definition of “voting members” or “total number of voting members of the association.” There is no indication in the law whether the maximum number of votes in an association would be the total number of voting members in all circumstances or whether that number would change depending on the suspension of voting rights for certain members. The idea of reducing the total number of owners by the number of ineligible owners is not a foreign concept. For example, Nevada law prohibits the association from casting a ballot on behalf of a unit it owns, so it could not be a voting member. NRS 116.311(11).

Nevada’s common-interest community law comes from the Uniform Common Interest Ownership Act (“Uniform Act”). In considering how language in NRS 116 was intended, it can be helpful to look at the Uniform Act. However, many provisions in NRS 116 are unique to Nevada and not found in the Uniform Act. Suspension of voting rights is an example of this. Nevada law allows an association to prohibit owners (for a reasonable time and if provided in the governing documents) from voting on matters related to the community. NRS 116.31031(1)(a)(1). However, the Uniform Act prohibits an association from suspending a unit owner’s right to vote. Section 3-102(a)(19)(B) (Uniform Act 2014). Based on this discrepancy it is not helpful to look at how voting members are defined or treated in the Uniform Act, but it probably explains why NRS 116 does not specifically address this issue.

From a practical perspective, it makes sense that an owner who is suspended from voting would not be considered a *voting member*. They cannot vote: How could they be called a voting member? The issue also raises public policy considerations. The statutory requirements for owner percentages would be more difficult if suspended owners are counted as voting members.

For example, in a removal election 35% of the total number of voting members must vote in favor of removal and a majority of all votes cast must be in favor. NRS 116.31036(1). In an association with 250 units (not owned by the association) and 25 units' owners suspended from voting; there would need to be 88 votes in favor if suspended owners are considered voting members (35% of 250). That would increase the percentage from 35% to 39% of the owners who could actually vote. If the suspended owners are not considered voting members, the association would need 79 votes in favor of removal (35% of 225). Likewise, suspended owners who turn in a ballot should not be considered to determine the number of *all votes cast*, as this would require more than a majority of the counted votes to be in favor of removal. There is no reason to make the difficult removal process harder for owners. California law takes this into account by defining "voting power" to exclude those with "the right to vote upon the happening of some condition or event which has not yet occurred." California's Corporate Code §5078

The Division does not believe the Nevada Legislature intended for boards to be able to increase their chances of defeating a removal effort by suspending voting privileges. Interpreting voting members to exclude those owners who are suspended, serves the public policy of allowing the owners to accomplish things like removal based on the actual percentages in the statutes. This makes sense in other places where *voting members* is used; as in the number of owners necessary to petition for a special meeting

(NRS 116.3108) and to establish a quorum (NRS 116.3109(2)(a)). This also means that suspended voters cannot sign a petition for removal, audit or special meeting.

ADVISORY CONCLUSION:

Based on the foregoing, the Division concludes that it is appropriate to calculate the number of voting members based on the number of owners who are entitled to vote at the time the vote is taking place by subtracting the number of suspended owners from the total number of eligible owners. For example, in a 100 unit association where no units are owned by the association and 10 owners are suspended from voting, the total number of voting members would be 90.