

# Gov Doc vs NRS 116

Rev. 03/07/2022



# Disclaimer

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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.
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# Agenda



- Statutes and Regulations
- Priority of Governance
- Governing Documents Defined
- Declaration
- Other Governing Documents
- Violations
- Enforcement

# Statutes and Regulations

[https://red.nv.gov/Content/Administration/Statutes\\_and\\_Regulations/](https://red.nv.gov/Content/Administration/Statutes_and_Regulations/)

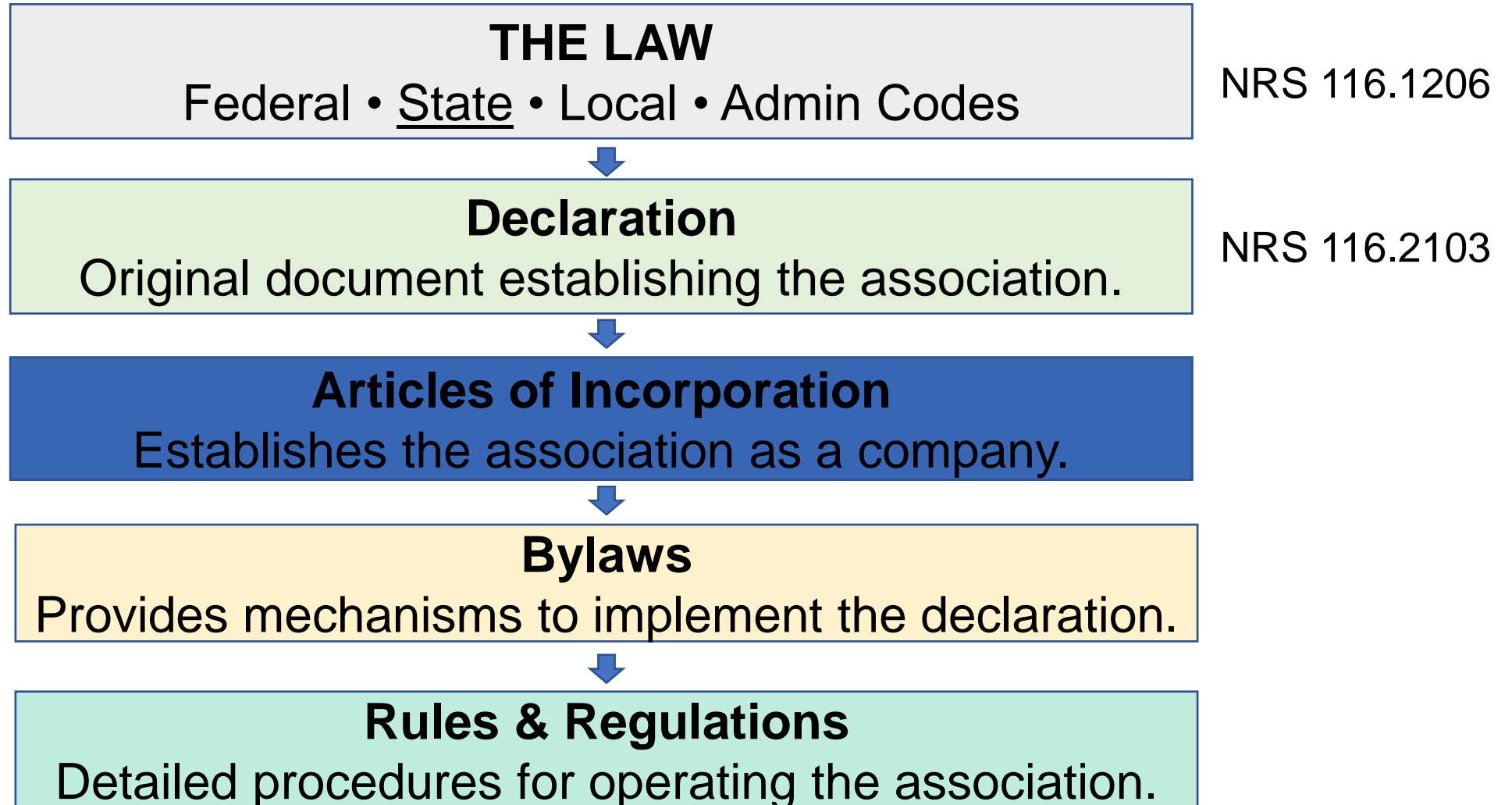
- **Nevada Revised Statutes (NRS):** Laws that are enacted by the legislature.
  - Changes can only be made through legislative action.
  - Changes can be followed at:  
<https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bills/List>
- **Nevada Administrative Code (NAC):** The regulations that outline how laws are administered.
  - Changes to regulations are preceded by workshops and public hearings.
  - Changes can be followed at:  
[https://red.nv.gov/Content/Administration/Regulation\\_Changes/](https://red.nv.gov/Content/Administration/Regulation_Changes/)

# Statutes and Regulations continued

[https://red.nv.gov/Content/Administration/Statutes\\_and\\_Regulations/](https://red.nv.gov/Content/Administration/Statutes_and_Regulations/)

<b>Chapter Title</b>	<b>Statute</b>	<b>Regulation</b>
Mediation and Arbitration	NRS 38	NAC 38
Common-Interest Ownership (Uniform Act)	NRS 116	NAC 116
Common-Interest Communities: Regulation of Community Managers and Other Personnel	NRS 116A	NAC 116A
Condominium Hotel Act	NRS 116B	NAC 116B
Nonprofit Corporations	NRS 81 or 82	NAC 81 or 82

# Priority of Governance



# Priority of Governance: NRS Supremacy

NRS 116.1108

- The principles of law and equity, including the law of corporations (e.g. NRS 82) and any other form of organization authorized by Nevada law are **supplemental** to the provisions of NRS 116.

NRS 116.11085

- If a matter governed by NRS 116 is also governed by NRS 78, 81, 82, 86, 87, 87A, 88 or 88A and there is a conflict between the provisions, **NRS 116 prevails.**

# Priority of Governance: Provisions in Violation of NRS 116

NRS 116.1206

- Any provision contained in an association's governing documents that violates any provision of NRS 116:
  - Shall be deemed to conform with those provisions by operation of law and the provision is **not required** to be amended to conform.
  - **Is superseded** by the provisions of NRS 116, regardless of whether the provision became effective **before** the enactment of the provision of law.

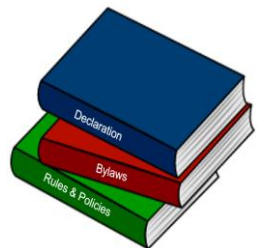




# Governing Documents Defined

NRS 116.049

- The Covenants, Conditions & Restrictions (CC&Rs)/Declaration:
  - The original document that creates the community, recorded against all properties **before** they are sold.
- Articles of Incorporation:
  - The articles that organize the non-profit organization that is the association, submitted to the Secretary of State's office.
- The Bylaws:
  - Contain provisions pertaining to meetings, elections, board officer positions and duties.



# Governing Documents Defined continued

NRS 116.049

## ➤ Rules & Regulations

- Created by the board to clarify provisions of the governing documents that already exist
- Any other documents governing the operation of the association:
  - Reserve Study, architectural review guidelines, collection policy, fine schedule, *Robert's Rules*, resolutions, etc.



# Knowledge Check

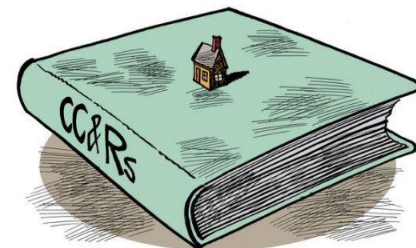


1. Who creates and approves NRS's?
2. Who creates and approves NAC 116?
3. Which is higher on the priority of governance, bylaws or Declaration?
4. If a matter is governed by NRS 116 and any other NRS, which NRS prevails?

# Declaration (CC&Rs): Contents

NRS 116.2105

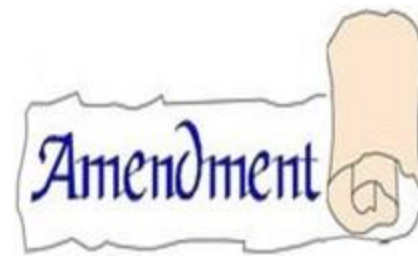
- The declaration **MUST** contain:
  - The name of the CIC and a statement that the CIC is either a condominium, cooperative or planned community;
  - The name of every county in which any part of the CIC is situated;
  - Description of the real estate included in the CIC;
  - The maximum number of units the declarant can create;
  - A description of the boundaries of each unit;
  - A description of common elements;
  - Developmental rights reserved by the declarant;
  - An allocation to each unit of voting rights & liability to pay assessments;
  - Any restrictions on use & occupancy;
  - **Any other matters** the declarant considers appropriate.



# Declaration: Amendments

NRS 116.2117

- The declaration may be amended **only** by vote or agreement of units' owners of units to which at least a majority of the votes are allocated,
  - **UNLESS** the declaration specifies a **different percentage**.
- **NO** action to challenge the validity of an amendment may be brought more than one (1) year after the amendment is recorded.
- Every amendment **MUST** be recorded in every county in which any portion of the CIC exists and is effective only upon recordation.



# Declaration: Amendments continued

NRS 116.2117

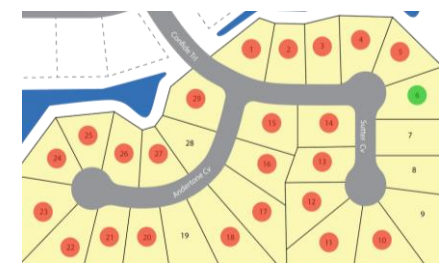
- Amendments to change the boundaries of any unit **MUST** be approved by
  - a majority of the units owners **and**
  - ALL owners who are affected.
- Amendments to materially restrict the permitted uses or who may occupy a unit **MAY NOT** be enforced against those who owned their units on the date of recordation of the amendment.



# Declaration: Unit Boundaries

NRS 116.2102

- Unit boundaries are defined by the Declaration
- **EXCEPT** as otherwise provided by the **declaration**:
  - If walls, floors or ceilings are designated as boundaries of a unit, all *interior* materials constituting the finished surfaces are a part of the unit, and all other portions of the walls, floors or ceilings are part of the common elements.



# Declaration: Common Elements

NRS 116.017

## ➤ Common Elements:

### ➤ In a condominium or cooperative:

- All portions of the CIC other than the units, including easements in favor of units or the common elements over other units.

### ➤ In a planned community:

- Any real estate within a planned community which is owned or leased by the association, other than a unit.

### ➤ In a CIC:

- Any other interests in real estate for the benefit of units' owners which are subject to the declaration.





# Declaration: Limited Common Elements

NRS 116.2108

- Defined as a portion of the common elements allocated by the **declaration** for the exclusive use of fewer than all units (NRS 116.059).
- Examples include:
  - Any duct, wire, conduit, bearing wall or other fixture laying partially within and partially outside the designated boundaries of a unit and serving only that unit; and
  - Any fixtures, shutters, awnings, window boxes, doorsteps, porches, balconies, patios and all exterior doors and windows designed to serve a single unit but located outside the unit's boundaries.
- **EXCEPT** as the **declaration** otherwise provides, a limited common element may be reallocated by an amendment to the declaration (**all** unit owners affected must consent).



# Declaration: Maintaining the Community

NRS 116.3107

- **EXCEPT** to the extent provided by the **declaration**,
  - the association has the **duty** to provide for the maintenance, repair and replacement of the common elements (each unit owner is responsible for his or her unit).
    - Each unit's owner **SHALL** afford to the association access through his or her unit reasonably necessary for those purposes.
    - If damage is inflicted to any unit through which access is taken, the association, if responsible, is liable for the prompt repair thereof.



# Declaration: Reserve Study

NRS 116.31152

- Used to finance the long-term maintenance of the communities common & limited common elements.
- The executive board SHALL:
  - Have a reserve study conducted at least once every 5 years; and
  - Review the study, at least annually, and make any adjustments to the funding plan to ensure “adequate” funding.



# Declaration: Reserves

- The association SHALL establish adequate reserves. NRS 116.3115
  
- “Adequately funded reserves” means: NAC 116.425
  - having funds sufficient to maintain the common elements
  - at the level described in the governing documents
  - without using funds from the operating account or
  - imposing special reserve assessments.



# Declaration: Powers of the Association

NRS 116.3102

- Except as otherwise provided in NRS 116, and **subject to the provisions of the declaration**, the association (not all inclusive):
  - Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and
    - May adopt and amend rules and regulations and
  - May, in accordance with NRS 116.31151, collect assessments for common expenses from the units' owners and
    - May, in accordance with NRS 116.311395, invest association funds.



# Declaration: Powers of the Association continued

NRS 116.3102

- Except as otherwise provided in NRS 116, and **subject to the provisions of the declaration**, the association (not all inclusive):
  - MAY hire and discharge managing agents, employees, agents and independent contractors.
  - MAY institute, defend or intervene in litigation or in arbitration.
  - MAY make contracts and incur liabilities.
  - MAY regulate the use, maintenance, repair, replacement and modification of the common elements.
  - MAY cause additional improvements to be made as part of the common elements.
  - MAY impose charges for late payment of assessments, construction penalties, and reasonable fines for violations of the governing documents.



# Declaration: Alteration of Unit by Owner

NRS 116.2111

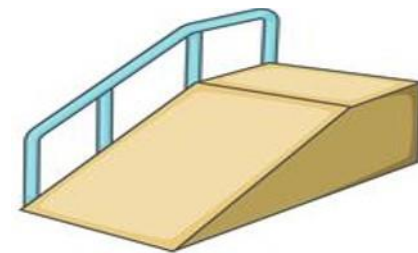
- **SUBJECT TO** the provisions of the declaration, a unit owner **MAY NOT** change the appearance of common elements, or the exterior appearance of a unit without permission of the association.
- Any improvement or alteration made that is visible from any other portion of the community **MUST** be added in accordance with the procedures set forth in the governing documents and must be selected or designed to be compatible with the style of the community.



# Declaration: Alteration of Unit by Owner continued

NRS 116.2111

- An association MAY NOT unreasonably:
  - Restrict, prohibit or otherwise impede the lawful rights of a unit owner to have reasonable access to his or her unit; or
  - Restrict, prohibit or withhold approval for a unit's owner to add to a unit:
    - Improvements necessary to improve access to the unit for any occupant who has a disability;
    - Additional locks to improve security; or
    - Shutters to improve security or reduce costs of energy.





# Declaration: Construction Penalties

NRS 116.310305

- The association **MAY** impose a construction penalty against a unit owner who fails to adhere to the schedule if the right to assess a construction penalty is set forth in the **declaration**.
- A unit owner shall adhere to a schedule required by the association for:
  - The completion of the design for improvement to a unit;
  - The commencement of construction;
  - The completion of construction; or
  - The issuance of any permit necessary.



# Declaration: Construction Penalties continued

AB 249 (2021)

Effective 1 October 2021:

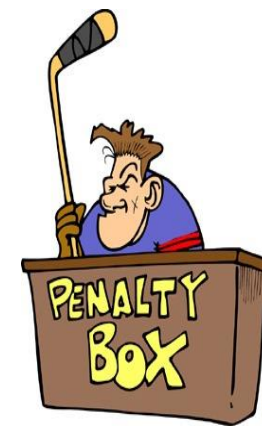
- **If** a county or city in which the CIC [of more than 6 units] is located adopts an ordinance restricting the hours in which construction work may begin, during the period beginning on May 1<sup>st</sup> and ending on September 30<sup>th</sup>,
  - The board shall not and the governing documents must not restrict the hours that work may be to hours other than those set in the [county/city] ordinance.



# Declaration: Construction Penalties continued

NRS 116.310305

- The unit owner must receive notice of the alleged violation at the designated mailing OR email address and be invited to a hearing on the alleged violation prior to any penalty being effective.
- **A construction penalty is NOT a fine.**
- The association **MAY** foreclose for a failure to adhere to a construction schedule.



# Declaration: Budgets

NRS 116.31151

- **UNLESS** the declaration imposes *more stringent* standards, not less than 30 or more than 60 days before the beginning of the association's fiscal year, the executive board SHALL prepare and distribute a copy of the budget and the collection policy to each unit owners' designated mailing or email address.
- The budget **MUST** include, without limitation:
  - The current estimated replacement cost and remaining useful life of each major component;
  - The current estimate of the amount of cash reserves necessary and amount set aside;
  - A statement as to whether the executive board has determined or anticipates the levy of one or more special assessments; and
  - A general statement describing the procedures used for the estimation and accumulation of cash reserves.



# Declaration: Surplus Funds

NRS 116.3114

- ***Unless otherwise provided in the declaration,***
  - any surplus funds of the association remaining after payment of the common expenses and any prepayment of reserves **MUST be** paid to the units' owners in proportion to their liabilities for common expenses.
    - Unless the **declaration** provides otherwise, surplus funds must be credited to the units' owners accounts.
    - If the **declaration** is silent on the matter, surplus funds must be credited to the units' owners accounts.



# Knowledge Check



1. Who may amend the declaration?
2. Define “Adequate Reserves”.
3. May an association prevent a unit owner from changing the exterior appearance of their unit?
4. Is a construction penalty a “fine”?
5. Unless the declaration provides otherwise, what must be done with surplus funds?

# Other Governing Documents: Articles

NRS 116.3101(4)

- The association **MUST**:
  - Be organized as a profit or nonprofit corporation, association, limited-liability company, trust, partnership or any other form of organization authorized by Nevada law;
  - Include in its articles of incorporation that the purpose of the corporation is to operate as an association pursuant to NRS 116;
  - Contain in its name the words “common-interest community,” “community association,” “master association,” “homeowners’ association” or “unit-owners’ association;” and
  - Comply with the applicable corporate law (such as NRS 82) when filing with the Secretary of State’s office.



# Other Governing Documents: Bylaws

NRS 116.3106

- The bylaws of the association **MUST**:
  - Provide the number of members of the executive board and the titles of the officers;
  - Provide for election by the board of a president, treasurer, secretary and any other officers;
  - Specify the qualifications, powers and duties, terms of office and manner of electing and removing officers and filling vacancies;
  - Specify the powers that the board/officers may delegate to other persons or to a community manager;
  - Specify the officers who may prepare, execute, certify and record amendments to the declaration on behalf of the association;
  - Provide procedural rules for conducting meetings;
  - Specify a method for the units' owners to amend the bylaws;





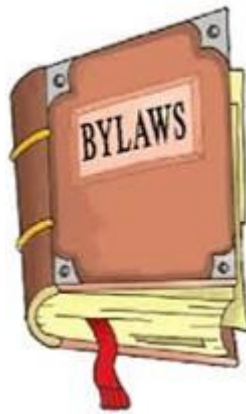
# Other Governing Documents: Bylaws continued

NRS 116.3106

- The bylaws of the association **MUST**:
  - Provide procedural rules for conducting elections;
  - Contain any provision necessary to satisfy NRS 116 or the declaration concerning meetings, voting, quorums, etc.; and
  - Provide for any matter required by law other than NRS 116 to appear in the bylaws of organizations of the same type.
- The bylaws **may** provide for **any other** necessary or appropriate matters.
- The bylaws **MUST** be written in plain English.
- Subject to provisions of the declaration and the bylaws, the association may amend bylaws except
  - The board may not determine the qualifications, powers, duties or terms of office of members of the executive board.

NRS 116.3102

NRS 116.3103



# Other Governing Documents: Rules & Regulations

NRS 116.31065

- Subject to provisions of the declaration, the association may adopt and amend rules and regulations.
- The rules adopted by an association:
  - **MUST** be reasonably related to the purpose for which they are adopted;
  - **MUST** be sufficiently explicit in their prohibition, direction or limitation to inform a person of any action or omission required for compliance;
  - **MUST NOT** be adopted to evade any obligation of the association;

# Other Governing Documents: Rules & Regulations

continued

NRS 116.31065

- The rules adopted by an association:
  - **MUST** be **consistent** with the **governing documents** and **MUST NOT arbitrarily** restrict conduct or require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association.
  - **MUST** be uniformly enforced under the same or similar circumstances against all units' owners. **Any rule that is not uniformly enforced may not be enforced against any unit's owner.**
  - **MAY** be enforced by the association through the imposition of a fine, if the association complies with NRS 116.31031 (fining process).



# Violations: Of Governing Documents

NRS 116.31031

- Except as otherwise provided in this section, if a unit owner or guest violates any provision of the governing documents of an association, the executive board **MAY**, if the **governing documents** so provide:
  - prohibit voting,
  - prohibit access to common elements,
  - impose a fine, or
  - send a courtesy notice.



# Violations: Of Governing Documents continued

NRS 116.31031

- The executive board **MAY NOT** impose any fine for a violation of the governing documents unless the violator has been provided with written notice including:
  - The alleged violation in detail,
  - a clear and detailed photograph when possible,
  - a proposed action to cure,
  - the amount of the fine, and
  - the date, time and location for a hearing.



# Violations: Of Governing Documents continued

SB72 & NRS 116.31085(4)

- Any person who may be sanctioned for an alleged violation:
  - Is entitled to attend all portions of the hearing related to the alleged violation, including
    - Presentation of evidence and
    - Testimony of witnesses;
  - Is entitled to due process including
    - The right to counsel,
    - The right to present witnesses, and
    - The right to present information relating to any conflict of interest of board members;
  - Is not entitled to attend deliberations of the board; and
  - Is entitled to receive written notice of the board's decision regarding the violation.
    - Continuing violations don't start until this notice is given.



# Violations: Of Governing Documents continued

NRS 116.31031

- If the association adopts a policy imposing fines for any violations, the officer specified in the bylaws **SHALL** prepare and cause to be sent by U.S. mail to each unit a schedule of the fines that may be imposed.
- A fine (not for health and safety) **MUST NOT** exceed \$100 for each violation or a total amount of \$1,000 per hearing.
  - \* Health and safety will soon be defined and capped in NAC per SB72.
- 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.
- The association **SHALL** establish a compliance account to account for fines, which must be separate from any account established for assessments (NRS 116.310315).



# Violations: Of Governing Documents continued

- If a board member is suspected of:
  - Violating NRS 116 (**EXCEPT** NRS 116.31184 – threats and harassment);
    - A unit owner can file a complaint using Intervention Affidavit form 530.
  - Misinterpreting the association's governing documents;
    - A unit owner can file an Alternative Dispute Resolution claim on form 520.





# Enforcement

NRS 116.3102(3)&(4)

- The executive board **MAY determine** whether to take enforcement action for a violation of the governing documents, including for unpaid assessments or other claims made by or against it.
- The executive board **does not** have a duty to take enforcement action if it determines that, under the **facts and circumstances presented**:
  - The association's legal position does not justify taking any or further enforcement action;
  - The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;
  - Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or
  - It is not in the association's best interests to pursue an enforcement action.

# Enforcement continued

NRS 116.3102(3)&(4)

- The executive board's decision not to pursue enforcement under **one set of circumstances** does not prevent the executive board from taking enforcement action **under another set of circumstances**, but
  - the executive board **MAY NOT** be arbitrary or capricious in taking enforcement action.



# Knowledge Check



1. In which governing document would a Unit owner find the terms of office for a board member?
2. Who may amend or change the bylaws?
3. True/False: Rules of the association created by the board must be consistent with the governing documents.
4. Is an executive board required to take action against a unit owner for a possible violation of the governing documents?
5. If the association imposes a fine for a rules violation, what is the maximum fine the association may impose for a non health/safety violation?

# Conclusion!



- Statutes and Regulations
- Priority of Governance
- Governing Documents Defined
- Declaration
- Other Governing Documents
- Violations
- Enforcement

# Questions?

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