



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
ADVISORY OPINION

Subject: <b>What constitutes a quorum under NRS 116.3109(3)?</b>	Advisory No. <b>20-01</b>	2 pages
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**QUESTION:**

What constitutes a quorum under NRS 116.3109(3)?

**SHORT ANSWER:**

Quorum is a majority of the actual members of the board, not the majority of the seats available.

**ANALYSIS OF THE ISSUE:**

NRS 116.3109 states the requirements for a quorum for owner meetings and for board meetings. The quorum requirement for owner meetings is 20%. For board meetings, NRS 116.3109(3) provides as follows:

Unless the governing documents specify a larger number, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board *only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken*. If a quorum is present when a vote is taken, the affirmative vote of a majority of the members present is the act of the executive board unless a greater vote is required by the declaration or bylaws.

(Emphasis added).

The issue is whether a quorum is based on the number of board seats or if it is based on the number of individuals entitled to cast votes on the board at any given time. The Division takes the position that quorum depends on the number of individuals entitled to cast votes on the board. A majority of the individual board members constitute a quorum.

The law provides for a 20% quorum for owners' meetings due to the reality that owners tend to not go to meetings. Associations frequently face issues with a lack of interest in serving on the board as well. Allowing a majority of the individual board members to constitute a quorum does mean that a board with only one member can act on behalf of the association. Concerned members of the association are free to participate as a board member and should seek an appointment.

In addition, board members owe a fiduciary duty to act in the best interests of the association. If a single board member cannot take action on behalf of the association, there could be a lapse in management and other services. An association cannot be managed by a community manager or maintain common areas if the board cannot function.

Board members who find themselves in a situation where there is not enough participation in the community to fill all the seats on a board must understand their fiduciary duty to fill vacancies as quickly as possible. But board members must be able to take action as needed for an association to conduct business and not be hindered just because members of the association will not serve on the board.

This advisory opinion addresses the meaning of quorum for board meetings under NRS 116.3109(3). An association's bylaws may impose a larger number and that would be controlling.

### **ADVISORY CONCLUSION:**

Associations are formed for the maintenance and upkeep of the community, and even though too few people may be willing to serve on their association board, the association needs to be able to function. To this end, the Division interprets the quorum requirement for the board to be a majority of the actual individuals entitled to vote. If a full board is not attainable after good faith efforts to appoint or elect unit owners onto the board, the board can still function with a majority of the individuals serving on the board. If, in the worst-case scenario, an association ends up with one sole board member, that board member has a fiduciary duty to seek full board participation while acting on the behalf of the association.