



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

Subject: Records of Unit Owned by Association	Advisory No. 12-03-116	4 pages
	Issued By:	Real Estate Division
	Amends/Supersedes	N/A
Reference(s): NRS 116.31175	Effective Date: May 18, 2012	

QUESTIONS PRESENTED:

1. Is an association required to turn over records relating to a unit the association owns, even if the information relates to an occupant or tenant of the association owned unit?
2. Can a collection agency assert proprietary rights to documents sent on behalf of an association for an association owned unit to preclude the association from producing such documents under a records request from a unit owner?

SHORT ANSWERS:

1. Yes, associations that own units within their community cannot claim those records are excluded from disclosure based on NRS 116.31175(4)(b), even if they pertain to an occupant or tenant of the association owned unit.
2. No, collection agency documents distributed for or on behalf of the association for an association owned unit are association records for which no exclusion to disclosure exists.

ANALYSIS OF THE ISSUES PRESENTED:

1. NRS 116.31175 governs when records of the association must be made available to unit owners. NRS 116.31175 states in part:

1. Except as otherwise provided in subsection 4, **the executive board 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

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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, **including, without limitation:**

(a) The financial statement of the association;

(b) The budgets of the association required to be prepared pursuant to [NRS 116.31151](#);

(c) The study of the reserves of the association required to be conducted pursuant to [NRS 116.31152](#); and

(d) All contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party.

...

4. The provisions of subsection 1 do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees;

(b) The records of the association relating to another unit's owner, including, without limitation, any architectural plan or specification submitted by a unit's owner to the association during an approval process required by the governing documents, except for those records described in subsection 5; and

(c) Any document, including, without limitation, minutes of an executive board meeting, a reserve study and a budget, if the document:

(1) Is in the process of being developed for final consideration by the executive board; and

(2) Has not been placed on an agenda for final approval by the executive board. . .

(emphasis added).

Petitioner asserts NRS 116.31175(4)(b)¹ for the proposition that once an association forecloses on a unit, the association becomes the unit owner and records relating to that unit are not subject to a records request. The Division does not interpret NRS 116.31175 the same way as Petitioner. The statute provides an exception for "records of the association relating to another unit's owner." Here "another" means a party that is not involved in the request, i.e. a third party. NRS 116.31175(4)(b) is intended to protect the privacy rights of third parties, not the association. Generally speaking, all records are available to review unless one of the limited exceptions applies. NRS 116.31175(1) requires "the books, records and other papers of the association" to be available for review. The association has no privacy right to protect once the association becomes a unit owner. The unit is owned for the benefit of all other members of the association. An association owned unit is no different from any other asset of the association for which no exception to disclosure of records exists.

As for records of a "tenant" of the association owned unit, there is no provision in NRS 116 that provides for an occupant's privacy rights when the unit is owned by the association.

¹ Formerly NRS 116.31175(1)(b).

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Petitioner correctly states that prior to the association becoming the owner, a unit owner could not request information from the association relating to the prior unit owner or to the tenant of the unit owner. The protection provided to a tenant applies because the records would relate to “another unit’s owner.” But there is no specific protection to tenants or occupants of a unit. Absent any exception to the provisions of NRS 116.31175(1), the records relating to the association’s unit and the occupant of that unit are available for inspection by unit owners.

At the point the occupant becomes a tenant of the association, the lease is an association record as a contract to which the association is a party under NRS 116.31175(1)(d). When the association foreclosed its lien and became the owner of the unit, all records regarding that unit became records of the association available for inspection by unit owners. If in fact, the association was seeking eviction proceedings, those proceedings would be a matter of public record anyway and certainly available to other unit owners within the association under NRS 116.31175(1)(d).

2. NRS 116.31175(4) provides the only categories of documents that are not subject to the requirements of NRS 116.31175(1). As explained above, the exceptions to disclosure do not apply when the association is the unit owner. Records relating to the occupant or tenant of the association’s unit are likewise not subject to any exception in NRS 116.31175(4). The Division disputes the categorization of a collection company’s letters in the course of collection as “proprietary,” but regardless the collection company placed the information in the public realm by sending them on behalf of the association to an occupant of the association’s unit or by sending documents directly to the association. Such documents are records of the association for which no exception to disclosure applies. While the Division would agree that efforts at collection prior to foreclosure are not available to other unit owners, a former owner is not protected. A former owner does not fall into the category of “another unit’s owner” after the association foreclosed on the unit. Records relating to efforts of the collection agency, as an agent of the association, to collect a debt from a former owner must be disclosed to unit owners. As an agent of the association, a collection company cannot claim collection records are proprietary to prevent them from disclosure by the association to unit owners.

ADVISORY CONCLUSION:

Associations have an obligation to provide all “books, records and other papers of the association for review” by unit owners subject to limited exceptions. The exception of records “relating to another unit’s owner” was never intended to protect the association. It was intended to protect the privacy rights of unit owners unrelated to the request for records. Once the association becomes a unit owner, it must treat all records relating to the unit as records of the association that are available for review by unit owners. Likewise, documents pertaining to an occupant or tenant of an association owned unit are not subject to any exception from disclosure. Documents generated by collection companies are distributed to the association and any particular occupant of the association’s unit. Release of such information would indicate

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that no actual proprietary information is contained in those documents. Regardless, once they are disseminated, the documents become a record of the association and subject to review by unit owners. NRS 116.31175(4)(b) does not provide an exception for records relating to a unit owned by the association, nor does it apply to former owners. Therefore, the association's records pertaining to its unit must be available for inspection by unit owners.

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