

# **From Candidate to Committee: Everything You Need to Know About HOA Elections**

Training Officers:  
Dre Anderson  
Andrei Tcacenco



HOA

Nevada Real Estate Division



**Introduction**  
**Declarant Control**  
**Bylaws**  
**Initial Notice**  
**Campaigning**  
**Ballots**  
**Removal Elections**  
**Q&A**



**Before we begin, you are reminded that, as training officers, we are here to provide general information and education on NRS/NAC 116, 116A & 116B, and NAC 38. We do not provide legal advice, interpret the law, or give opinions on individual circumstances.**

**Our goal is to help you learn, understand, and apply the relevant statutes, regulations, and your community's CC&Rs. We want to equip you with the knowledge and tools necessary to effectively manage and live within your common-interest communities.**

**We will have dedicated time for questions and answers towards the end of the class. Please note that the Q&A session is intended to clarify the material covered today and not to address specific issues you might be facing. Feel free to jot down any questions regarding the class that you may have as we go along, and we will address them during the Q&A period. Thank you.**

**For online live classes: please ensure your Webex display name is the name you want on your certificate of attendance.**



**By the end of the course, attendees will:**

- 1. Understand the triggers for turnover and termination of Declarant Control.**
- 2. Comprehend the importance of the Bylaws as they relate to elections.**
- 3. Learn the statutory requirements concerning election notices.**
- 4. Understand meeting requirements concerning elections.**
- 5. Explore the recall election process.**

## **OBJECTIVES**





ICEBREAKER



# Declarant: Introduction

- Following the period of declarant control, unit owners within a common-interest community (CIC) elect members of the board of directors to represent them.
- These directors make decisions for the community and are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation.

# Declarant Control

- Following the period of declarant control, unit owners within a common-interest community (CIC) elect members of the board of directors to represent them.
  - The termination of declarant control is contingent on the number of units in an association.

NRS 116.31032





# Declarant Control

- In a CIC with fewer than 1000 units:
  - Not later than **60 days** after conveyance of **25% of the units** that may be created, at least 1 member and not less than 25% of members of the executive board must be elected by unit owners.
  - **60 days** after conveyance of **75% of the units** that may be created, a period of declarant's control terminates.

## Declarant Control, continued

- In a CIC with more than 1000 units:
  - Not later than **60 days** after conveyance of 15% of the units that may be created, **at least 1 member** and not less than 25% of members of the executive board must be elected by unit owners.
  - **60 days** after conveyance of **90% of the units** that may be created, the period of declarant's control terminates.



# Declarant Control, All Communities

- For all associations: Not later than **60 days** after conveyance of 50% of the units that may be created, **at least 1/3** of the members of the executive board must be elected by units' owners.

# Termination of Declarant Control

- The period of declarant's control terminates:
  - 5 years after all declarants have **ceased** to offer **units for sale**; or
  - 5 years after all declarants last exercised the right to add new units; or
  - The day the declarant records an instrument voluntarily surrendering all rights to control activities of the association.



DOCUMENTATION

13

PROCEDURES

VIOLATIONS

# BYLAWS, ELECTIONS AND THE BOARD

COMPLIANCE



# Looking to the Bylaws

Prior to initiating a unit owner election, elected board directors should be familiar with the Bylaws of their association. The bylaws must:

- State the required number of members of the executive board and titles of the officers (president, treasurer, secretary, and any other title stated).
- Specify the qualifications, powers, duties, terms of office and manner of electing and removing officers of the association and members of the executive board.

## Looking to the Bylaws, continued

- The Bylaws must provide procedural rules for conducting elections; and
- Specify the powers the board may delegate to other persons or to a community manager; and
- Specify the month, time and place that the annual meeting of the unit owners is to be held. **The election takes place at the annual meeting of the units' owners.**





- **All executive board members must be unit owners.**
- **Newly elected members of the executive board take office immediately.**
- **At the next executive board meeting following the election, directors appoint officers in accordance with the Bylaws.**
  - **Unless the governing documents say otherwise, officers are not required to be unit owners.**

**NRS 116.3106**

## **Board Organization**

- The term of office of a member of the executive board may not exceed 3 years.
- The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the greatest extent possible, an equal number of directors are elected at each election.
  - There are no limits on the number of terms that a board member may serve.

NRS 116.31034(2)

## **Election Terms**

# Summary

- **At the conclusion of Declarant control, an Executive Board must be elected by a vote of the unit owners.**
- **All executive board members must be unit owners and may not hold terms of office for longer than three years, pursuant to NRS 116.31034.**
- **The ballots must be counted at an annual meeting of the unit owners.**



# HOA

## **THE NOMINATIONS PROCESS**

# OWNERS ASSOCIATION

# Request for Nominations

- At least **30 days** before the preparation of any election ballots:
  - The association **must** mail out **Request for Nomination** forms to all unit owners.
  - The requests must include:
    - Eligibility requirements;
    - Nomination & Disclosure forms; and
    - Implementation of Duly Elected option (if applicable).

**NRS 116.31034(4)**



# Duly Elected

- If, at the closing period for nominations, the number of candidates is **equal to or less than the number of vacancies**, then:
  - The association **will not** prepare or mail any ballots; and
  - The nominated candidates shall be deemed to be duly elected to the executive board at the meeting of the units' owners at which ballots would have been opened and counted.

**NRS 116.31034(5)**

# Board Appointments

- Any person appointed to the executive board shall serve as a member of the executive board until the next regularly scheduled election.
- An executive board member elected to a previously appointed position may only be elected to fulfill the remainder of that term in order to keep terms appropriately staggered.

**NRS 116.31034**



# Eligibility

- **A candidate must be either:**
  - A unit owner,
  - An officer, employee, agent or director of a corporate owner of a unit,
  - A trustee or designated beneficiary of a trust that owns a unit,
  - A partner of a partnership that owns a unit,
  - A member or manager of a LLC that owns a unit, or
  - A fiduciary of an estate that owns a unit.
    - If the potential candidate is not the record owner, the person shall file proof in the records of the association that he or she is eligible per the qualifications listed here.

**NRS 116.31034(14)**



# Eligibility, continued



- **A person who owns 75% or more of the units in an association MAY:**
  - Be a candidate or an officer of the association; and reside with, be married to, domestic partners with, or related by:
    - Blood/adoption/marriage to another person who is also a member of the executive board or is an officer of the association.
  - **Unless** the person owning 75% or more of the units and the other person would constitute a majority of the total seats on the board.

**NRS 116.31034(11)**



# Ineligibility

- **A candidate may not:**

- Reside with, be married to, domestic partners with, or related by:
  - Blood/adoption/marriage to another person who is also a member of the
  - Executive board or is an officer of the association;
    - Unless the number of nominees is less than or equal to the number of vacancies;
  - Stand to gain any personal profit or compensation from executive board matters.

**NRS 116.31034(12)**



- **Each candidate must prove their eligibility via a Nomination Form.**

- Each candidate must complete a Disclosure Form in which the candidate must:
  - Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or appear to result in a potential conflict of interest; and
  - Disclose whether they are in good standing with the association (including any unpaid and past due assessments or contruction penalties).

# Disclosure Statements



- **A candidate who has submitted a nomination form MAY request that the association either:**
  - **Send, at the association's expense, to the designated mailing address of each unit, a Candidate Informational Statement.**
    - The statement:
      - Must be no longer than a single, typed page;
      - Must not contain any defamatory, libelous or profane information; and
      - May be sent with the secret ballot or in a separate mailing.

**NRS 116.31034(17)**

# **Candidate Informational Statement**



## BOARD CANDIDATE NOMINATION FORM

*This form must be sent out to each unit owner at least 30 days before the preparation of election ballots.*

A meeting of the units' owners must be held at least once each year, at which time ballots for the election of members of the executive board must be opened and counted. The election for Name of Association has been scheduled for Date. There will be # vacancies, Duration of Terms. If you are a unit owner interested in running for the association's board of directors, please complete and submit the following information:

YOUR NAME \_\_\_\_\_

ADDRESS OF UNIT OWNED \_\_\_\_\_  
(Street) (City) (State)

ELIGIBILITY (place 'T' for true, 'F' for false on the lines below):

\_\_\_\_\_ I do not reside in a unit with, am not married to, am not domestic partners with, or related by blood, adoption or marriage to another person who is also a member of the executive board or is an officer of the association.

\_\_\_\_\_ I do not stand to gain any personal profit or compensation of any kind from a matter before the executive board.

\_\_\_\_\_ I do not perform the duties of community manager for this association, nor does my spouse, parent or child, by blood, marriage or adoption.

\_\_\_\_\_ (Master Association) I do not perform the duties of community manager for the master association, or any association that is subject to the governing documents of a master association, nor does my spouse, parent or child, by blood, marriage or adoption.

\_\_\_\_\_ In this community, I am: the record owner of a unit; an officer, employee, agent or director of a corporate owner of a unit; a trustee or designated beneficiary of a trust that owns a unit; a partner of a partnership that owns a unit; a member or manager of a limited-liability company that owns a unit; or a fiduciary of an estate that owns a unit.

**NOTE:** If you are not the record owner, you must file proof in the records of the association that you are associated with the corporate owner, trust, partnership, limited-liability company or estate and identify the unit or units owned.

If you are deemed eligible, your name will be placed on the ballot and your disclosures (page 2) will be distributed to each member of the association. In order to complete the nomination process, you *must* complete and submit page 2 of this form.

**The executive board has determined to use the "duly elected" process described below:**

*NRS 116.31034(5) ... "If, at the closing of the prescribed period for nominations for membership on the executive board, the number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected to the executive board at the election, then: (a) The association will not prepare or mail any ballots to units' owners pursuant to this section; and (b) The nominated candidates shall be deemed to be **duly elected** to the executive board at the meeting of the units' owners at which the ballots would have been counted pursuant to paragraph (e) of subsection 15."* In this scenario, candidates may reside with or be related to another board member, unless one of them owns 75% or more units in the community and together these owners would constitute a majority of the board.

YOUR SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

RETURN COMPLETED FORM TO Mail-in address and/or drop-off location  
BY Date and Time (late or incomplete submissions will not be accepted).

If you are deemed eligible and would like to communicate **campaign material**, other than the one page Candidate Informational Statement, directly to units' owners at your own expense, you can request to receive a list of mailing addresses in the community (not to include any names): in paper format at a cost not to exceed 25¢ per page for the first 10 pages and 10¢ per page thereafter; by compact disc at a cost of not more than \$5; or by email at no cost. At the time of request, you will be required to provide a signed written statement stating that you will not use the list of addresses for any purpose other than communicating campaign material. If you refuse to sign this statement, the association or its agent may refuse your request for addresses.

## BOARD CANDIDATE NOMINATION FORM

*This form must be sent out to each unit owner at least 30 days before the preparation of election ballots.*

A meeting of the units' owners must be held at least once each year, at which time ballots will be opened and counted to determine those elected to the executive board, or candidates will be deemed to be duly elected to the executive board. The annual meeting for Name of Association has been scheduled for Date. The unit owner listed below submitted his/her nomination form and was deemed eligible to serve on the association's board of directors:

CANDIDATE NAME \_\_\_\_\_

As required pursuant to NRS 116.31034(9), please see the candidate's disclosure statements below:

### REQUIRED DISCLOSURES

Please disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest if you were to be elected to serve as a member of the executive board:


Please disclose whether or not you are a member in good standing, meaning that you have no unpaid and/or past due assessments or construction penalties due to the association:


Not being in good standing or having a perceived conflict of interest does not make a candidate ineligible pursuant to Chapter 116. Pursuant to NRS 116.3103(1), however, "officers and members of the executive board are subject to conflict of interest rules governing the officers and directors of a nonprofit corporation," and pursuant to NRS 116.31031(9), a member of the executive board cannot participate in any hearing or cast any vote relating to a fine if the member has not paid all assessments which are due to the association.

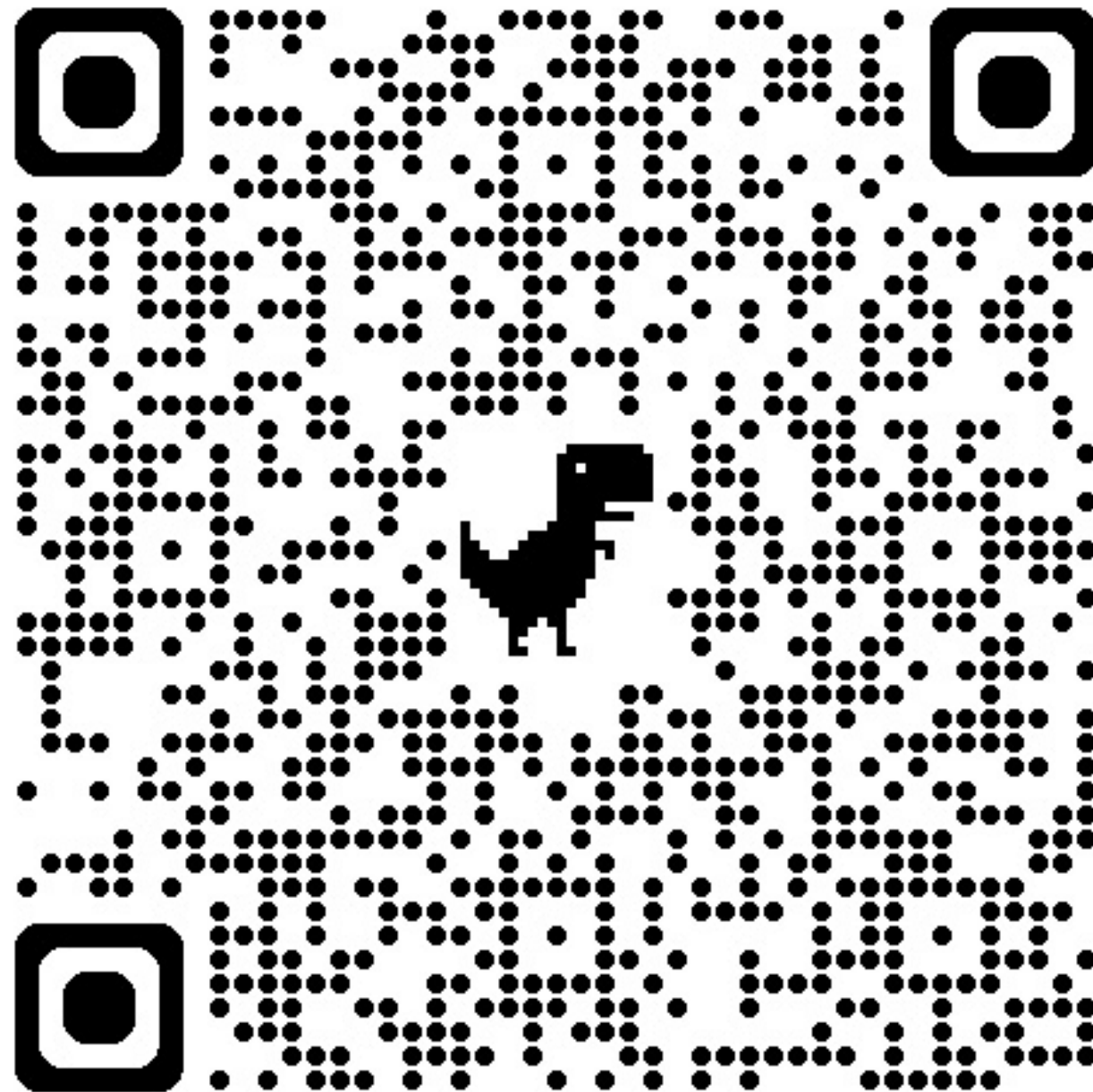
Candidates further have the option to complete and submit a **Candidate Informational Statement** along with this form to provide voting members with additional information as to their qualifications and reasons for running. The informational statement must be no longer than a single, typed page and cannot contain any defamatory, libelous or profane information (see next page). Unless otherwise requested, this statement will be sent to unit owners before the election, at the association's expense.



*This form must be sent out to each unit owner at least 30 days before the preparation of election ballots.*

Candidates have the option to use this space to tell units' owners a little bit more about themselves and why they should be elected to sit on the association's board of directors. This statement must be no longer than a single, typed page and cannot contain any defamatory, libelous or profane information. If completing by hand, please make sure the information is legible.

[illegible]



[https://red.nv.gov/uploadedFiles/rednvgov/Content/CIC/Program\\_Training/Flowcharts/candidate-nomination-form-template.pdf](https://red.nv.gov/uploadedFiles/rednvgov/Content/CIC/Program_Training/Flowcharts/candidate-nomination-form-template.pdf)





# Campaigning

- **To allow the candidate to communicate campaign material directly to the units' owners, provide to the candidate a list of mailing addresses for each unit, not including any names:**
  - **In paper format not to exceed the cost per page (25 cents per page for the first 10 pages, 10 cents per page thereafter),**
  - **By compact disc for \$5 or less, or**
  - **By email at no cost.**

**The list should NOT be provided by the association outside of an election period.**

# Campaigning



# Campaigning: Additional Materials

- If an official publication of the association contains:
  - Any mention of a candidate or ballot question,
  - The official publication must, upon request, provide equal space to all candidates.
  - Views or opinions concerning an issue of official interest.
- **The official publication must, upon request, provide equal space to opposing views.**

**Note: An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election.**



# Political Signs

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- Defined as a sign which expresses support for or opposition to a candidate, political party or ballot question in any federal, state, local or association election.
  - Neither the board, nor the governing documents, may prohibit a unit owner or occupant from exhibiting one or more political sign(s), with certain exceptions.
    - All political signs exhibited are subject to any applicable provision of law governing the posting of political signs.
    - Signs must be **no larger** than 24x36 inches.

NRS 116.325



# Summary

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- Initial Notice Contains (including but not limited to):
  - Explanation of the Duly Elected Process (NRS 116.31034[5]).
  - Eligibility Requirements:
    - Having no relation to board/manager (NRS 116.31034[10]).
    - Not standing to gain from the position (NRS 116.31034[10]).
- Disclosure Statement (NRS 116.31034[9]).
  - Disclose any potential conflict of interest.
  - Disclose membership standing.



# Knowledge Check

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**True or false: Elections for the executive board take place at an open meeting of the executive board.**

# Knowledge Check

**Answer: False, election ballots must be opened at an annual meeting of the units' owners.**





## Knowledge check

The nomination form must be sent out at least \_\_\_\_\_ days before the preparation of a ballot.

## Knowledge check

The nomination form must be sent out at least **30** days before the preparation of a ballot.



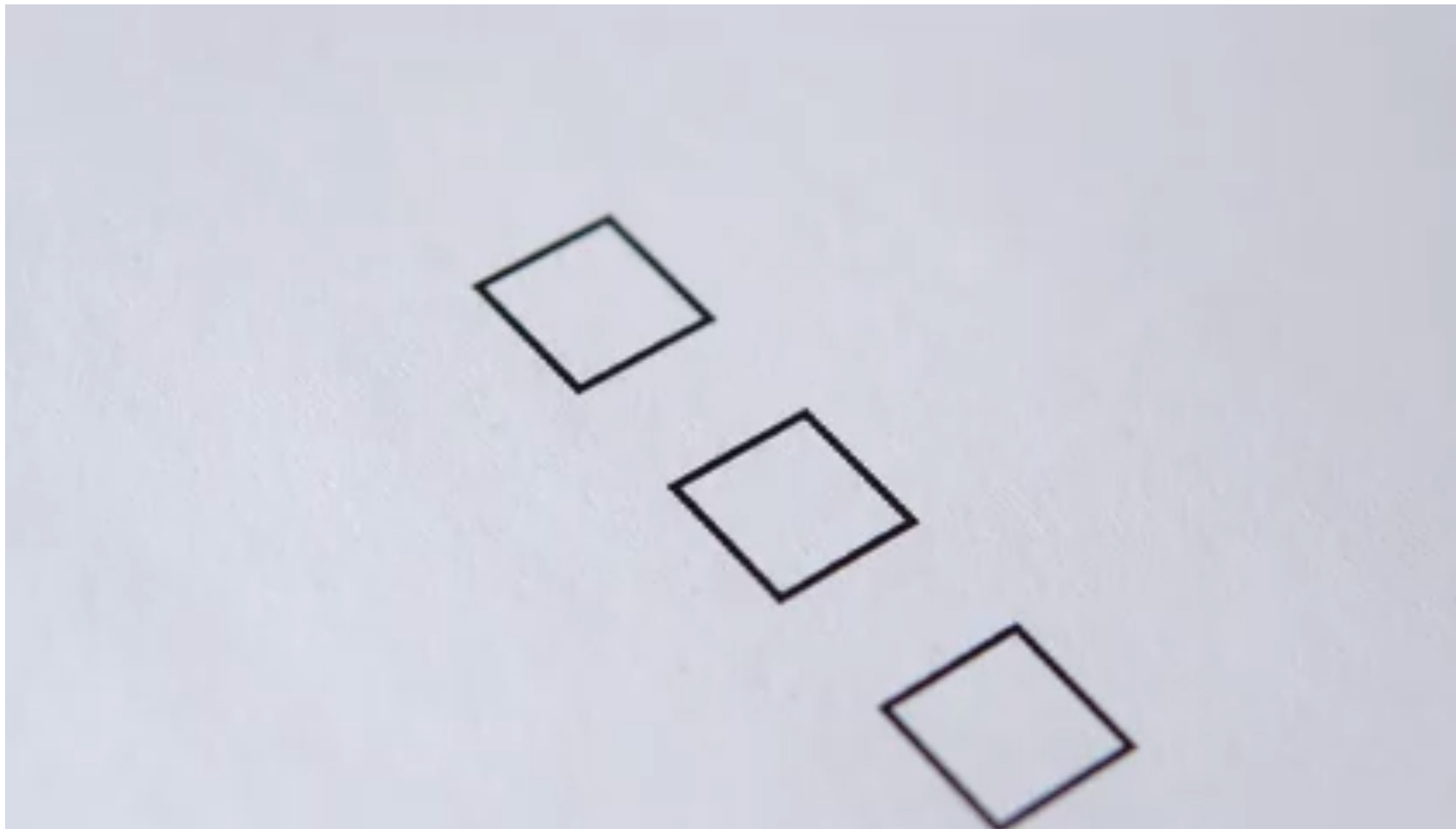
## Knowledge check

The term of office of a member of the executive board must not exceed \_\_ years.

## Knowledge check

The term of office of a member of the executive board must not exceed **3** years.





**Secret Written**

**Sending Multiple**

**Three Envelope**

# Ballots

# Secret Written Ballots



- If the number of candidates is greater than the number of vacancies, then the association shall:
  - Prepare and mail ballots to unit owners who are eligible to vote, and;
  - Conduct an election accordingly.
- The officer specified in the bylaws shall bring about that a secret written ballot and;
- Return envelope to be sent, prepaid by U.S. mail, to the designated mailing address of each unit owner.

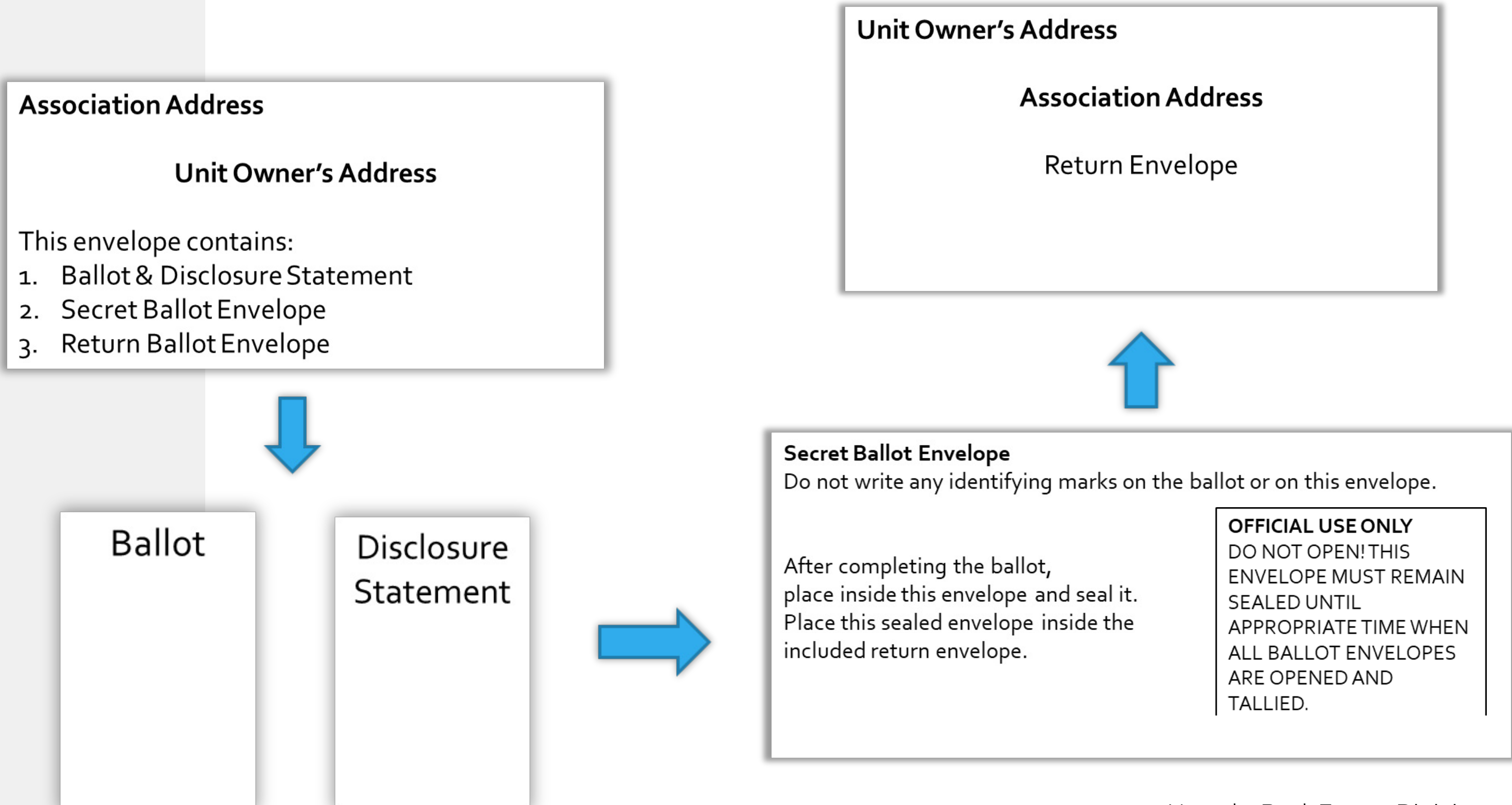


# Secret Written Ballots



- If the number of candidates is greater than the number of vacancies, then the association shall:
  - Prepare and mail ballots to unit owners whose voting rights have not been temporarily revoked; and
  - Conduct an election accordingly.
- The officer specified in the Bylaws shall cause a secret written ballot, and return envelope to be sent, prepaid by U.S. mail, to the designated mailing address of each unit owner.

# The Three Envelope System





**Note: Each unit owner must be provided with at least 15 days after the date the secret written ballot is mailed to return the ballot to the association.**

# Advisory Opinion (AO) 20-02

**Is an association permitted to mail secret election ballots to multiple addresses requested by a unit owner?**

## **Short Answer:**

**No, under NRS 116.31034(15)(a) an association must send only one secret election ballot to a unit owner. That secret election ballot must be sent to only one address- EITHER to the mailing address of the owner's unit within the common-interest community, OR to the mailing address that the unit owner designates in writing.**



# Board Elections

# Knowledge Check

## True or false?

**To allow the candidate to communicate campaign material directly to the units' owners, the association must provide a list of names and mailing address for all unit owners, when requested.**

# False!

**To allow the candidate to communicate campaign material directly to the units' owners, the association must provide a list of mailing address for all unit owners, BUT NOT THEIR NAMES!**



# True or false?

**The candidate information statement may contain defamatory, libelous or profane information.**

# False!

**The candidate information statement may NOT contain  
defamatory, libelous or profane information.**

# Yes or No?

**Is an association permitted to mail secret election ballots to multiple addresses if requested by a unit owner?**



**No, the association may only mail one ballot to each unit owner.**

# The Election

- **Ballots must be opened and counted at a unit owners' meeting by a neutral 3rd party;**
  - **Either at the annual or a special meeting.**
  - **A quorum is not required.**
    - Only secret written ballots returned to the association, by the due date/time, may be counted.
    - Ballots must be opened and counted in plain sight.

NRS 116.31034 & NRS 116.3108

## Counting Ballots



**Ballots and identifying envelopes are kept as records of the association for at least 10 years (NRS 116.31175).**

**Records**



A person shall not knowingly or willfully:

- Change or falsify a ballot;
- Forge or falsely sign a ballot;
- Fraudulently cast a vote;
- Reject or fail to count (if properly completed) a ballot;
- Destroy, deface, or otherwise invalidate the ballot of another voter; or
- Submit a counterfeit ballot.

PROHIBITED

## **Prohibited Acts**



# Post Election

- Members of the executive board shall immediately take office upon election or appointment.
- Each member of the executive board SHALL, **within 90 days**, after his or her appointment or election, certify in writing to the association on **NRED form 602** that the member has read and understands the governing documents of the association and the provisions of NRS & NAC 116 to the best of his or her ability.



**Declaration of Certification**  
**Common-Interest Community Executive Board Member**

**Do not submit this form to the Division.**



# Elections Timeline, summary

Notifications of eligibility sent no less than 30 days before the preparation of an election ballot.

At least 15 days before the ballots are opened, they must be distributed to unit owners.

Secret ballots are opened and counted at a unit owners' meeting (quorum not required).

**NRS 116.31034**



- **An executive board meeting shall be held after an election.**
  - **During this meeting, the board members determine the officers in accordance with the Bylaws (NRS 116.3106).**

## **Appointing Board Members Following an Election**



# RECALL!

## ELECTIONS

# Recalling a Board Member

- **Any member of the executive board, other than a member appointed by the declarant, may be removed with or without cause.**
  - A removal election may be called by at least 10% of unit owners who are eligible to vote (or any lower percentage specified in the bylaws).
  - The petition should include the date, name and addresses of all signatories (names should be printed and signed).



# NOTICE

- The board shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures.



Between 15 and 60 days after the date on which the recall petition is received by the association, secret written ballots and return envelopes (3 envelope system) for the removal election must be mailed to each unit owner.

(NRS 116.31036):

- Ballots must state the percentage of votes necessary (35%+); and
- Specify the time, date and method by which a ballot must be delivered to the association to be counted.

## **Recall Election Timelines**

Each unit owner must be provided with at least 15 days after the date the secret written ballot is mailed to return the ballot to the association.

- No later than 90 days after the petition is received by the board, a special meeting of the units' owners must be held to open and count the ballots.

# Recall Election Timelines

# The Math of Recall Elections

In order for a board member to be removed by the units' owners:

- At least 35% of the total number of voting members of the association must cast votes IN FAVOR of removal; and
- Those votes cast must also represent A MAJORITY of all votes cast.

**NRS 116.31036**



# EXAMPLE

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- If there are 100 total voting members in the association, **at least 35 votes must be received AND vote in favor AND**
- A majority of all votes cast must be in favor.

A person wearing a blue polka-dot shirt is holding a white rectangular card in front of their chest. On the card is a large, hand-drawn question mark with a cross-hatch pattern inside. The background is a solid light yellow color.

## Group Discussion:

**An association has 100 total voting members.  
If 40 voting members cast votes and 30 of those votes are in  
favor of removing the board member, is that board member  
removed?**





**Answer:**

**No. 30 votes in favor represents a majority of all votes cast, but it is not 35% of the total votes in the association.**



A person wearing a blue polka-dot shirt is holding a white rectangular card. On the card is a large, hand-drawn question mark with a cross-hatch pattern inside. The background is a solid light yellow color.

## Group Discussion:

**An association has 100 total voting members.**

**If all 100 voting members cast votes and 40 of those votes are in favor of removing the board member, is that board member removed?**





**Answer:**

**No. 40 votes is greater than 35% of possible votes in the association, however, 40 votes is not the majority of all votes cast.**

Before we move on to the Q&A session, I'd like to remind everyone that we are here to provide general information and guidance. We cannot give legal advice, interpret the law, or provide opinions on individual circumstances.

## OFFICE OF THE OMBUDSMAN

FOR OWNERS IN COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

The purpose of this Q&A session is to help clarify the material covered in today's class. Please keep your questions focused on understanding and the application of the statutes, regulations, and CC&Rs relevant to your roles within your community.

For specific legal concerns or individual issues, please consult with a qualified attorney.





# THANK YOU

**ANDREI TCACENCO & DRE ANDERSON**

**EMAIL: [CICOMBUDSMAN@RED.NV.GOV](mailto:CICOMBUDSMAN@RED.NV.GOV)**

**PHONE: 702-486-4480**