Via Email: publiccomments@red.nv.gov, Leticia.Chavez@business.nv.gov

Dec 16, 2025

Re: Agenda Item 4.2 — NRS 116.31087, Right of Units' Owners to Have Certain Complaints Placed on Agenda of Executive Board

To: Members of the CIC Task Force

I submit this letter in opposition to the Division's proposed approach to Agenda Item 4.2 concerning NRS 116.31087. These comments are submitted for the Task Force's consideration and inclusion in the record.

1. The Division's Premise Is Incorrect: The Division asserts that "the current statutory language allows some boards to interpret subsection (2) as inapplicable." A plain reading does not support that assertion. Subsection (2) imposes a clear mandatory duty on the association to acknowledge receipt of a written complaint *and* to notify the unit owner of the right to request agenda placement. Boards that fail to do so are not exercising interpretive discretion; they are failing to comply with the statute. In practice, this failure has coincided with little observable compliance action, leaving owners too often without any substantive response at either the association or Division level. Recasting noncompliance as statutory ambiguity misidentifies the problem and diverts Task Force attention from enforcement shortfall and/or education involving an existing legal obligation.

2. Unintended Loophole: The flaw in NRS 116.31087 is not ambiguity, but an unintended loophole that permits a board to place a complaint on the agenda and then refuse to engage at all—a result not contemplated by the Legislature. This allows compliance in form while defeating the statute in substance. The vast majority of boards act in good faith as the law intended; the issue is what the statute permits when a board chooses, or is advised, to avoid engagement. A governance framework must function as intended even in those circumstances.

3. Legislative Intent Was Public Accountability (SB 182, 2009): In 2009, the Legislature amended NRS 116.31087 through SB 182 specifically to require agenda placement of alleged violations, reflecting a deliberate choice to prioritize transparency and on-the-record accountability to the membership rather than continued private or informal handling. An owner's first interaction with the association is rarely a formal agenda request; it typically follows unsuccessful efforts to obtain an explanation or response. By the time a unit owner invokes this statutory right, earlier informal efforts have typically failed, making public placement within the association's formal governance process both necessary and intentional. The Division's proposed approach would move the statute in the opposite direction.

4. The Task Force Record Reflects a Shift in the Division's Position: The Task Force has previously considered NRS 116.31087, and the August 2020 minutes are instructive. During that discussion, the industry council representative asserted that allegations of statutory or governing-document violations are "compliance issues" that belong in executive session, on the theory that public discussion could expose boards to liability. That position is difficult to reconcile with the Legislature's 2009 amendment, which deleted the qualifying phrase "if action is required by the executive board," thereby removing board discretion over whether alleged violations would be

addressed and requiring public, on-the-record accountability instead. Legislators deliberately chose to prioritize accountability over silence by those exercising governing authority.

The August 2020 minutes also finds industry counsel suggesting that "other reasonable opportunities" exist for boards to address alleged violations outside the agenda-placement process. In practice, when a board elects silence none remain; the owner is left only with regulatory escalation or litigation, outcomes the Legislature sought to avoid by mandating agenda-level accountability. If adopted, the proposal would convert a public accountability mechanism enacted by the Legislature into a private process controlled by the board.

At the same meeting, however, the Division articulated a materially different understanding of the statute's purpose, stating that its vision was to give the respondent association a reasonable opportunity to review and address alleged violations before an owner comes to the Ombudsman's Office and files a formal complaint. The Division's current proposal departs from that earlier position. The Divisions proposal now aligns with the industry's position expressed in 2020.

5. The Larger Intervention Affidavit Process Issue: Withholding a substantive response is not limited to board meetings. Before filing a formal Intervention Affidavit, owners must submit a written demand proposing steps to resolve the issue. In too many cases, owners receive no response or no substantive explanation of the association's justification for its action or inaction. Thus, despite having satisfied all procedural prerequisites, owners can be left without any articulated position from the board or the Division if the IA is not advanced or is closed by the Division.

6. Administrative Law Rejects Procedural Limbo: Nevada administrative law is structured to avoid a system in which petitions are acknowledged but never substantively resolved. NRS 233B requires a written disposition for that reason. Associations exercising statutory governance authority under NRS 116 should be held to the same standard when allegations of legal or governing-document violations are formally placed before the executive board. NRS 116.31087 should not permit procedural compliance without substantive accountability.

7. Task Force action is warranted, but not for the reason suggested by the Division; the issue is not statutory ambiguity or confusion over notice requirements, but a loophole that allows boards to satisfy NRS 116.31087 procedurally while avoiding a substantive explanation of their actions. As the Task Force considers recommendations for statutory change, the correction should be narrow and targeted: once a qualifying complaint is placed on the agenda, the executive board should be required to substantively address the allegation—either through discussion or a written statement explaining the board's position and the basis for its action or inaction. A response that merely acknowledges receipt or provides no explanation should not be treated as compliance.

I submit these comments for the Task Force's consideration and inclusion in the record.

Respectfully,

Mike Kosor
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