

Understanding HOA Elections

Rev. 03/07/2022



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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/.

Agenda



- Declarant Control
- Board Organization
- Nomination
- Campaigning
- Ballots
- Election
- Removing a Board Member

Declarant's Control

NRS 116.31032(2)

- For associations of 999 or less:
 - Not later than 60 days after **25%** of units which may be created have been conveyed to unit owners
 - 1 member, not less than 25%, of board must be elected by unit owners other than declarant.
- For associations larger than 999:
 - Not later than 60 days after **15%** of units which may be created have been conveyed to unit owners
 - 1 member, not less than 25%, of board must be elected by unit owners other than declarant.
- Regardless of association size, not later than 60 days after **50%** of units which may be created have been conveyed to unit owners
 - not less than 1/3 of board must be elected by unit owners other than declarant.



Declarant's Control continued

NRS 116.31032(2)

- Declarant's control terminates:
 - Not later than 60 days after:
 - 75% of units in a community with 999 units or less have been conveyed to unit owners;
 - 90% of units in a community with more than 999 have been conveyed to unit owners.
 - 5 years after all declarants have **ceased to offer units for sale**;
 - 5 years after all declarants **last exercised the right to add new units**; **or**
 - The day the declarant provides notice to unit owners, via mail and email, and **records an instrument voluntarily surrendering** all rights to control activities of the association.

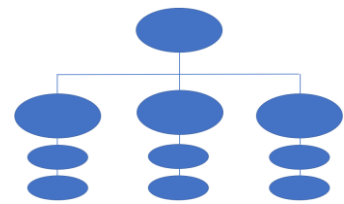


Board Organization

NRS 116.31034(1)

- Unit owners shall elect an executive board of at least **three** directors.
- 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 **however**
 - non-board member officers have no voting rights.

NRS 116.3106



Board Organization: Bylaws

NRS 116.3106

➤ Specify:

- the required number of executive board members (at least 3);
- the titles of the officers (president, treasurer, secretary, etc.);
- the qualifications, powers, duties, terms of office and manner of electing and removing officers and board members; NRS 116.31036
- board powers that may be delegated to other persons such as a CAM;
- procedural rules for elections;
- meeting procedures (if different than Robert's Rules); and NRS 116.3109
- the month, time, and place of the annual Unit Owners Meeting.



Board Organization: Terms of Office

- The executive board may NOT determine the qualifications, powers, duties, or terms of office for board members. NRS 116.3103(2)(d)

- Terms of office are designated in the Governing Documents (Bylaws). NRS 116.31034(2)
 - Not more than 3 years, but
 - No limit on number of terms in NRS but may be limited by Governing Documents.
 - Terms MUST be staggered.



Knowledge Check



1. The period of declarant's control terminates ___ years after all declarants have ceased to offer units for sale.
2. The association must have at least ___ board members.
3. Which governing document specifies the qualifications, powers, duties, and terms of office for board members?
4. The term of office of a member of the executive board must not exceed ___ years.

Nomination

NRS 116.31034(4)

- Methods of nomination:
 - Self nomination,
 - By board member, and/or
 - By nominating committee established by the association.
- Notice of eligibility **must** be mailed or emailed to each unit owners' designated address not less than 30 days before the ballots are created.
Includes:
 - Eligibility requirements;
 - Nomination & Disclosure forms; and
 - Implementation of Duly Elected option (if applicable).



Nomination: Eligibility

NRS 116.31034(1)&(14)

- 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 candidate is not the record owner, they **shall** file proof of eligibility under one of the above conditions.



Nomination: Eligibility continued

NRS 116.31034(10)&(12)

➤ A candidate **must 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;
- perform the duties of, or have their spouse, parent/child by blood/marriage/adoption performing the duties of a community manager for
 - their association;
 - their master association, **or**
 - any of their sub associations.



Nomination: Eligibility continued

NRS 116.31034(11)

- 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 two board members together would constitute a majority of the board.

~~Majority~~

Nomination: Form

NRS 116.31034(9)

- 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.
 - A candidate is not in “good standing” if they have any unpaid assessments or construction penalties that are due to the association.
- Both forms are sent by the candidate to the association.



Nomination: Form continued

NRS 116.31034(13)

- If a person **is not** eligible to be a candidate for, or a member of, the board, the existing board:
 - must not place their name on the ballot; and
 - must prohibit them from serving on the board or as an officer.
- If a person **is** eligible, their disclosure statement **will** be sent to each unit owner **with the ballot**.
 - In the event ballots are not prepared, disclosures are sent in the next regular mailing of the association.



Template

http://red.nv.gov/uploadedFiles/rednvgov/Content/CIC/Program_Training/Flowcharts/candidate-nomination-form-template.pdf

Nomination: Duly Elected

NRS 116.31034(5)

- The executive board, in compliance with the governing documents, determines whether to allow candidates to be **duly elected**.
- If it is implemented, the association **must disclose** the following:
 - That the executive board has authorized its use, **and**
 - 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 unit's owners** at which ballots would have been opened and counted.



Nomination: Appointments

NRS 116.31034(7) & NRS 116.3103(2)(c)

- The executive board MAY, if the governing document so allow, fill any board vacancies by appointment **if**:
 - there are not enough qualified candidates at the close of nominations; or
 - the vacancy occurs between elections.
- Such appointments:
 - Are only effective **until the next regularly scheduled election**, and
 - Only for **the remainder of that term** in order to keep terms appropriately staggered.



Knowledge Check



1. The nomination form must be sent out at least ___ days before the preparation of a ballot.
2. True/False: The duly elected process is automatic and required by NRS 116.
3. True/False: If vacancies remain at the closing period prescribed for nomination, the CAM may appoint individuals to fill the vacancies.
4. In all events where the potential candidate is not the record owner, the person shall ____.
5. What two disclosures must be included in the candidate disclosure statement?

Campaigning: Candidate Information Statement

NRS 116.31034(17)(a)

- Candidate information statement:
 - Must not be longer than a single, typed page and
 - Must not contain any defamatory, libelous or profane information.
- The statement may be distributed at the association's expense, to all unit owners;
 - with or separate from the secret written ballot.



Campaigning: Candidate Information Statement continued

NRS 116.31034(17)(b)

To allow the candidate to communicate campaign material directly to the unit's owners:

- Upon written request, the association **must** provide the candidate a list of mailing addresses for each unit, not including any names.
 - In paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents for each additional page;
 - by compact disc for \$5 or less, or
 - by email at no cost.
- The candidate **must** provide a **signed** written statement to the association, stating that the request for addresses is to communicate campaign material only, and nothing else.



Campaigning: Candidate Information Statement continued

NRS 116.31034(17)(b)(2)(II)

- The association or its agent **may** refuse the request for addresses, **if**
 - The candidate refuses to sign the written statement, or
 - If the candidate has already requested the association mail material at the associations expense.

DENIED

Campaigning: Additional Materials

NRS 116.31035

- If an official publication of the association contains:
 - any mention of a candidate,
 - 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.
- “Official publication” means:
 - An official website (social media);
 - An official newsletter or other similar publication that is circulated to each unit’s owner; or
 - An official bulletin board that is available to each unit’s owner.



Campaigning: Interference

NRS 116.31034(16)&(18)

- An association **shall not** adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate's campaign for election.
 - That the campaign **may** be limited to 90 days before the date that ballots are required to be returned.
- An association and its directors, officers, employees and agent are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to NRS 116.31034(17) and/or NRS 116.31035.



Campaigning: Displaying Political Signs

NRS 116.325

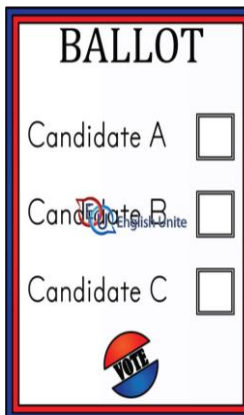
- Defined as a sign which expresses support for or opposition to a candidate, political party or ballot question in any federal, state, local or association election.
- Neither the board, nor the governing documents, may prohibit a unit owner or occupant from exhibiting one or more political sign(s), subject to the following conditions:
 - No political sign may be larger than 24x36 inches.
 - If the unit is occupied by a tenant, the unit owner may not exhibit any political sign unless the tenant consents, in writing.
 - All political signs are subject to any applicable provisions of law.
 - A unit owner or occupant may exhibit as many signs as desired but not more than one sign for each candidate, party or ballot question.



Ballots

NRS 116.31034(8)&(15)

- If the number of candidates is greater than the number of vacancies, or if the duly elected process is not authorized, the association shall prepare and mail ballots to unit owners whose voting rights have not been revoked.
- 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.
 - A 3-envelope system can be used to track receipt of the ballot and maintain confidentiality.
 - 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.



Ballots: Sending Multiple Ballots

AO 20-02 & NRS 116.31034(15)(a)

Question:

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

Short Answer: No

An association **must** send only **one** secret election ballot to a unit owner.

That secret ballot **must** be sent to only **one** address- **EITHER**

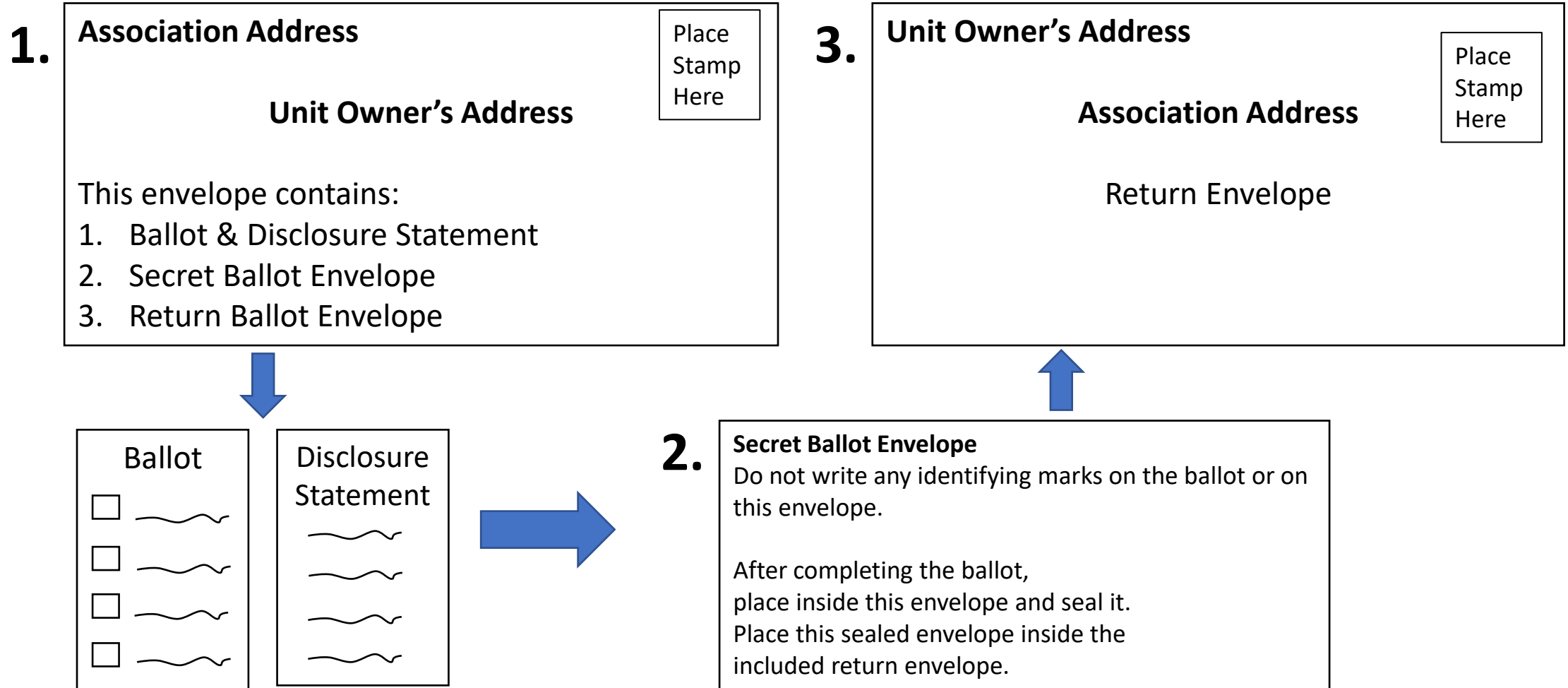
to the mailing address of the owner's unit within the CIC, **or**

to the mailing address that the unit owner designates in writing.

Election ballots **may not** be sent to a unit owner at **multiple addresses**



Ballots: 3 Envelope System



Knowledge Check



1. True/False: The candidate information statement may contain defamatory, libelous or profane information.
2. True/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.
3. True/False: If an official publication contains any mention of a candidate, that publication must provide approximate space to all who request it.
4. Is an association permitted to mail secret election ballots to multiple addresses if requested by a unit owner?
5. Does NRS require the use of a 3-envelope system for elections?

Election: Counting Ballots

NRS 116.31034(15)

- Ballots **must** be opened and counted at a unit owners' meeting;
 - Either at the annual or a special meeting. NRS 116.3108(1)
 - A quorum is not required.
- Only secret written ballots returned to the association, by the due date/time, may be counted.
- Neither incumbent members of the executive board nor any person whose name is on the ballot may
 - possess,
 - be given access to, or
 - participate in the opening or counting of the secret written ballots.



Election: Counting Ballots continued

- Except as otherwise provided in the declaration or bylaws, once a completed ballot is delivered to the association it is not revoked
 - by death, NRS 116.311(9)(e)
 - disability, or
 - attempted revocation by the person who cast that vote.
- Ballots and identifying envelopes are kept as records of the association for at least 10 years. NRS 116.31175(7)



Election: Prohibited Acts

NRS 116.31107

- 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.



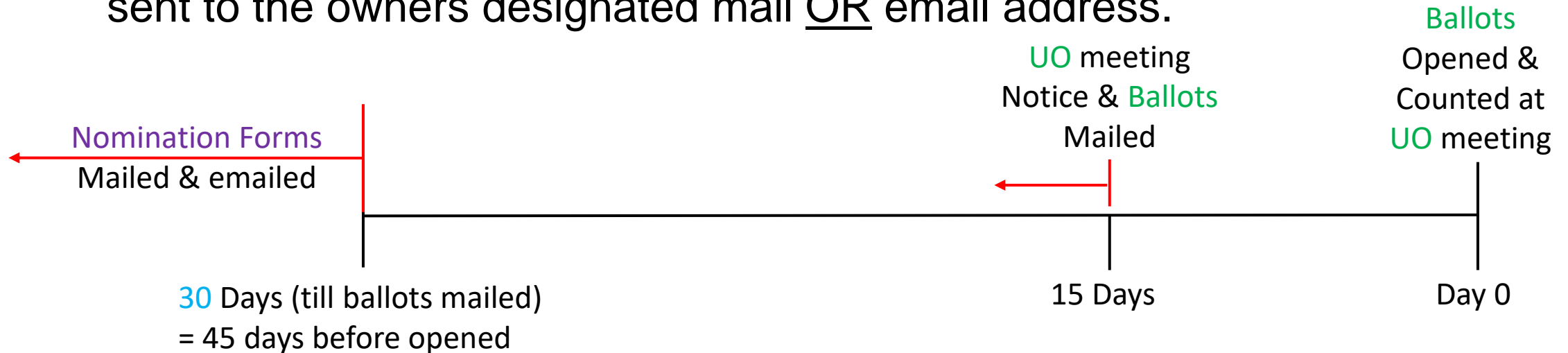
A person who violates this section is guilty of a **Category D Felony**
(Enforced by **criminal courts** pursuant to NRS 193.130)



Election: Timeline

NRS 116.31034

- At least 15 before the **Ballots** are opened, they are distributed.
 - Often sent with the **Unit Owners** Meeting notice
- Not less than **30** days before ballots are prepared, **nomination forms** are sent to the owners designated mail OR email address.



Election: Post Election

NRS 116.31034(19)

- Members of the executive board shall immediately take office upon election or appointment.
- Within **30 days** after election or appointment of a new board member(s):
 - The CAM shall provide the new board member(s) with a copy of the management agreement.

NRS 116A.620

- Within **90 days** of assuming office, each member of the executive board shall:

- read all governing docs,
- read NRS 116 & 116A,
- read NAC 116 & 116A, and
- **certify**, via form 602, that they read/understand all, to the best of their ability.



Removing a Board Member

NRS 116.31036

- Any member of the executive board, other than those appointed by the declarant, may be removed by unit's owners **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 % specified in the bylaws).
- Unit owners must provide, in writing, their qualifying unit address, the date, and print and sign their name on a petition.
- Once the required number of signatures are obtained, the petition must be
 - submitted by mail, return receipt requested, to the association, **or**
 - served to the board or CAM by process server.

RECALL PETITION

Name of CIC: _____ This petition contains signatures of unit owners seeking the recall of _____

 Name(s) of Board Director(s) for whom recall is sought

Any member of the executive board, other than a member appointed by the declarant, may be removed from the board with or without cause –

BRIEFLY SET FORTH THE REASON(S) WHY RECALL IS DEMANDED

Minimum Number of signatures (in ink) required (see percentage requirement below)

At least 10% of the unit owners eligible to vote, or any lower percentage specified in the bylaws must sign.

1 PRINT YOUR NAME ADDRESS OF UNIT OWNED IN THE COMMUNITY

YOUR SIGNATURE DATE

2 PRINT YOUR NAME ADDRESS OF UNIT OWNED IN THE COMMUNITY

YOUR SIGNATURE DATE

3 PRINT YOUR NAME ADDRESS OF UNIT OWNED IN THE COMMUNITY

YOUR SIGNATURE DATE

4 PRINT YOUR NAME ADDRESS OF UNIT OWNED IN THE COMMUNITY

YOUR SIGNATURE DATE

5 PRINT YOUR NAME ADDRESS OF UNIT OWNED IN THE COMMUNITY

YOUR SIGNATURE DATE

Removing a Board Member continued

NRS 116.31036

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

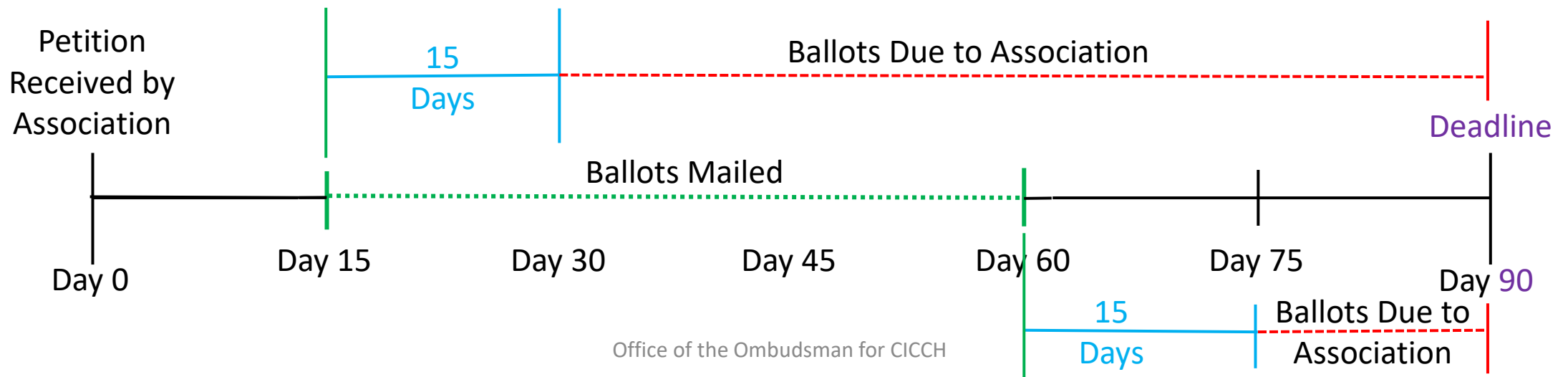
- Removals must be conducted by secret written ballot in the same manner as elections.
 - All provisions and procedures for possession, opening, and counting of election ballots apply to the removal process.



Removing a Board Member: Timeline

NRS 116.31034

- No later than **90** days after the petition is received by the board, a **special meeting** of the unit's owners must be held to open and count the ballots.
- Between **15** and **60** days after a recall petition is received by the association,
 - ballots for the removal **MUST** be **mailed** to each unit owner.
- Unit owners must be provided at least **15** days to **return** the removal ballot. Special meeting may occur anytime after this **15** days.



Removing a Board Member: The Math

NRS 116.31036

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



- A. At least 35% of the total number of voting members of the association must cast a vote; **and**
- B. At least 35% of the total number of voting members of the association must vote in favor of removal; **and**
- C. Those votes cast must also represent a majority of all votes cast.

Removal Math: Example 1



An association has 100 total voting members.

If 30 voting members cast votes and all 30 votes are in favor of removing the board member, is that board member removed?

No. While the 30 votes represent a majority of all votes cast, it is not 35% or more of total votes in the association.

Removal Math: Example 2



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?

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

Removal Math: Example 3



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?

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

Removing a Board Member: Additional Methods

NRS 116.31036

- NRS 116.31036 IS NOT the only way to remove a board member.
- Governing Documents may authorize additional methods for unit owners and/or the board to remove a member of the board; so long as they do not violate the protections in NRS 116.31036.



Knowledge Check



1. True/False: A quorum is not required to be present at the annual meeting of the units' owners to open and count the ballots.
2. True/False: An incumbent member of the executive board may possess, have access to, and assist in the counting of the secret written ballots so long as their name is not on the current ballot.
3. At what type of meeting must the secret written ballots be opened and counted?
4. What happens if a unit owner passes away after they submit their secret written ballot?
5. What percentage of unit owners must vote to approve the removal of a board member for it to pass?

Conclusion!



- Declarant Control
- Board Organization
- Nomination
- Campaigning
- Ballots
- Election
- Removing a Board Member

Questions?

- <http://red.nv.gov/> - Main Page
- CICOmbudsman@red.nv.gov – Email Questions
- http://red.nv.gov/Content/CIC/Program_Training/