



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

Subject: Can an Association mail secret election ballots to multiple addresses if requested by a unit owner?	Advisory No. 20\02	4 pages
	Issued By:	Real Estate Division
	Amends/Supersedes	N/A
Reference(s): NRS 116.31034(15)(a)		Effective Date: October 28, 2019

QUESTION:

Under NRS 116.31034(15)(a), when conducting elections for the executive board, is an association permitted to mail secret election ballots to multiple addresses requested by a unit owner?

SHORT ANSWER:

No, under NRS 116.31034(15)(a) an association must send only **one** secret election ballot to a unit owner. That secret election ballot must be sent to only **one** address- **EITHER** to the mailing address of the owner’s unit within the common-interest community, **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.

ANALYSIS OF THE ISSUE:

The procedure for an association’s election is mandated by statute and is set forth in NRS 116.31034. NRS 116.31034 contains no language that permits an association to deviate from its procedures and requirements.

NRS 116.31034(15) sets forth the election requirements for members of the executive board of an association and addresses how election ballots are to be sent. The statute states:

Except as otherwise provided in subsection 5 or NRS 116.31105, the election of any member of the executive board must be conducted by secret written ballot in the following manner:

- (a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit’s owner.

NRS 116.31034(15), excepts out the provisions of two other statutes- NRS 116.31034(5) and NRS 116.31105.

NRS 116.31034(5) provides that where the number of candidates nominated as candidates for membership on the board is equal to or less than the number of members to be elected to the executive board, the association is not required to send out an election ballot to unit owners as is required by NRS 116.31034(15). Instead, the nominated candidates are to be deemed duly elected to the executive board.

NRS 116.31105 sets forth certain provisions related to a unit owner's voting rights through delegates or representatives.

These two statutory provisions will not be further discussed as neither affect the analysis of the issue before the Nevada Real Estate Division ("Division").

The issue before the Division is whether, under NRS 116.31034(15)(a), an association can send election ballots for an executive board election to multiple addresses if requested by a unit owner.

This issue is one of statutory interpretation and is governed by basic principles of statutory interpretation. These principles require that where the plain language of a statute is clear and unambiguous, that the statute be enforced as written. *Hobbs v. State*, 127 Nev. 234, 237 (2011) (citing *Sheriff v. Witzemburd*, 122 Nev. 1056, 1061 (2006)). Only when a statute is ambiguous, meaning it is subject to more than one reasonable interpretation, is it necessary to look beyond its plain language to consider the statute's meaning in light of its spirit, subject matter, and public policy. *Hobbs*, 127 Nev. at 237 (citing *Butler v. State*, 120 Nev. 879, 892-93 (2004)). Further, statutory provisions should be read as a whole and any conflict harmonized when possible. *International Game Technology, Inc. v. Second Judicial Dist. Court ex rel. County of Washoe*, 124 Nev. 193, 200 (2008). Generally, an agency's interpretation of its statute is also entitled to deference. *Nuleaf CLV Dispensary, LLV. State Department of Health and Human Services, Division of Public and Behavioral Health*, 134 Nev. 129, 133 (2018).

The plain language of the NRS 116.31034(15) mandates that an association follow the procedure set forth in NRS 116.31034(15). The statute states that "the election of any member of the executive board **must** be conducted by secret written ballot" in the manner described in the statute.

The first part of NRS 116.31034(15)(a), requires an Association's secretary or other officer, to send "a secret ballot and a return envelope" to a unit owner. The statute states in relevant part:

- a) The secretary or other officer specified in the bylaws of the association shall cause **a** secret ballot (singular) and **a** return envelope (singular) to be sent...

The plain language of the statute uses the singular form of "ballot" and the singular form of "envelope." The plural form of either word is not used. The statute does not state that

the Association's secretary or officer shall send unit owners "ballots" and "return envelopes." Therefore, the plain, unambiguous language of the statute requires that the secretary or officer of an association send only one ballot- not multiple ballots.

The second portion of NRS 116.31034(15)(a) states that the ballot shall be sent "to the mailing address of each unit within the common-interest community **OR** to any other mailing address designated in writing by the unit's owner."

A plain reading of the statute does not permit the secret ballot to be sent to the mailing address for the unit **AND** to the address designated in writing by the unit owner. The statute uses the term "or"- not "and," meaning that the ballot can be sent to one address or to the other, but not to both.

Also, the statute states that the ballot shall be sent to the mailing address of the unit "or any other mailing address designated in writing by the unit's owner." The statute uses the singular form of "mailing address"- not "mailing addresses."

Because the language in NRS 116.31034(15)(a) is clear and unambiguous, the statute is to be interpreted based on its plain language. When NRS 116.31034(15)(a) is read in its entirety, the plain language of the statute requires that **one** secret ballot be sent to the unit owner at **one** address. The election ballot is required to be sent to **EITHER** the unit owner's mailing address within the common interest community, **OR** to **a** mailing address (not multiple mailing addresses) designated by the unit owner in writing.

This procedure that an association must follow with respect to holding elections is mandatory. NRS 116.31034(15) states that "the election of any member of the executive board **must** be conducted by secret written ballot" in the manner described in the statute. The statute does not contain any other language permitting a different procedure.

The Division is aware of the May 18, 2012 advisory opinion it issued- Advisory Opinion No. 12-04-116. Nothing in that opinion conflicts with this advisory opinion. At issue in that opinion was whether using a unit owner's designated electronic mailing address was sufficient to constitute written notice under NRS 116 and whether it constituted a "mailing address" under NRS 116. Although that opinion stated that "nothing restricts an association from providing notice in as many manners as deemed to convey the notice," the opinion was referencing the manner in which an association is permitted to give notice to a unit owner. The issued opinion did not discuss how ballots should be sent to unit owners for election purposes. The mandatory procedure establishing how a ballot should be sent to a unit owner is codified in NRS 116.31034(15)(a).

The Division concluded in Advisory Opinion No. 12-04-116, that while NRS 116.31068(1) permits an association to use electronic email as a means of giving a unit owner notice, NRS 116.31068(3) sets forth exceptions where NRS 116.31068(1) does not apply. The Division concluded that based on these exceptions, NRS 116 could not be interpreted as allowing for the use of an electronic mailing address in all places written notice is required under NRS 116 and that an electronic mail address could not replace a "mailing address" under all provisions of NRS 116.

Also relevant to the analysis of the issue here, is the exception to NRS 116.31068(1) set forth in NRS 116.31068(3)(b). That exception states that “if any other provision of this chapter specifies the manner in which notice must be given by an association,” the provisions of NRS 116.31068(1) do not apply. Although that statute pertains to notice requirements- not the election process and sending out ballots as is at issue here- the same logic applies to the analysis here. Specific election procedures and requirements have been codified in NRS 116.31034 and it is mandatory that an association follow them. Therefore, even if NRS 116.31068(1) were to apply, the election procedure specified in NRS 116.31034 would control.

Also, as a policy consideration, the Division has an interest in enforcing its statutes to maintain the integrity of the election process. The provisions set forth in NRS 116.31034 are in place to maintain that integrity. Here, if NRS 116.31034(15)(a) were to be construed as permitting multiple ballots to be sent to a unit owner at multiple addresses, the election process could be compromised.

For example, if a unit owner receives multiple ballots, it increases the chance that the association receives multiple election ballots back. It then places the association in the position of having to determine which ballot is in fact valid, opening the possibility for error. Multiple ballots also increase the opportunity for a unit owner to vote more than one time without the association catching the error, and also increases the likelihood that someone other than the unit owner will improperly submit the ballot.

Also, recall that NRS 116.31107 prohibits any person from changing or falsifying a voter’s ballot, rejecting, failing to count, destroying, defacing or otherwise invalidating the valid ballot of another. Violation of this statute is punishable by a felony. Issuing multiple ballots places an association at risk for violating this statute and decreases the likelihood of an association obtaining an accurate ballot count.

ADVISORY CONCLUSION:

The Division interprets NRS 116.31034(15)(a) as requiring that an association send only **one** election ballot to a unit owner. That election ballot may be sent to only **one** address- **EITHER** to the mailing address of the owner’s unit within the common-interest community, **OR** to the mailing address that the unit owner designates in writing. NRS 116.31034(15)(a) does not permit multiple ballots to be sent to a unit owner at multiple addresses.