



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

Subject: Executive Session Agenda	Advisory No. 12-05-116	5 pages
	Issued By: Real Estate Division	
	Amends/ Supersedes	N/A
Reference(s): NRS 116.31085(3),(4),(7); NRS 116.31083(5); NRS 116.3108(4); NRS 116.310305		Effective Date: November 15, 2012

QUESTION:

How detailed do executive board agendas need to be when the board meets in executive session?

SHORT ANSWER:

The agendas for executive board meetings held in executive session need to be detailed enough to show owners that the board is discussing only those items permitted by NRS 116.31085(3) and include clear and complete statements of the topics and actions possible.

ANALYSIS OF THE ISSUE:

According to NRS 116.31083(5), meetings of an association's executive board must comply with the provisions of subsection 4 of NRS 116.3108. NRS 116.3108(4) concerns meetings of unit owners and requires an agenda to state:

- (a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, 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.
- (b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may

take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners regarding any matter affecting the common-interest community or the association and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

Except as otherwise provided in NRS 116, the agenda for a meeting of the executive board held in executive session should comply with the foregoing requirements. Due to the provisions of NRS 116.31085(7), unit owners are not entitled to attend or speak at a meeting of the executive board held in executive session, so the agenda need not include the provisions of subsection (c) above. The executive session agenda is also limited by NRS 116.31085(3).

NRS 116.31085(3) provides for the only matters the board can discuss in executive session. It states:

An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

While meetings in executive session concern confidential matters that may not be disclosed on an agenda, the agenda for a meeting held in executive session must be clear enough to show unit owners that those items in NRS 116.31085(3) are the only items that will be discussed. The board can consult with their attorney regarding proposed or pending litigation provided those discussions are privileged under NRS 49.035 to 49.115, inclusive. The board can discuss only the character, alleged misconduct, professional competence, or physical or mental health of the community manager or employee. The board can also discuss violations of governing documents and failures of a unit owner to follow a schedule pursuant to NRS 116.310305, if a fine is possible. If the board is discussing these items, the executive session agenda should be clear enough to show the matters fall in one of these categories.

For example, consider the following agenda which is not clearly stated:

ABC HOA
BOARD OF DIRECTORS
EXECUTIVE SESSION
AGENDA
JUNE 26, 2012, 5:30 PM

- I. CALL TO ORDER
- II. ESTABLISHMENT OF QUORUM
- III. APPROVE MINUTES
May 26, 2012
- IV. APPEALS
- V. ACCOUNT REQUESTS
- VI. LEGAL
- VII. PERSONNEL
- VIII. REVIEW OF BAD DEBT & WRITE-OFFS
- IX. ADJOURNMENT

“Appeals” – It is not clear what is being discussed for this item. If “Appeals” concerns appeals from violation hearings in which a fine was imposed, such matters could be heard in executive session, but it needs to be clear that the discussion is related to a unit owner’s violation of the governing documents.

“Account Requests” – It is not clear what this is referring to. Records requests may not be discussed in executive session. Every item must fit in one of the limited categories for executive session meetings.

“Legal” – In order for any legal discussions to take place, the association’s attorney must be present and the discussion must qualify as privileged under NRS 49.035 to 49.115, inclusive. Discussions of case strategy would be privileged, but a procedural update on litigation status is not privileged and should not be discussed in executive session. Likewise, if the association’s attorney is not present, no legal discussions should be taking place in executive session unless it is covered by another category. The agenda should be clear why the discussion is being held in executive session.

“Personnel” – Only those matters concerning character, alleged misconduct, professional competence, or physical or mental health of an employee can be discussed in executive session. It must be clear from the agenda how the discussion falls in one of those categories.

“Review of Bad Debt & Write-Offs” – The amounts of bad debt and write-offs are not subject to discussion in executive session. If the board wants to discuss specific unit owners’ violations of governing documents that can be discussed in executive session, but

the amounts the board intends to write-off as bad debt is not something that is decided in executive session.

To show compliance with NRS 116.31085(3) and NRS 116.31083(5) and NRS 116.3108(4), the agenda could be re-written to provide as follows:

ABC HOA
BOARD OF DIRECTORS
EXECUTIVE SESSION
AGENDA
JUNE 26, 2012, 5:30 PM

- I. CALL TO ORDER
- II. ESTABLISHMENT OF QUORUM
- III. APPROVE MINUTES
May 26, 2012
- IV. APPEALS
 - 1. Deliberate regarding unit owner appeals from imposition of fines by Committee.
 - 2. Take action on appeal requests.
- V. LEGAL
Discussion with Association attorney, _____, regarding case strategy for pending litigation matter _____ v. _____ and possible litigation matter involving violation of governing documents by particular unit owner.
- VI. PERSONNEL
 - 1. Discussion of complaints regarding association employee.
 - 2. Possible Action regarding employee.
- VII. REVIEW OF BAD DEBT & WRITE-OFFS
 - 1. Discussion of collectability from particular unit owners and potential write-offs for same.
 - 2. Write-off amounts to be discussed and decided in next regular session.
- VIII. ADJOURNMENT

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ADVISORY CONCLUSION:

All associations are required to follow the procedures set forth in their governing documents, but at a minimum, the agenda for executive session meetings must include a clear and complete statement of the topics and action to be taken such that it is clear how the item is entitled to be discussed and decided in executive session. Associations may not include confidential information in the executive session agenda, but each executive session agenda item must clearly state how each item for discussion fits in the limited categories listed in NRS 116.31085(3).