

# Sale of a Unit in a CIC

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- Should confusion arise requiring the interpretation and application of the law to your association's specific circumstances, a legal opinion from a qualified attorney may be necessary.
- Please review the course calendar, training request form, and presentations published on the training webpage to gain an understanding of additional opportunities for education and training. See our training webpage at [http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/).



This presentation addresses the unique requirements involved with the sale and resale of CIC units.

These requirements are in addition to any and all other applicable procedures and disclosures required by the State of Nevada for the sale of real estate and/or property.

# Additional Resources

NRED Residential Disclosure Guide:  
<http://red.nv.gov/Content/Publications/RDG/>

Educational tools, such as reference guides and cheat sheets are available on the training webpage at  
[http://red.nv.gov/Content/CIC/Program\\_Training/Flowcharts\\_and\\_Outlines/](http://red.nv.gov/Content/CIC/Program_Training/Flowcharts_and_Outlines/)



# Agenda



- Public Offering Statement vs Resale Package
- Information Statement
- Public Offering Statement
- Warranties
- Constructional Defect
- Civil Action
- Resale Package
- Exemptions

# Public Offering Statement vs Resale Package

## Public Offering Statement

Provided by the declarant to the first purchaser of a unit.

## A Resale Package

Provided by the seller, other than a declarant, to a subsequent purchaser.

**Both require an Information Statement!**



# Information Statement

NRS 116.41095

Information Statement must include the following disclosures:

- “You generally have 5 days to cancel the purchase agreement”
- “You are agreeing to restrictions on how you can use your property”
- “You will have to pay owners’ assessments for as long as you own your property”
- “Failure to pay assessments can result in loss of your home (foreclosure)”
- “Association may have the power to affect how you use and enjoy your property”
- “You are required to provide prospective purchasers of your property with information about living in your CIC”

# Information Statement: Unit Owners' Rights

NRS 116.41095

- Statement must include the following disclosures to the potential buyer:
  - “You have certain rights regarding ownership in a CIC which are guaranteed by NV. You have the right:
    - To be notified of all meetings of the association and its executive board,
      - except in cases of emergency;
    - To attend and speak at all meetings, except those held in executive session;
    - To request a special meeting;
    - To inspect, examine, photocopy and audit financial and other records of the association;
    - To be notified of all changes in the community’s rules and regulations and other actions by the association or board that affect you.”





# Public Offering Statement

NRS 116.4103(1)

- Statement must include:
  - The name and address for the declarant and the CIC, and
    - identify if CIC is a condominium, cooperative or planned community.
  - A general description of the CIC, including to the extent possible,
    - the types, number and schedule of commencement and completion of construction of buildings and amenities.
  - The estimated number of units in the CIC.
  - Copies of
    - Declaration,
    - Bylaws, and
    - Any rules or regulations of the association.



# Public Offering Statement continued

NRS 116.4103(1)

- Statement must include:
  - A description of any services or subsidies being provided by the declarant or an affiliate, not reflected in the budget, or
    - expenses which the declarant pays and expects may become a common expense and
    - the projected common expense assessment attributable to each of those services or expenses and for each type of unit.
  - Any initial or special fee due from the purchaser or seller at closing, including,
    - any transfer fees, payable to association, CAM, or third party and
    - a description of the purpose and method of calculating the fee.
  - The terms and significant limitations of any warranties provided by the declarant including
    - statutory warranties and limitations on the enforcement thereof or on damages.



# Public Offering Statement continued

NRS 116.4103(1)

- Statement must include:
  - A statement that unless the purchaser or their agent has personally inspected the unit, the purchaser may cancel, in writing, their contract for purchase until midnight of the 5th calendar day following the execution of the contract.
    - Contract must also stipulate this.
  - A statement of any unsatisfied judgment or pending action against the association and the status of any pending action material to the CIC of which the declarant has actual knowledge.
  - Any current or expected fees or charges to be paid by units' owners for the use of the common elements and other facilities related to the CIC.



# Public Offering Statement continued

NRS 116.4103(1)

- Statement must include:
  - A statement describing all current and expected fees or charges for each unit, including
    - Association fees,
    - Fines,
    - Assessments,
    - Late charges or penalties,
    - interest rates on delinquent assessments,
    - Additional costs for collecting past due fines, and
    - Charges for opening or closing any file for each unit.
  - Any restraints on alienation of any portion of the CIC and any restrictions:
    - On leasing or renting of units; and
    - On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on the sale or condemnation of or casualty loss to the CIC, or on termination.



# Public Offering Statement continued

NRS 116.4103(1)

- Statement must include:
  - A description of any arrangement described in NRS 116.1209
    - NRS 116.1209: Master/Sub relationships, agreements between other real-estate holders to share any expenses like taxes/insurance/maintenance/walls etc.
  - The information statement.
  - Any current balance sheet and projected budget for 1 year after 1<sup>st</sup> conveyance to a purchaser, and thereafter
    - The current budget,
    - a statement of who prepared the budget and
    - A statement of the budget's assumptions concerning occupancy and inflation factors.



# Public Offering Statement continued

NRS 116.4103(1)

➤ Statement must include:

➤ The budget must include:

- A statement of the amount included in the budget for reserves;
- A statement of any other services;
- The projected common expense assessment by category of expenditures; and
- The projected monthly common expense assessment for each type of unit, including the amount established for reserve.

\* The declarant is only required to update the Public Offering Statement once each calendar quarter if it contains the warning contained in NRS 116.4103(3).



# Knowledge Check



1. Who provides a Public Offering Statement?
2. Who provides a Resale Package?
3. Who must be provided with an Information Statement?
4. True/False: A purchaser must be provided a copy of the declaration, bylaws and all rules and regulations.

# Warranties: Implied

NRS 116.4114

- These are not expressly stated but are understood to exist by conformity of law.
- A declarant warrants:
  - That, except for normal wear and tear, a unit will be in at least as good condition at the time of delivery as it was at the time of contracting.
  - That a unit and the common elements in the community are suitable for the ordinary uses of real estate of their type and that any improvements will be:
    - Free from defective materials; and
    - Constructed according to sound standards of engineering.
- Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.





# Warranties: Express

NRS 116.4113

- Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:
  - Any affirmation of fact or promise that relates to the unit creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;
  - Any model or description of the physical characteristics of the CIC creates an express warranty that the CIC will reasonably conform to that model or description;
  - Any description of the quantity or extent of the real estate comprising the CIC creates an express warranty that the CIC will conform to that description, subject to customary tolerances; and
  - A provision that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful.



# Warranties: Express continued

NRS 116.4113

- Neither formal words nor a specific intention to make a warranty is necessary to create an express warranty of quality.
  - However, a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.
- Any conveyance of a unit transfers to the purchaser all express warranties of quality.
- A warranty created by this section may be excluded or modified by agreement of the parties.



# Warranties: Exclusion or Modification

NRS 116.4115

- Warranties of quality may be excluded or modified by agreement of the parties by expression of a disclaimer, such as
  - “as is,”
  - “with all faults,” or
  - Other language that calls the purchaser’s attention to the exclusion.
- A declarant may disclaim liability in an instrument signed by the purchaser for a specified defect or failure to comply with a law IF
  - the defect or failure became a part of the basis for the bargain.



# Warranties: Statute of Limitations

NRS 116.4116

- A judicial proceeding for breach of any warranty **MUST** be commenced within 6 years after the cause of action accrues,
  - but the parties may agree to reduce the period to not less than 2 years.
  - With respect to a unit that may be occupied for residential use, an agreement to reduce the period must be evidenced by a separate instrument executed by the purchaser.



# Warranties: Statute of Limitations continued

NRS 116.4116

- A cause of action for breach of warranty of quality accrues:
  - At the time the purchaser enters into possession; or
  - At the time common elements are completed.
- During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce any warranty claims involving the common elements.
  - Only members of the executive board elected by unit owners other than the declarant may serve on the committee.
  - Any attorney's fees incurred are common expenses and must be added to the annual budget.



# Construction Defect

NRS 40

- A defect in the design, construction, manufacture, repair or landscaping:
  - Which presents an unreasonable risk of injury to a person or property; or
  - Causes physical damage to the residence or the real property to which the residence is affixed.



# Civil Action

NRS 116.31088

- At least 21 calendar days before a meeting at which the commencement of civil action will be discussed, the association shall provide each unit owner with written notice of the meeting; sent to owners designated mail or email address.
- At least 10 days before a meeting at which unit owners will consider commencing civil action, the association shall provide a written statement to all unit's owner that includes:
  - A reasonable estimate of the costs, including attorney's fees; and
  - an explanation of the potential benefits and potential adverse consequences if the association does not commence the action.
- For a civil action that is commenced to protect the health, safety and welfare of members of the association, a vote or written agreement of a majority of unit owners is **NOT** necessary.



# Knowledge Check



1. What is an implied warranty?
2. Are formal words required to create an express warranty?
3. What is the statute of limitations for filing a civil claim for breach of warranty?
4. If a board is considering commencing civil action on behalf of the association, is this decision made in executive session or an open board meeting?
5. How many days before that meeting must the board provide notice to unit owners?



# Resale Package

NRS 116.4109

- If the property is located within a sub-association, the seller **MUST** provide a resale package for **BOTH** the master and sub associations.
- Within 10 calendar days after receipt of a written request by a unit owner, the association shall furnish a resale package.
  - The package remains effective for 90 calendar days.
- The purchaser is not liable for any delinquent assessments or fees greater than the amount set forth in the Statement of Demand, if:
  - The association or seller fails to furnish a resale package, or
  - The package has incorrect information.
- Neither the seller or their agent is liable to the purchaser for any erroneous information provided by the association.



# Resale Package continued

NRS 116.4109

- MUST include:
  - Copies of all governing documents of the association,
  - The Information Statement(s),
  - The current operating budget, and
  - The current year-to-date financial statements, including a detailed summary of the reserves.
- Certificate of Sale:
  - Detailing all standard fees and charges the association charges to unit owners throughout the course of operations.
- Statement of Demand:
  - Detailing the specific charges/fees/dues owed by a specific unit.



# Resale Package continued

NRS 116.4109

- All Resale Package documents **MUST** be provided to the unit owner in electronic format, at no charge.
  - If the association is unable to provide electronic copies, the association may charge a reasonable fee, not to exceed 25 cents per page for the first 10 pages and 10 cents per additional page



# Resale Package: Certificate of Sale

NRS 116.4109

## ➤ MUST include:

- The Statement of Demand,
- A statement of any unsatisfied judgements or pending legal actions against the association and the status of any such actions,
- A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit, and
- A statement describing all current and expected fees or charges for each unit, including
  - Assessments
  - Fines
  - Collection Policy
  - Late charges or penalties
  - Interest rates on delinquent assessments
  - Additional costs for collecting past due fines
  - Charges for opening or closing any file
  - Association fees



# Resale Package: Certificate of Sale continued

NRS 116.4109(4)(b)

Effective June 1<sup>st</sup>, 2021:

- An association may not charge more than **\$185** for preparing the certificate of sale.
- If the seller requests the certificate be furnished sooner than 3 business days after the date of the request, the association may charge a fee not to exceed **\$100**.



# Resale Package: Statement of Demand

NRS 116.4109(7)

- Lists any unpaid obligations currently due from the seller.
  - These obligations belong to the unit and are taken out of escrow upon completion of sale.
  - These do not count toward the value of the home.
- Remains effective for at least 15 business days after the date of delivery by the association.
- If the association becomes aware of an error in the statement before resale, the association **MUST** deliver a replacement.
  - Unless a replacement is received, the purchaser may rely upon the accuracy of the original statement.



# Resale Package: Statement of Demand continued

NRS 116.4109(7)

- Payment of the amount set fourth in the statement of demand constitutes full payment of the amount due from the selling unit's owner.
- Effective June 1<sup>st</sup>, 2021:
  - The association may charge a fee of not more than **\$150** to prepare and furnish the statement of demand.
  - If the seller requests the certificate be furnished sooner than 3 business days after the date of the request, the association may chare a fee not to exceed **\$100**.

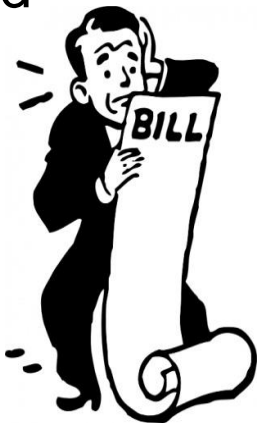


# Resale Package: Fees and Charges limits

AB237, NRS 116.4109(4)

Effective June 1<sup>st</sup>, 2021

- An association shall not charge any fee not authorized in NRS 116.4109.
- An association shall not charge any fee in an amount which exceeds any limits set forth in NRS 116.4109.
- Fee limits will increase annually with CPI
- Violations of these limits may be reported via form 910
  - Upon receipt of a valid form 910, the Division will contact the board/CAM and request a written response.
  - Failure to respond within 30 days automatically equals an admission of guilt and is punishable by an administrative fine of \$250.





# Resale Package: Fees and Charges limits continued

Form 910

TYPE OF DOCUMENT/ACTION	MAXIMUM AMOUNT THAT CAN BE CHARGED (NRS 116.4109 & 116.3102)	AMOUNT ACTUALLY CHARGED
<b>Resale Certificate</b>	<b>\$185</b> (+ \$100 to expedite)	\$ [REDACTED] Expedite fee charged (if applicable): \$ [REDACTED]
<i>Includes a statement of any unsatisfied judgments or pending legal actions against the association, including status, any other fees associated with the resale of a unit, and all current and expected fees or charges for each unit. This fee must be based on the actual costs the association incurs in preparing the certificate.</i>		
<b>Demand Statement</b>	<b>\$165</b> (+ \$100 to expedite)	\$ [REDACTED] Expedite fee charged (if applicable): \$ [REDACTED]
<i>Sets forth the amount of monthly assessment needed for common expenses and any unpaid obligation of any kind currently due from the selling unit's owner.</i>		
<b>Opening/Closing a File</b>	<b>\$350</b>	\$ [REDACTED]
<i>This fee must be based on the actual cost the association incurs to open or close any file. It may only include fees authorized by the governing documents, including transfer fees, inspection fees, processing fees, and any OTHER fees used to cover association resale costs. Prepaid assessments do not fall under this cap.</i>		
<b>Governing Documents/ Information Statement</b>	<b>\$0</b> To be provided electronically at no fee. (In the event an association is unable to provide these documents electronically, it may charge up to 25 cents per page for the first 10 pages, and 10 cents thereafter).	\$ [REDACTED]
<i>Includes the CC&amp;Rs, bylaws, rules and regulations; a copy of the current operating budget and current year-to-date financial statement, including a summary of the reserves; and the "Before You Purchase...Did You Know?" statement.</i>		
<b>TOTAL:</b>	<b>\$700</b> (or \$900 to expedite)	\$0 [REDACTED]

NOTES: Fees may increase on an annual basis by a percentage equal to the percentage of increase in the Consumer Price Index (All Items). Both a sub-association and Master association (if applicable) have the authority to charge these fees.

# Exemptions

NRS 116.4101

- Neither a public offering statement nor a certificate of sale are required for the following transfers:
  - Gratuitous disposition of a unit;
  - Disposition pursuant to court order;
  - Disposition by a government or governmental agency;
  - Disposition by foreclosure or deed in lieu of foreclosure;
  - Disposition to a dealer;
  - Disposition that may be cancelled by the purchaser at any time, for any reason, without penalty;
  - Disposition of a unit restricted to nonresidential purposes; or



# Exemption continued

NRS 116.4101

- Neither a public offering statement nor a certificate of sale are required for the following transfers:
  - Disposition of a unit in a planned community which contains no more than 12 units if:
    - The declarant reasonably believes in good faith that the maximum assessment stated in the declaration will be sufficient to pay the expenses of the planned community; and
    - The declaration cannot be amended to increase the assessment during the period of the declarant's control without the consent of all units' owners.



# Knowledge Check



1. True/False: If a property is located within a sub-association, the seller must provide a resale package for either the master or sub associations.
2. How long after receiving a written request from a unit owner does the board have to provide a resale package?
3. Who is responsible for erroneous information provided by the association?
4. What is the current maximum amount that an association may charge a unit owner for furnishing a complete resale package, if all documents are provided electronically?

# Conclusion!



- Public Offering Statement vs Resale Package
- Information Statement
- Public Offering Statement
- Warranties
- Constructional Defect
- Civil Action
- Resale Package
- Exemptions

# Questions?

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