



# Dissolving a CIC

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## **Nevada Real Estate Division**

*Presented By the Training Officer; Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels Training Program*





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- 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/](http://red.nv.gov/Content/CIC/Program_Training/).

# Agenda



- Authority to Terminate
- Termination Agreement
- Parties Involved
- Disposing of Common Elements
- Financial Impacts

# Authority to Terminate: Unit Owners

NRS 116.2118

- The board may not terminate the CIC! NRS 116.3103
- A CIC may be terminated **ONLY** by agreement of at least 80% of unit owners, or any **LARGER** percentage specified in the declaration.
- If any additional approvals are required (i.e. third parties) by the declaration, the termination is not effective without those approvals, except in cases of:
  - Eminent domain,
  - Foreclosure against an entire cooperative of a security interest, or
  - Catastrophe.

# Authority to Terminate: Eminent Domain

NRS 116.1107

- The power/authority of a government to take private property for public use.
- **The association is NOT authorized to exercise the power of eminent domain.**
- If a unit is acquired by eminent domain leaving the unit's owner without usable property, the unit's owner must be compensated for the unit and its allocated interests, whether or not any common elements are acquired.
- Any portion of a unit remaining after the taking shall be a common element.
- Upon acquisition, unless the judicial decree otherwise provides, the unit's allocated interests are automatically reallocated to the remaining units.
  - The association shall prepare, execute, and record an amendment to the declaration reflecting the reallocation.



# Authority to Terminate: Foreclosure

NRS 116.21188

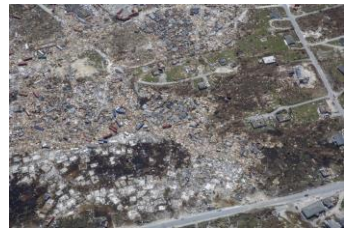
- Foreclosure against a portion of, or the entire CIC, does not terminate the community.
- Upon foreclosure and imminent sale or receivership, the new deed holder now owns the community.



# Authority to Terminate: Catastrophe

NRS 116.2124

- If substantially all the units in a CIC have been destroyed or are uninhabitable and the available methods for giving notice of a meeting of units' owners to consider termination will not likely result in receipt of the notice,
- The executive board or any other person holding an interest in the CIC may commence an action in the district court to terminate the CIC.
- During the pendency of the action, the court may issue whatever orders it considers appropriate, including an order for the appointment of a receiver.
- After a hearing, the court may terminate the CIC or reduce its size and may issue any other order it considers to be in the best interest of the units' owners and persons holding an interest in the CIC.



# Termination Agreement

NRS 116.2118

- Except in cases of Eminent Domain or court order following a catastrophe, there must be a termination agreement, signed by the required percentage of owners who approve the dissolution and any other approvals as required.
- The termination agreement must be executed in the same manner as a deed.
- Appropriately signed and recorded with the county recorder.
- The agreement must specify a date which the agreement will be void if not yet recorded.
- An agreement to terminate is effective only upon its recordation.





# Parties Involved: Executive Board

NRS 82.461

- During the termination process, directors shall:
  - Obtain any necessary approvals and then gain legal counsel;
  - Record the termination agreement;
  - Make a list of all assets for the appraiser;
  - Make arrangements for any potential sales;
  - Create a plan to pay any debts; and
  - Distribute residual money and property as outlined in the association's articles or bylaws.



# Parties Involved: Third-Party Rights

NRS 116.2119

- A CIC typically enters into contracts with third parties (mortgage companies, credit unions and banks) that may have authority within the CIC.
- These contracts cannot simply be canceled. Before or during dissolution, the association or its members will need to pay off the any obligations or refinance/renegeotiate any applicable agreement.
- The declaration may require that lenders approve termination of the community as a condition of its effectiveness.



# Parties Involved: Creditors

NRS 116.21183

- Creditors may enforce their liens upon termination of a CIC (attorneys, utility companies, management company, service providers).
- Creditors will be paid before unit owners.
- Following termination, creditors may lien individual units in proportion to their ownership interests.



# Parties Involved: Lawyer

- Dissolution typically involves at least one attorney with specialized knowledge of real estate law, contract law, corporate law, and community association law.
- If developers, landowners, and/or lien holders must also consent to the terms of dissolution, each party will be represented by legal counsel.
- An attorney can help an association understand how much debt is owed, and how to best pay it off or refinance.



# Disposing of Common Elements

- Before a CIC can be officially terminated, it must dispose of its common elements.
- This can be difficult for larger communities with elaborate recreational amenities or private roads.
- Assets can be sold to an investor willing to take over maintenance responsibilities, but such an investor will expect a reasonable profit in return.
- In the case of a condominium or townhouse, common elements maintained by the association include roofs, patios, parking areas, etc.
  - An agreement to terminate *may* provide that all of the common elements **and units** of the community be sold following termination.



# Disposing of Common Elements continued

- If the association has common elements that they cannot sell, the amenity still belongs to each unit owner in the association.
- This means that each unit owner is responsible for maintaining the element and is liable if an injury were to occur.
  - How do you organize collecting money for service and insurance?
- Each unit owner may not agree to be responsible for the common element, but you cannot prevent them from using a trail, park, entrance gate, etc.
- If the amenity is left neglected (whether a clubhouse, pool, walking path, etc.) this area can become inundated with garbage, unauthorized individuals, and activities that pose health and safety concerns.



# Disposing of Common Elements: Interests of Unit Owners

NRS 116.21185

- An independent appraiser, selected by the association, will determine the fair market value of any limited common elements.
- The decision of the appraiser must be distributed to all unit owners and becomes final unless disapproved within 30 days by 25% of unit owners.
- If any unit or limited common element is destroyed to the extent that an appraisal cannot be made, the interests of the units' owners are:
  - In a condo, their respective interests in the common elements immediately before the termination;
  - In a coop, their respective ownerships immediately before the termination; and
  - In a planned community, their respective liabilities for common expenses immediately before termination.



# Financial Impacts

- New deeds may be required - The deeds to each unit may include reference to the HOA. If the HOA no longer exists, deeds may have to be redrafted and rerecorded with the mortgage lenders for each property.
- Who takes the records? – May have to pay for storage.
- What happens to bank accounts? – Articles of incorporation may provide guidance.
  - If funds sit at the bank they eventually get sent to unclaimed property.





# Financial Impacts: Proceeds

- Until a sale has been concluded, and the proceeds thereof distributed, the association continues to exist with all powers it had before termination.
  - Following termination of the CIC, the proceeds of any sale and assets of the association are held by the association as trustee for the unit owners.
- Proceeds of the sale must eventually be distributed to unit owners and lienholders based on their interests.
- There may be no proceeds if the purchaser requires that the element be brought up to a certain standard prior to purchase.



# Knowledge Check



1. Does the board have authority to terminate a CIC?
2. What percent of unit owners is required to terminate a CIC?
3. Does terminating a CIC cancel all the CIC contracts?
4. True/False: Signing a Termination Agreement automatically relieves unit owners from financial liability for common elements.
5. What must be done with association funds following termination.

# Conclusion!



- Authority to Terminate
- Termination Agreement
- Parties Involved
- Disposing of Common Elements
- Financial Impacts

# Questions?

- <http://red.nv.gov/> - Main Page
- [CICOmbudsman@red.nv.gov](mailto:CICOmbudsman@red.nv.gov) – Email Questions
- [http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/)