



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

Subject: Electronic Mailing	Advisory No. 12-04-116	4 pages
	Issued By: Real Estate Division	
	Amends/Supersedes	N/A
Reference(s): NRS 116.31068; NRS 116.12065; NRS 116.31034 (1) (a); NRS 116.31031 (4) (b)	Effective Date: May 18, 2012	

QUESTIONS PRESENTED:

1. Whether the use of an electronic mailing address, designated in writing by a unit's owner for receipt of notices, is sufficient to constitute written notice under all provisions of NRS 116?
2. Whether an electronic mailing address, designated in writing by a unit's owner for receipt of notices, is considered a "mailing address" under all provisions of NRS 116?

SHORT ANSWERS:

1. No, use of electronic mailing addresses is not sufficient to constitute written notice under all provisions of NRS 116.
2. No, an electronic mailing address is not a "mailing address" under all provisions of NRS 116.

ANALYSIS OF THE ISSUES PRESENTED:

In 2011, the Nevada Legislature adopted what has been codified in NRS 116.31068 which became effective on January 1, 2012. NRS 116.31068 states:

NRS 116.31068 Notice to units' owners. [Effective January 1, 2012.]

1. Except as otherwise provided in subsection 3, an association shall deliver any notice required to be given by the association under this chapter to any mailing or electronic mail address a unit's owner designates. Except as otherwise provided in subsection 3, if a unit's owner has not designated a mailing or electronic mail address to which a notice must be delivered, the association may deliver notices by:

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- (a) Hand delivery to each unit's owner;
 - (b) Hand delivery, United States mail, postage paid, or commercially reasonable delivery service to the mailing address of each unit;
 - (c) Electronic means, if the unit's owner has given the association an electronic mail address; or
 - (d) Any other method reasonably calculated to provide notice to the unit's owner.
2. The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.
3. The provisions of this section do not apply:
- (a) To a notice required to be given pursuant to NRS 116.3116 to 116.31168, inclusive; or
- (b) If any other provision of this chapter specifies the manner in which a notice must be given by an association.
- (Added to NRS by 2011, 2413, effective January 1, 2012)

(emphasis added).

Based on this new statute, the Division was asked to clarify if electronic mail can be used to provide all notices required by NRS 116 and if "mailing address" as used in NRS 116 refers to an electronic mail address. Subsection 1 of the new statute allows notice to be provided to any mailing or electronic mail address a unit's owner designates or if a unit's owner has not designated a form of notice then the association is given discretion regarding how notice is made as provided in subsections (a) through (d). All of subsection 1 is subject to the limitations of Subsection 3.

NRS 116 is derived, in part, from the Uniform Common Interest Ownership Act (Uniform Act). NRS 116.31068 was derived from the Uniform Act, but the Nevada Legislature made some changes. In particular, the Nevada Legislature added Subsection 3. Subsection 3 provides two exceptions to the notice provisions of Subsection 1. Subsection 3 states that Subsection 1 does not apply to: (a) notice required by NRS 116.3116 to 116.31168, inclusive; and (b) any other provisions of the chapter that specifies the manner notice must be given by the association.

Based on Subsection 3, the Division does not believe the Nevada Legislature intended for electronic mail to satisfy all provisions for which written notice is required, or that "mailing address" as used in NRS 116 means electronic mail. If the Nevada Legislature wanted "mailing address" to refer to electronic mail address, it could have provided for that in the new statute. By virtue of the limiting language in subsection 3 of NRS 116.31068, it is clear the Nevada Legislature did not intend to override statutes providing for specified notices and provide for one statute to address all notices under NRS 116. Whether any particular statute allows notices to be sent by virtue of an electronic mail address depends on the language of the statute.

There are several provisions in NRS 116 that specify the manner in which a notice must be given by an association. For example, NRS 116.12065 states:

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If any change is made to the governing documents of an association, the secretary or other officer specified in the bylaws of the association shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a copy of the change that was made.

The Division interprets this statute to require notice by hand delivery or by U.S. mail to the address of the unit or another mailing address given by the unit's owner. Meaning notice must be mailed by U.S. mail to the unit or another mailing address. If the association receives written notice from a unit's owner requesting notices by electronic mail, then notice should be sent via the electronic mail address, but notice will not be deemed to have been sent unless notice is also hand-delivered or mailed by U.S. mail.

Likewise, NRS 116.31034 (11) (a) cannot be read to allow for notice by electronic mail. NRS 116.31034 (11) (a) provides:

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.

This statute requires notice to be mailed by U.S. mail to the unit or to any other designated mailing address. The Division does not interpret "mailing address" to be an electronic mail address in this statute in light of the fact that the statute requires a return envelope to be sent with the secret ballot. A return envelope cannot be e-mailed.

Nothing restricts an association from providing notice in as many manners as deemed necessary to convey the notice. Furthermore, it is incumbent upon the association to provide adequate notice to the unit's owner. For example, notice of a violation of the governing documents must be made to the violating owner as provided in NRS 116.31031. NRS 116.31031 (4) (b) states:

Within a reasonable time after the discovery of the violation, the unit's owner and, if different, the person against whom the fine will be imposed has been provided with:

- (1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and
- (2) A reasonable opportunity to contest the violation at the hearing.

For the purposes of this subsection, a unit's owner shall not be deemed to have received written notice unless written notice is mailed to the address of the unit and, if different, to a mailing address specified by the unit's owner.

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Therefore, notice must be mailed to the address of the unit *and* provided to any other designated mailing address. If the association is given an electronic mail address by a unit's owner in writing that specifies notices should be sent to that e-mail address, then notices pursuant to NRS 116.31031 (4) (b) should be mailed to the unit address *and* e-mailed to the unit's owner. In this instance, "mailing address" can be interpreted to include an electronic mail address if specified by the unit's owner. Certainly the association should honor any written request made by an owner specifying how notices should be sent to them, but the association must satisfy the specific notice requirements detailed in various sections of NRS 116. Subsection 3 of NRS 116.31068 requires compliance with all the specific notice requirements in NRS 116.

ADVISORY CONCLUSION:

NRS 116.31068 (1) provides the manner in which notices can be made by the association to a unit's owner. But NRS 116.31068 (3) provides the exceptions for such notices. Those exceptions apply to NRS 116.3116 to 116.31168 inclusive and where notice is specified by other statutes. Based on the exceptions, the Division cannot interpret NRS 116 to allow for use of electronic mailing addresses in *all* places written notice is required. Just the same, an electronic mail address cannot replace "mailing address" under *all* provisions of NRS 116. Where NRS 116 specifies the type of notice that must be provided, the association must comply with that provision. And to further ensure notice is actually received by a unit's owner, even where not required by statute, a prudent association should also provide notice to the unit's owner in any manner specifically requested by a unit's owner.

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