Gov Doc vs NRS 116

Rev. 03/07/2022
▪ Staff in the Ombudsman’s Office is prohibited from providing legal advice. All Materials produced and provided to the public are for informational purposes only and do not serve as legal advice.

▪ 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/.
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/

➢ **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/
# Statutes and Regulations continued

[https://red.nv.gov/Content/Administration/Statutes_and_Regulations/](https://red.nv.gov/Content/Administration/Statutes_and_Regulations/)

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

THE LAW
Federal • State • Local • Admin Codes

Declaration
Original document establishing the association.

Articles of Incorporation
Establishes the association as a company.

Bylaws
Provides mechanisms to implement the declaration.

Rules & Regulations
Detailed procedures for operating the association.

Office of the Ombudsman for CICCH
Priority of Governance: NRS Supremacy

➢ 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.

➢ 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

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

➢ 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

➢ 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

➢ 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.

NRS 116.2105

Office of the Ombudsman for CICCH
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

➢ 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

➢ 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

➢ **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.

NRS 116.017
Declaration: Limited Common Elements

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

➢ **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.

NRS 116.3107
Declaration: Reserve Study

➢ 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.

NRS 116.31152

Office of the Ombudsman for CICCH
Declaration: Reserves

➢ The association SHALL establish adequate reserves.

➢ “Adequately funded reserves” means:
  ➢ 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.

NRS 116.3115

NAC 116.425
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

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

➢ 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.
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.

NRS 116.2111
Declaration: Construction Penalties

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.
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 1st and ending on September 30th,

➢ The board shall not and the governing documents must not restrict the hours that work may begin to hours other than those set in the [county/city] ordinance.
Declaration: Construction Penalties continued

➢ 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

➢ **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.

NRS 116.31151
Declaration: Surplus Funds

➢ 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

➢ 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

➢ 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 116.3106

NRS 116.3102

NRS 116.3103
Other Governing Documents: Rules & Regulations

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

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).

NRS 116.31065
Violations: Of Governing Documents

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.

NRS 116.31031

Office of the Ombudsman for CICCH
Violations: Of Governing Documents continued

➢ 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;
  ➢ In 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

➢ 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).
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

➢ 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.

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?

- [http://red.nv.gov/](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/)