

Via Email

Nevada CIC Task Force
c/o Nevada Real Estate Division

Re: Discussion Item 5.3 – Opposition to Suggested Language to NRS 116.31087

Dear Members of the Task Force:

I write in opposition to the suggested language to NRS 116.31087. The suggested language explicitly announces that nothing can compel a board to engage in dialogue with owners regarding allegations that it has engaged in statutory violations. If adopted, the proposal would undermine fiduciary governance and the very transparency the statute was intended to create within the association.

The statute amendment or a properly promulgated regulation should make clear, at a minimum, a substantive non-privileged written response to owners is required whenever a formal allegation is placed on the agenda. Anything less renders the agenda-placement requirement hollow. Only upon a showing of good cause, and with Division approval, should any deviation or extension be permitted.

Under the expanded executive-session authority in NRS 116.31085, as amended in 2021, nearly any allegation of noncompliance can be characterized as governed by privilege. In practice, virtually every allegation of wrongdoing may be routed into executive session. The board may then issue a nominal or even non-substantive written response to a single owner—rather than providing an explanation on the record available to all owners—of its compliance position as lawmakers intended. If permitted, the transparency the statute was designed to create is reduced to a procedural formality.

Boards are entitled to consult counsel. Nothing in this objection challenges that right. However, consultation with counsel—absent a clearly stated and reasoned litigation risk—should not replace articulation of the board’s compliance position to its owners. A board can meet privately with its attorney and then state its conclusion and reasoning in open session without disclosing privileged communications. Articulating the board’s position does not waive privilege; it fulfills the accountability function of NRS 116.31087.

Importantly, when the alleged violation is one committed by the association against its owners, the matter should not be shielded from those same owners through routine invocation of privilege. Owners are the beneficiaries of the association’s statutory duties. A governance structure in which an association may avoid acknowledging and explaining its compliance position to its members undermines confidence in that structure.

Combined with the confidentiality provisions governing the Division’s expanded interpretation of confidentiality under NRS 116.757, most statutory compliance disputes will remain shielded from owners at both the board and regulatory levels unless they proceed to a formal hearing.

That outcome further weakens transparency and diminishes confidence in Nevada's statutory enforcement framework.

Additionally, clarification is necessary to ensure that suggested agenda placement under NRS 116.31087 does not delay or implicate intervention affidavit pre-filing exhaustion requirements under NRS 116.745.

For these reasons, this opposition to the suggested language is provided. Transparency and privilege can coexist. The statute should not be amended in a manner that resolves that balance in favor of opacity within the association. Clarification should reinforce, not narrow, the transparency the Legislature intended NRS 116.31087 to provide.

Respectfully submitted,

/s/ Mike Kosor

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