



Governing Documents vs NRS 116

Understanding the Hierarchy, Authority, and Application in CIC

Clarifying the Roles of Bylaws, CC&Rs, Rules and State Law in HOA Governance

Before we begin, you are reminded that, as training officers, we are here to provide general information and education on NRS/NAC 116, 116A & 116B, and NAC 38. We do not provide legal advice, interpret the law, or give opinions on individual circumstances. Our goal is to is to help you learn, understand, and apply relevant statutes and regulations. We want to equip you with the knowledge and tools necessary to effectively manage and live within your common-interest communities.

We will have dedicated time for questions and answers towards the end of the class. Please note that the Q&A session is intended to clarify the material covered today and not to address specific issues you might be facing. Feel free to jot down any questions regarding the class that you may have as we go along, and we will address them during the Q&A period. Thank you.



Introduction

- NRS 116 establishes the legal foundation for all common-interest communities in Nevada.
- Specifics of implementation are often delegated to an association's governing documents.
- This delegation can create confusion when determining whether to follow statute or governing documents.
- Understanding how to interpret and prioritize legal authority is essential for effective board decision-making.

Learning Objectives

Upon completion of this class, participants should have a basic understanding of:

1. Recognize key words/phrases in NRS 116 that indicate legal precedence.
2. Understand the hierarchy and required contents of governing documents.
3. Identify when the board has discretionary authority in enforcing provisions.
4. Determine when state law or governing documents take precedence.
5. Explore how NRS 116 delegates specifics to governing documents.
6. Acknowledge potential consequences of non-compliance.

AGENDA

Introduction: Law vs. Governing Documents

NRS 116 Overview: Key Language and Legal Hierarchy

Types of Governing Documents: Purpose & Contents

When Law Takes Precedence

When Governing Documents Control

Board Discretion & Enforcement

Common Mistakes & Real-Life Scenarios



Consequences of Non-Compliance

Q&A

STATUTORY COMMANDS

- "Shall..." - Required by law
- "Must...." - Required in law

DISCRETIONARY AUTHORITY

"May..." – Optional, depends on context (e.g., "may" vs. "may not")

DEFERENCE TO GOVERNING DOCUMENTS

- "Unless otherwise provided..."
- "Unless the declaration imposes more stringent standards..."
- "Except as otherwise provided in the governing documents..."
- "In accordance with the declaration or governing documents"
- "Unless otherwise limited or prohibited by the declaration..."

STATUTE OVERRIDES GOVERNING DOCUMENTS

- The statute takes precedence.

Notwithstanding any provision of the governing documents to the contrary...

Clarifying Legal Conflicts Across Statutes

Core Legal Principle

Legal Foundations (NRS 116.1108)

- The principles of law and equity supplement NRS 116, unless they conflict.
- This includes laws on corporations (e.g., NRS 82) and any organizational forms allowed by Nevada law.

Conflict Resolution

Conflict of Laws (NRS 116.11085)

- If another chapter of NRS also governs a matter (e.g., NRS 78, 81–88A), and a conflict exists...
- NRS 116 takes precedence over those other statutes.

What is Meant by Governing Documents?

Understanding the Foundational Documents that Guide Community Associations

THE DECLARATION



- Original legal document that creates the community.
- Recorded against all properties before sale.
- Sets covenants, conditions, and restrictions (CC&Rs).

ARTICLES OF INCORPORATION



- Organize the non-profit association.
- Filed with the Nevada Secretary of State.
- Establishes the legal identity of the HOA.

THE BYLAWS



- DESCRIBE HOW THE ASSOCIATION IS GOVERNED INTERNALLY.
- COVERS MEETINGS, ELECTIONS, OFFICER ROLES, AND DUTIES.

RULES & REGULATIONS



- DESCRIBE HOW THE ASSOCIATION IS GOVERNED INTERNALLY.
- COVERS MEETINGS, ELECTIONS, OFFICER ROLES, AND DUTIES.

ADDITIONAL DOCUMENTS



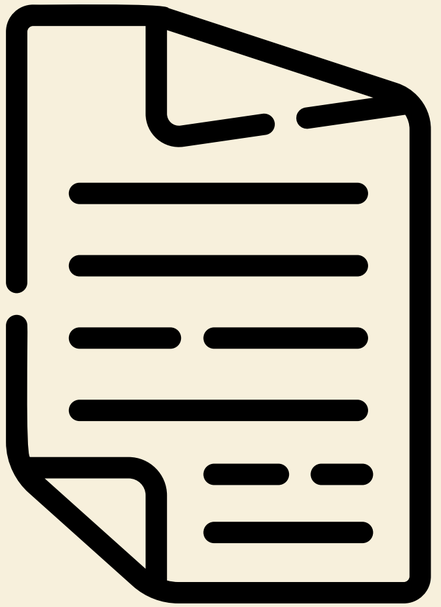
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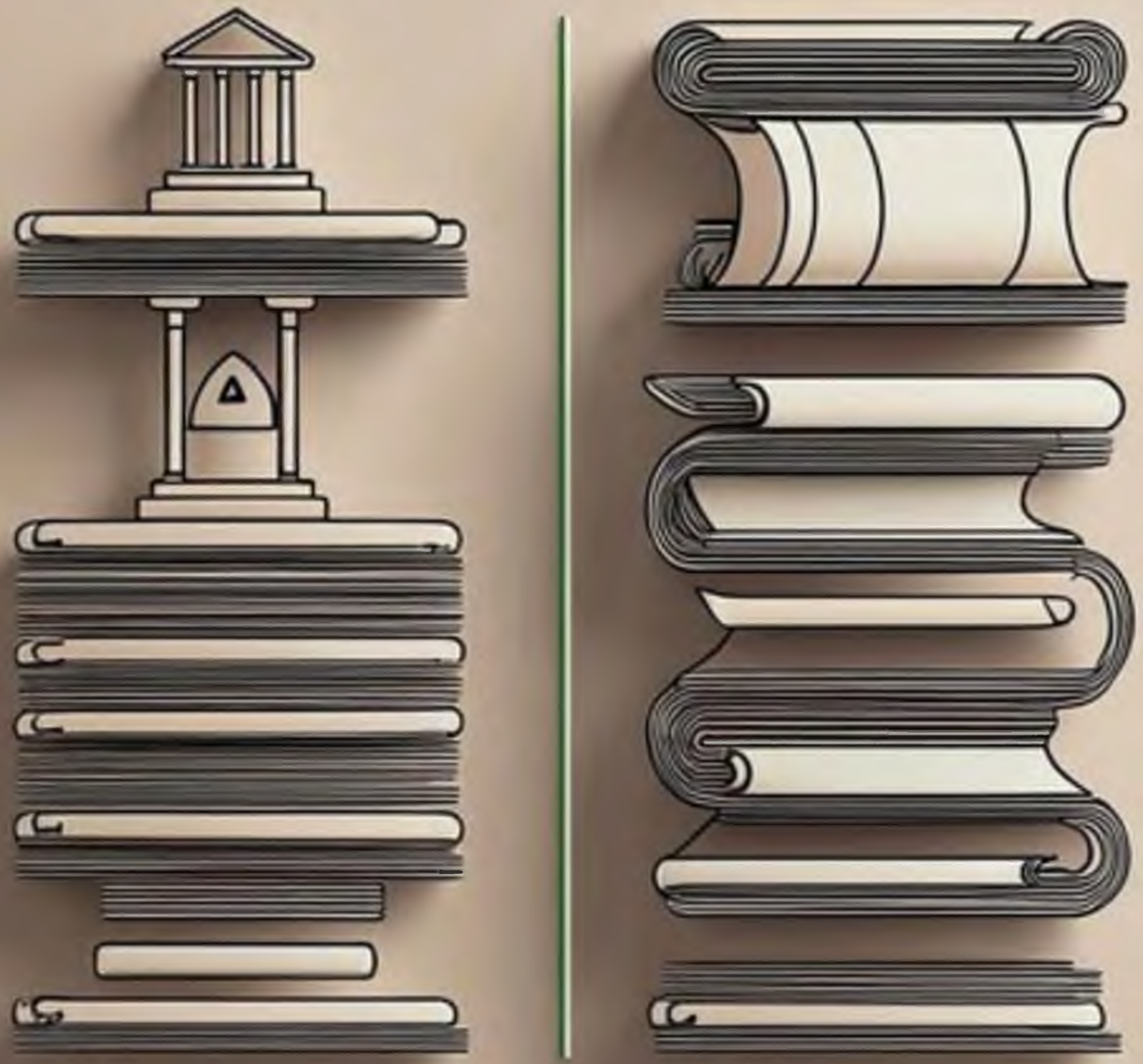
- RESERVE STUDY
- ARCHITECTURAL GUIDELINES
- COLLECTION POLICY & FINE SCHEDULE
- BOARD RESOLUTIONS OR ROBERT'S RULES

The Declaration (CC&R's)

REQUIRED CONTENTS - NRS 116.2105



- ✓ The Names of the CIC and a statement that the CIC is either a condominium, cooperative or planned community
- ✓ The name of every county in which any part of the CIC is situated
- ✓ Description of the real estate included in the CIC
- ✓ The maximum number of units the declarant can create
- ✓ A description of the boundaries of each unit
- ✓ A description of common elements
- ✓ Development rights reserved by the declarant
- ✓ An allocation to each unit of voting rights & liability to pay assessments
- ✓ Any restrictions on use & occupancy



Articles of Incorporation

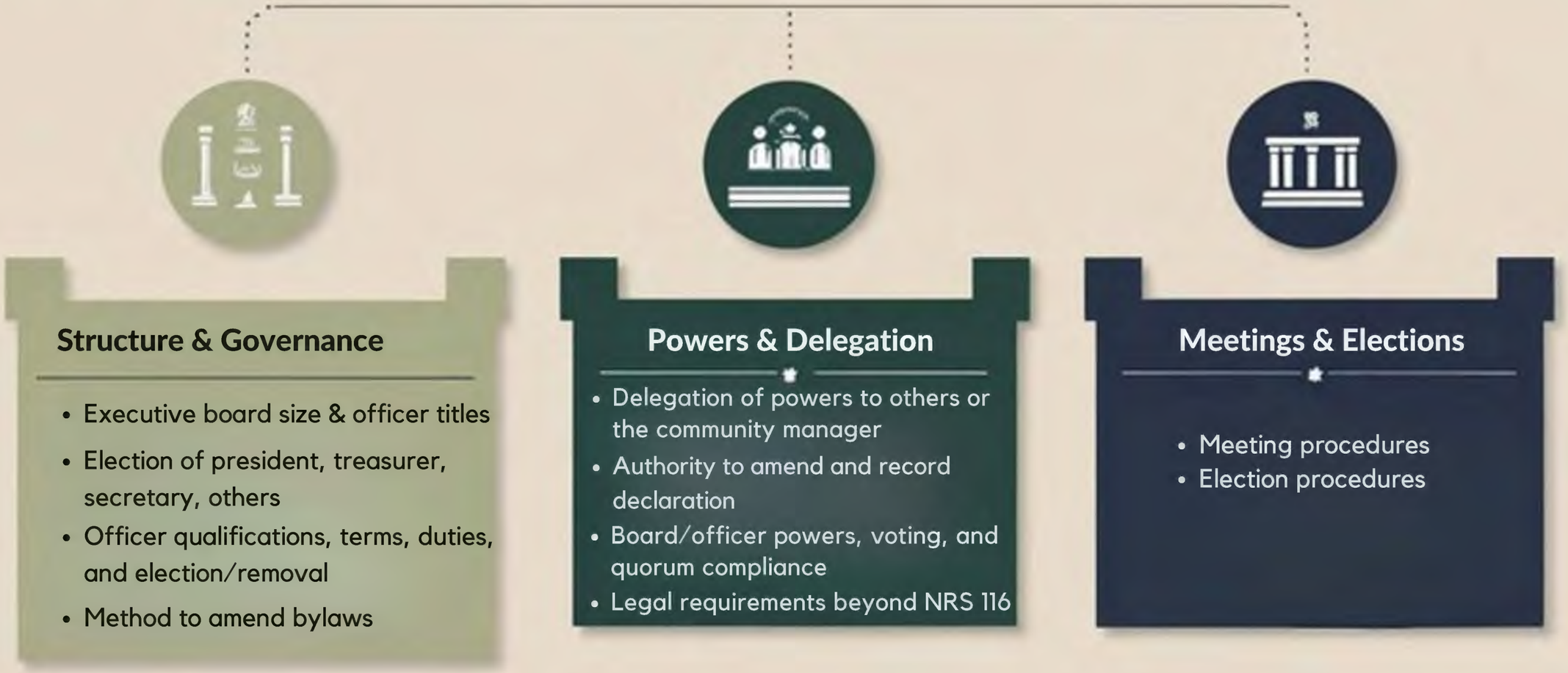
What the law requires under NRS 81.205

- The association must:

- Be legally organized as a profit or nonprofit entity (corporation, LLC, trust, etc.)
- State in its Articles that its purpose is to operate under NRS 116
- Include the words: “common-interest community,” “homeowners’ association,” etc.
- Comply with corporate filing requirements (e.g., NRS 82)

The Bylaws

Required Contents Under NRS 116.3106



Note: *The bylaws MUST be written in plain English.*

RULES & REGULATIONS

Legal Standards for Validity - NRS 116. 16.31065



MUST COMPLY WITH:

- Be reasonably related to the rule's intended purpose
- Be clear and explicit enough for compliance
- Be consistent with governing documents
- Be uniformly enforced under similar conditions

Must Not

- NOT be used to avoid association obligations
- NOT require construction of capital improvements not required by those documents

MAY INCLUDE:

Imposing fines for violations, if the process complies with NRS 116.31031

To Enforce or Not to Enforce?

The executive board MAY determine whether to take enforcement action.
It is not obligated to act in all circumstances.

NRS 116.3102(3) & (4)

VALID REASONS NOT TO ENFORCE:

- The legal position is weak or not justified
- The rule may conflict with current law
- Not in the community's interest
- It’s not in the best interest of the community

Boards may not be arbitrary or capricious.

One case not enforced doesn't mean others can't be—but decisions must be fair, reasonable, and consistent.

When HOA Rules Conflicts with NRS 116

What Happens When a Rule Violates NRS 116?

Any provision in governing documents that violates NRS 116 is:

- Automatically adjusted "by operation of law"
- Does NOT need to be amended to be corrected
- Legally assumed to match NRS 116

NRS 116 Supersedes All Conflicting Rules

NRS 116 overrides any conflicting provisions, even if the rule was created before the law was passed.

Old rules don't get grandfathered in if they contradict current law.

REVIEW & KNOWLEDGE CHECK

TEST YOUR UNDERSTANDING OF NRS 116 ESSENTIALS

QUICK RECAP

NRS 116 Prevails

Governing Documents - Declaration, Articles, Bylaws, Rules & other policies

Declaration Core details about the community & owner rights/obligations

Articles - Legal identity of the association

Bylaws Operating manual - board structure, meetings, elections

Rules & Regulations - Must be reasonable, consistent, and enforceable

Board Discretion - Can choose not to enforce in specific lawful situations

KNOWLEDGE CHECK

Which governing document creates the community and is recorded against all properties?

A) Articles of Incorporation)
B) Declaration (CC&Rs)
C) Bylaws
D) Rules & Regulations

True or False: The Board must take enforcement action for every violation, no matter how minor.

Rules & Regulations must be:
A) Reasonably related to their purpose
B) Arbitrary and selectively enforced
C) Consistent with governing documents

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KNOWLEDGE CHECK

Which governing document creates the community and is recorded against all properties?

A) Articles of Incorporation
B) Declaration (CC&Rs)
C) Bylaws
D) Rules & Regulations

True or False: The Board must take enforcement action for every violation, no matter how minor.

FALSE — Board has lawful discretion

Rules & Regulations must be:
A) Reasonably related to their purpose
B) Arbitrary and selectively enforced
C) Consistent with governing documents

Amending the Declaration

NRS 116.2117

Voting Requirement

May only be amended by majority vote (unless declaration specifies a different percentage)

Challenge Window

No challenges allowed after 1 year from recording

Recording Requirement

Must be recorded in every county where the CIC exists

Knowledge Check

Boundary Changes

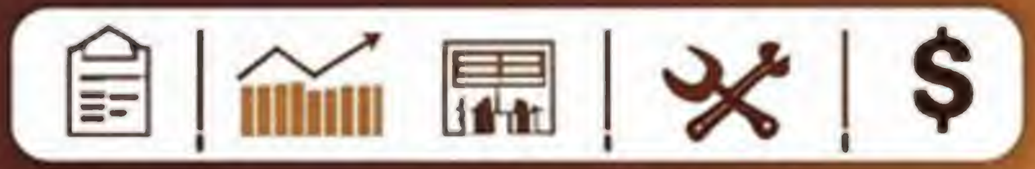
Requires unanimous consent from affected owners + majority of others

Use Restrictions

New restrictions on use/ occupancy do not apply to current owners at time of recordation

POWERS OF THE ASSOCIATION - NRS 116.3102
What Your HOA Can (and Must) Do

Required Powers (Shall):



> Adopt & amend bylaws, rules, regulations, except as otherwise provided in the bylaws
> Approve & and amend budgets (per NRS 116.31151)
> Collect assessments for common expenses
> Invest Association Funds except as otherwise provided in the bylaws

Permitted Powers (May):



> Hire & fire managers, staff, contractors
> Engage in litigation or arbitration
> Make contracts & incur liabilities
> Manage & improve common elements
> Acquire, hold, or convey real property
> Impose late fees, penalties, & fines
> Exercise other powers granted by law or bylaws
> Take necessary for for governance

Upkeep of the Community - NRS 116.3107 & 116.31152

Maintaining our Common Grounds & Long-Term Assets



Maintenance Duties (NRS 116.3107):

- HOA maintains, repairs & replaces common elements (owners maintain their units)
- Owners must give reasonable access to HOA for these purposes
- HOA liable for prompt repairs if it causes damage during access

Reserve Study Requirements (NRS 116.31152):

- Every 5 years → Conduct reserve study for major common element repairs/replacements
- Annually → Review results, check sufficiency of funds, and adjust funding plan if needed

Surplus Funds & Distribution Rules
(NRS 116.3114)

What Happens to Surplus Funds

After paying common expenses and prepaying reserves, surplus funds:

- MUST be paid to unit owners in proportion to their liability for common expenses, or
- Credited to unit owners' accounts to offset future assessments



Declaration Exceptions

If the declaration specifies a different method, that method applies



If silent, credit to owners' accounts is the default



Unit Boundaries

NRS 116.2102

Unless otherwise stated in the declaration:

- If walls, floors or ceilings are designated as boundaries of a unit:
  - Finished interior surfaces (paint, drywall, flooring, etc.) = part of the unit
  - All other portions (structural elements, insulation, exterior materials) = part of the common elements

Limited Common Elements

NRS 116.2108



"Limited common element" means a portion of the common elements allocated by the declaration for the exclusive use of one or more but fewer than all units (NRS 116.059),

Examples include:

- Any duct, wire, conduit, bearing wall or other fixture laying partially within and partially outside the designated boundaries of a unit and serving only that unit;
- Any fixtures, shutters, awnings, window boxes, doorsteps, porches, balconies, patios and all exterior doors and windows designed to serve a single unit, but located outside the unit's boundaries



Insurance – NRS 116.3113

Association Must Maintain

- Property insurance
- Commercial general liability
- Crime insurance
- Directors & Officers (E&O)

Key Requirements

- Association’s policy is primary if owner also has coverage (NRS 116.31133)
- Damaged CIC property must be repaired or replaced (NRS 116.31135)
- Excess costs are common expenses
- Willful misconduct/gross negligence → cost can be assessed to owner (NRS 116.3115[6])

General Rule

Owners may not alter common elements or unit exteriors without approval.



Reasonable Allowances

- Access for disabilities
- Additional locks
- Shutters for security/energy



Compatibility Requirement

- Visible alterations must follow governing documents.
- Must remain compatible with community overall appearance.



Alteration of Unit - NRS 116.2111

Balancing individual rights with community rights with community harmony.

Board Authority

- May restrict voting or access to common areas
- May issue courtesy notices
- May impose fines (if authorized in governing docs)

Due Process Required

- Written notice of violation (with photo if possible)
- Proposed action to cure
- Amount of fine stated
- Date, time, and location of hearing
- Include an explanation of the applicable provisions of the governing documents that form the basis of the alleged violation



Fine Limits

- Max $100 per violation (can be continuing which could exceed the $100 limit)
- Max $1,000 total (unless health/safety issue)

Compliance & Fairness

- Board members must be current on assessments to participate in a hearing
- Compliance account must be separate from assessment account

Abatements & Vacant Units -
- NRS 116.310312



Exterior of the unit

Includes landscaping, exterior of property exclusively owned by the unit owner, and any exterior the owner must maintain under the declaration.



Remediation

Means corrective action, but does not include restoration.



VACANT
(All must apply)

- Appears to be unoccupied
- Exterior not maintained per governing documents
- Owner has failed to pay assessments for 60+ days

Abatements & HOA Authority
(NRS 116.310312)

Triggering Events

- Security interest holder must provide contact info within 30 days.
- If action filed under NRS 40.430 or notice recorded under NRS 107.080.

HOA Authority After Notice & Hearing

1. Maintain exterior per governing docs
2. Remove or abate public nuisance if it:
   - Is visible from common area/street
   - Threatens health or safety
   - Causes blight or deterioration
   - Affects nearby use/enjoyment

If the Unit is vacant.

1. **Condition- Unit is vacant.**
2. **Notice & Hearing- Association provided owner notice & hearing per NRS 116.31031.**
3. **Notification to Security Holders**

   Notice of intent mailed by certified mail to each recorded security interest holder.

THEN

The association may enter the unit grounds to maintain the exterior or abate a public nuisance if the owner fails to act.

Vacant Unit Entry & Abatement Actions (NRS 116.310312)

WATER OR SEWAGE LEAK

Association may enter to abate leaks threatening damage if owner refuses or fails to act.

Remediate Mold or Damage

Cost Recovery & Lien



Remove Damaged Items

After notice but before hearing, damaged furniture, appliances, or fixtures may be removed if water/mold threatens health or safety.

Association may remediate mold/water damage when owner refuses, to protect health and prevent blight.

After hearing, costs may be charged to the unit. Unpaid amounts become a foreclosable lien.

Construction Penalties

NRS 116.310305

- Schedule Requirements
- Penalty & Authority
- Notice & Hearing
- Not a Fine
- Foreclosure Possibility

Threats and Harassment

NRS 116.31184

What's Prohibited

No one in a CIC shall willfully and without legal authority threaten, harass, or engage in conduct that causes harm, emotional distress, or creates a hostile environment.

Legal & Association Response

Violations = misdemeanor, not Division-enforceable (NRS 116.745). Governing docs may prohibit violent or abusive conduct and allow fines or sanctions.

Frequency of Meetings

Executive Board Meetings

- At least once every quarter
- Not less than once every 100 days
- Must be audio recorded

Unit Owner Meetings

- At least once every year
- Notice and agenda 15 days in advance
- Unit owners have the right to speak

Notices & Records

- Notice 10 days in advance
- Agenda provided
- Minutes kept indefinitely

Note: For Unit Owner Meeting notices- Not less than 15 days or more than 60 days in advance of any meeting of the units' owners

Robert's Rules of Order

NRS 116.3109(4)

Meetings of the association MUST be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised, UNLESS the bylaws or a resolution of the executive board adopted before the meeting provide otherwise.



QUORUM REQUIREMENTS

NRS 116.3109

EXECUTIVE BOARD MEETING – 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 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.

It then takes an affirmative vote by a majority of the board to make an action valid.

Quorum Requirements, Cont.'d.

Unit Owner Meeting – A quorum is present if 20% of votes are:

- Present in person
- Present by proxy
- Cast via absentee ballots
- Or any combination of the above

Quorum Not Required for:

- Election/removal of board members (35% in favor)
- Ratifying the proposed budget
- Approving prior annual or special meeting minutes

Governing documents may limit voting methods (NRS 116.311).

If quorum requirement >20% and not met, the next meeting (48 hrs–30 days later) defaults to 20%.

Elections

Election Rules & Terms

- **Annual Elections Required**

Per NRS 116.31034(3) the terms for board members are required to be staggered; thus, an election is held every year.

- **Secret Ballot Voting**

Voting must be conducted by secret written ballot to ensure fairness and confidentiality.

- **Notice Requirements**

Homeowners must receive written notice of the election and candidate solicitation at least 30 days before ballots are mailed.

- **Ballot Distribution**

Ballots must be mailed or delivered to all eligible voters 15–60 days before the election date.

- **Quorum Not Required for Ballot Count**

Ballots can be counted even if a quorum isn’t present at the meeting, as long as the required number of ballots is returned.

- **Tie-Breaking Procedures**

In the event of a tie, the association must follow its governing documents or conduct a runoff election.

Candidate Eligibility Restrictions

- **Delinquent Assessments**

The candidate must disclose that they are delinquent in their assessments.

- **Conflict of Interest**

Candidates must disclose any potential conflicts of interest, including business dealings with the association.

- **Term Limits (if applicable)**

Some associations may impose term limits as outlined in their bylaws or governing documents.

HOA Election Process – NRS 116.31034

Notice of Election:



At least 30 days before ballot preparation, the association must provide:

- Nomination forms
- Eligibility forms
- Candidate disclosure forms

Ballot Preparation & Distribution:



If candidates > vacancies, the association must:

- Prepare and mail prepaid return envelopes
- Include secret written ballots and candidate disclosure statements

Each unit owner must have at least 15 days to return the ballot

Voting & Counting:



- Incumbents and candidates may not access or participate in ballot opening or counting
- Secret ballots are opened and counted at the annual meeting
- Elected members are announced at this meeting

Taking Office:



- Executive board members and officers assume office upon election
- The executive board elects the officers of the association
- Officers do not need to be unit owners unless governing documents state otherwise

HOA Budgets

BUDGET PREPARATION & DISTRIBUTION



UNLESS the **declaration** imposes *more stringent* standards:



Timeline: Executive board must prepare and distribute the budget 30–60 days before the fiscal year starts, unless the declaration sets stricter rules.



Distribution: A copy of the budget must be provided to each unit owner, along with the collection policy.



NRS 116.31151

BUDGET MUST-INCLUDE



Major Component Details: Estimated replacement cost and remaining useful life of each major component.



Cash Reserves: Current estimate of cash reserves needed and amount set aside.



Special Assessments: Statement if the board anticipates or has determined special assessments.



Reserve Procedures: General description of procedures for estimating and accumulating cash reserves.

Association Fund Management

Adequately Funded Reserves (NAC 116.425):



- Funds sufficient to maintain common elements as described in the governing documents
- Does not require using operating funds or imposing special reserve assessments

Financial Statement Requirements (NRS 116.31144):



- Annual budget $45,000–$75,000: Reviewed by an independent CPA every 5 years (the review is during the year immediately preceding the year in which the reserve study is conducted)
- Annual budget $75,000–$150,000: Reviewed by an independent CPA every fiscal year
- Annual budget $150,000 or more: Audited by an independent CPA every fiscal year

Budgeting (NRS 116.3115):



- Must include a budget for daily operations
- Must include a budget for reserves
- Declaration may impose stricter standards

Withdrawal of Funds (NRS 116.31153):



- Reserve account: Requires two board member signatures
- Operating account: Requires two signatures, at least one board member (second may be the community manager)

HOA Recorss and Disclosure Requirements

NRS 116.31175



Owner Access

- Upon written request, the executive board must make books, records, and papers available for review
- Association may charge up to $25 per hour for review time



Copies Provided (within 21 days):

- Financial statement of the association
- Budgets
- Reserve study



Format & Fees:

- Records must be provided in electronic format at no charge (financial statement, budget, and the reserve study)
- If electronic format unavailable → fee may only cover actual copy costs



Restrictions & Retention:

- Records related to another unit owner cannot be disclosed
- Books, records, and papers must be maintained for at least 10 years
- Minutes must be kept until the CIC is terminated

Performing Your Duties
(NAC 116.405)

CICCH Commission may consider whether a board member has:



Authority

Acted within the authority granted by the governing documents

Compliance

Ensured the association complies with all laws and its own governing documents

Enforcement

Uniformly enforced the governing documents

Violations

If a Board Member is Suspected of:

Violating NRS 116

- (except NRS 116.31184 – threats & harassment)
- Initially, attempt to address the issue by discussing the concern with the board during a meeting and/or by formally requesting relevant documentation for verification.
- File a complaint using Intervention Affidavit – Form 530 after following the proper process

Misinterpreting Governing Documents

- Initially, attempt to address the issue by discussing the concern with the board during a meeting and/or by formally requesting relevant documentation for verification.
- File an Alternative Dispute Resolution (ADR) claim – Form 520

Review & Recap

Budgets & Funds

Prep 30–60 days before year; include ops + reserves: two-signature withdrawals; audits/reviews required

Elections

30-day nomination notice; secret ballots if contested; 15-day return; counted at annual meeting

Records

Owners may request in writing; 21-day deadline; electronic if possible; retain 10 yrs, minutes indefinitely

Board Duties & Violations

Must act within authority; enforce rules; file Form 530 (NRS violation) or 520 (ADR dispute

Meetings & Rules

Board meets quarterly + annual owner meeting; quorum: majority/20%; Robert's Rules apply; no threats/harassment


Pop Quiz

What percentage of unit owners is generally required to establish quorum at an owners' meeting, unless the governing documents state otherwise?

a) 10%
b) 20%
c) 35%
d) 50%

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How many days in advance must the association provide notice of nominations and eligibility forms before preparing ballots?

a) 7 days
b) 15 days
c) 30 days
d) 45 days

How many days in advance must the association provide notice of nominations and eligibility forms before preparing ballots?

a) 7 days
b) 15 days
c) 30 days
d) 45 days

If a board member is believed to be misapplying or not following the governing documents, which form should be filed after you have exhausted all efforts to resolve the matter?

a) Form 530 – Intervention Affidavit
b) Form 520 – ADR Claim
c) Form 514A – Statement of Fact
d) Form 550 – Compliance Notice

If a board member is suspected of misinterpreting the governing documents, which form should be filed?

a) Form 530 – Intervention Affidavit
b) Form 520 – ADR Claim
c) Form 514A – Statement of Fact
d) Form 550 – Compliance Notice

When a unit owner submits a written request, how many days does the executive board have to provide copies of the financial statement, budget, and reserve study?

a) 7 days
b) 14 days
c) 21 days
d) 30 days

When a unit owner submits a written request, how many days does the executive board have to provide copies of the financial statement, budget, and reserve study?

a) 7 days
b) 14 days
c) 21 days
d) 30 days

Within how many days before the start of the fiscal year must the executive board prepare and distribute the association’s budget?

a) 10–20 days
b) 30–60 days
c) 60–90 days
d) 90–120 days

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b) 30–60 days
c) 60–90 days
d) 90–120 days

Before we move on to the Q&A session, I'd like to remind everyone that we are here to provide general information and guidance. We cannot give legal advice, interpret the law, or provide opinions on individual circumstances.

The purpose of this Q&A session is to help clarify the material covered in today's class. Please keep your questions focused on understanding and the application of the statutes and regulations. For specific legal concerns or individual issues, please consult with a qualified attorney.


QUESTIONS?
COMMENTS?
CONCERNS?

THANK YOU

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