

# Understanding HOA Elections

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## **Nevada Real Estate Division**

*Presented By the Training Officer; Office of the Ombudsman  
for Owners in Common-Interest Communities and  
Condominium Hotels Training Program*

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- Should confusion arise requiring the interpretation and application of the law to your association's specific circumstances, a legal opinion from a qualified attorney may be necessary.
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# Introduction

- Following the period of declarant control, unit owners within a common-interest community (CIC) elect members of the board of directors to represent them.
- These directors make decisions for the community and are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation.
- Directors have a responsibility to act on an informed basis on behalf of the community, placing the interests of the association above their own.

# Learning Objectives

## Removal Elections

Attendees will understand the process concerning removal elections under the law.

6

## Declarant Control

Attendees will generally understand the triggers for turnover and termination of declarant control.

1

## Ballots

Attendees will gain an understanding of the process used to count the secret written ballots.

5

## Bylaws

Attendees will understand the importance of an association's bylaws as they relate to elections.

2

## Campaigning

Attendees will gain an understanding concerning campaigning in an HOA election.

4

## Initial Notice

Attendees will understand the statutory requirements concerning initial notice.

3

# Declarant Control

[NRS 116.31032](#)



- In a CIC with:
  - Less than 1,000 units
    - Not later than **60 days** after conveyance of **25%** of the units that *may* be created, **at least 1 member** and not less than **25%** of members of the executive board must be elected by unit owners.
    - **60 days** after conveyance of **75%** of the units that *may* be created, a period of declarant's control terminates.
  - 1,000 units or more
    - Not later than **60 days** after conveyance of **15%** of the units that *may* be created, **at least 1 member** and not less than **25%** of members of the executive board must be elected by unit owners.
    - **60 days** after conveyance of **90%** of the units that *may* be created, the **period of declarant's control terminates**.
- Not later than **60 days** after conveyance of **50%** of the units that *may* be created, **at least 1/3** of the members of the executive board must be elected by units' owners.

# Termination of Declarant Control

[NRS 116.31032](#)

- The period of declarant's control **terminates**:
  - 5 years after all declarants have **ceased to offer units for sale**;
  - 5 years after all declarants **last exercised the right to add new units**; or
  - The day the declarant **records an instrument voluntarily surrendering** all rights to control activities of the association.





# Looking to the Bylaws

[NRS 116.3106](#)

- Prior to initiating a unit owner election, elected board directors should be familiar with the bylaws of their association. The bylaws:
  - state the required **number** of members of the executive board and **titles** of the officers (president, treasurer, secretary, and any other title stated);
  - Specify the **qualifications, powers, duties, terms of office and manner of electing and removing** officers of the association and members of the executive board;
  - Specify procedures for filling vacancies;
  - Specify the powers the board may delegate to other persons or to a community manager;
  - Provide **procedural rules for conducting elections**; and
  - **Specify the month, time and place that the annual meeting of the unit owners is to be held. The election takes place at the annual meeting.**



# Election Requirements

- Unit owners shall elect an executive board of at least **three (3)** directors, all of whom must be unit owners ([NRS 116.31034\[1\]](#)).
- Newly elected members of the executive board take office immediately.
- At an executive board meeting following the election, **directors** then select officers of the association; president, secretary, treasurer (pursuant to [NRS 116.3106](#)).
- Unless the governing documents provide otherwise, **officers** of the association are **not** required to be unit owners; they would have no voting rights and simply carry out the duties assigned to them in the bylaws.



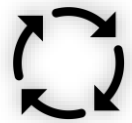


# Election Requirements, Continued

- The term of office of a member of the executive board ***may not exceed 3 years***, and unless the governing documents provide otherwise, there is ***no limitation on the number of terms that a board member may serve*** ([NRS 116.31034\[2\]](#)).
- The governing documents of the association must provide for ***terms of office that are staggered*** in such a manner that, to the greatest extent possible, an equal number of directors are elected at each election.
  - This excludes directors on executive boards with 1 year terms.

# Knowledge Check

- 1.** The period of declarant's control terminates \_\_\_ years after all declarants have ceased to offer units for sale.
- 2.** The election takes place at the \_\_\_\_\_ .
- 3.** The association must have at least \_\_\_\_\_ board members.
- 4.** The governing documents of the association must provide for terms of office that are \_\_\_\_\_ to the extent possible so that an equal number of board members are elected at each election.
- 5.** The term of office of a member of the executive board must not exceed \_\_\_\_\_ years.



# PROCESS - Request for Nomination Forms (Initial Notice)

- At least **30 days** before the preparation of any election ballots:
  - The association **must** mail out ***Request for Nomination*** forms to all unit owners.

[NRS 116.31034\(4\)](#)



# Initial Notice

## Association Duties [NRS 116.31034\[5\]\[6\]](#)

- The executive board determines whether to allow for candidates to be ***duly elected***.
  1. If it is permitted, the ***duly elected process*** must be explained.
    - The association **must disclose** the following:
      - That the executive board has determined to use the “duly elected” process.
      - If, at the closing period for nominations, the number of candidates is ***equal to or less*** than the number of vacancies, then:
        - a) The association will ***not*** prepare or mail any ballots; and
        - b) The nominated candidates shall be deemed to be duly elected to the executive board at the **meeting of the units’ owners** at which ballots *would have been* opened and counted.

# Appointments

- If, at the closing period for nominations, the number of eligible nominees is *less than* the number of vacancies, then the executive board may fill remaining vacancies on the executive board by ***appointment*** (regardless of what the governing documents say) ***at a meeting*** of the executive board ***held after*** the annual meeting.
- Any person *appointed* to the executive board shall serve as a member of the executive board ***until the next regularly scheduled election***.
- An executive board member ***elected*** to a previously appointed position may only be elected to fulfill ***the remainder of that term*** in order to keep terms appropriately staggered.

# Initial Notice

## Association Duties [NRS 116.31034\[1\]\[14\]](#)

2. **Eligibility requirements** must be explained.
- **To be eligible, first**, the candidate must be either:
    - A unit owner,
    - An officer, employee, agent or director of a corporate owner of a unit
    - A trustee or designated beneficiary of a trust that owns a unit
    - A partner of a partnership that owns a unit
    - A member or manager of a limited-liability company that owns a unit
    - A fiduciary of an estate that owns a unit
  - In all events where the potential candidate is not **the record owner**, the person shall file proof in the records of the association that he or she is eligible per the qualifications listed above.





# Initial Notice

## Association Duties [NRS 116.31034\(10\)](#)

- **To be eligible, *second***, the candidate may **NOT**:
  - reside in a unit with, be married to, domestic partners with, or related by blood, adoption or marriage to another person who is ***also*** a member of the executive board or is an officer of the association;
    - This is true unless the number of nominees is less than or equal to the number of vacancies.
  - ***stand to gain any personal profit or compensation*** of any kind from a matter before the executive board of the association;
  - perform the duties of, or have their spouse, parent or child, by blood, marriage or adoption performing the duties of community manager for that association.
  - in a master association, perform the duties of, or have their spouse, parent or child, by blood, marriage or adoption performing the duties of a community manager for that master association or any association that is subject to that master association (sub association).



# Eligibility, Additional

- A person who owns **75%** or more of the units in an association MAY:
  - Be a candidate or an officer of the association; and
  - Reside in a unit with, be married to, domestic partners with, or related by blood, adoption or marriage to another person who is also a member of the executive board or is an officer of the association...

***Unless the two board members together would constitute a majority of the board.***

# Disclosure Statements

## *Candidate Duties*

3. Each candidate must prove their eligibility on the ***Nomination Form*** and include the following ***disclosures*** in writing with the *Nomination Form* when they return it to the association (NRS 116.31034[9]). The candidate must:
- Make a good faith effort to ***disclose*** any financial, business, professional or personal relationship or interest that would result ***or appear*** to result in a ***potential conflict of interest***; and
  - Disclose whether he or she is a member in good standing.
    - A candidate is not in “good standing” if he or she has any unpaid assessments or construction penalties that are due to the association.



## Summary – Initial Notice Contains:

1. *Explanation of the Duly Elected Process* (NRS 116.31034[5])
2. *Eligibility Requirements*
  - a) Being a unit owner (NRS 116.31034[14])
  - b) Having no relation to board/manager (NRS 116.31034[10])
  - c) Not standing to gain (NRS 116.31034[9])
3. *Disclosure Statement* (NRS 116.31034[9])
  - a) Disclose any potential conflict of interest
  - b) Disclose membership standing

- If a person is **NOT** eligible to be a candidate, the board:
  - Must not place his or her name on the ballot; and
  - ***\*must prohibit such a person from serving*** as a member of the executive board or an officer of the association.
- If a person **IS** eligible, their disclosure statement **will** be sent to each unit owner ***with the ballot.***
- In the event ballots are not prepared, disclosures are sent in the next regular mailing of the association.

# Knowledge Check

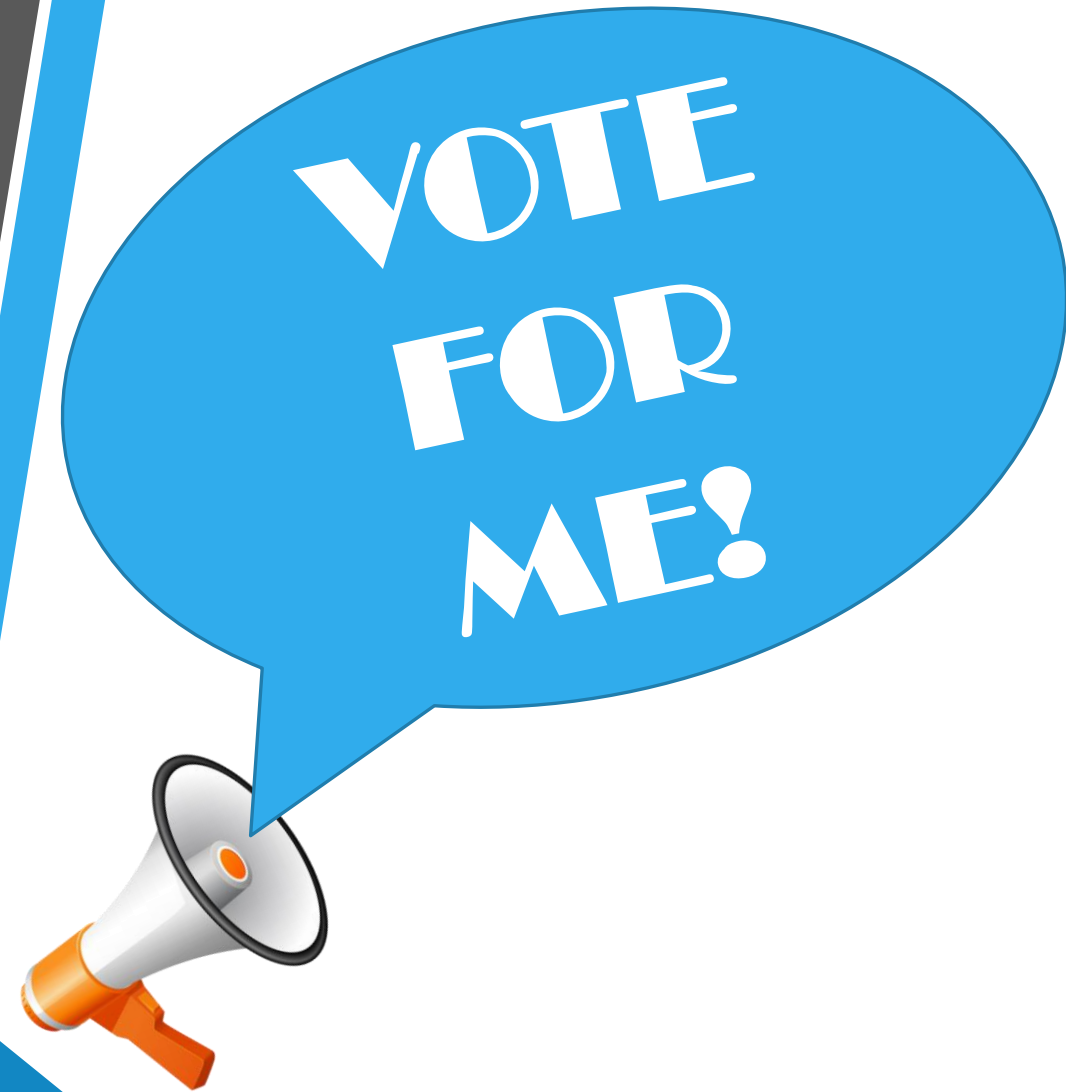
- 1.** The nomination form must be sent out at least \_\_\_\_\_ days before the preparation of a ballot.
- 2.** If the board decides to use the duly elected process, what must then be disclosed in the nomination form?
- 3.** If vacancies remain at the closing period prescribed for nomination closes, what may the board decide to do?
- 4.** In all events where the potential candidate is not the record owner, the person shall:  
\_\_\_\_\_ .
- 5.** What disclosures must be included in the candidate disclosure statement?



# Candidate Informational Statement

A candidate who has submitted a nomination form MAY request that the association either:

1. Send, *at the association's expense*, to the designated mailing address of each unit, a *Candidate Informational Statement*.
- The *Candidate Informational Statement*:
  - 1) Must be no longer than a single, typed page;
  - 2) Must not contain any defamatory, libelous or profane information; **and**
  - 3) *May* be sent with the secret ballot; or (continued on next slide)



# Campaigning (Optional)

2. To allow the candidate to communicate **campaign material** directly to the units' owners, provide to the candidate a list of **mailing** addresses for each unit, not including any names:
  - In paper format not to exceed the cost per page (25/10 cents),
  - By compact disc for \$5 or less, or
  - By email at no cost.
- If the **campaign material** will be sent by the association:
  - **By mail** – the candidate must provide to the association a separate copy of the campaign material.
  - **By email** – the candidate must provide to the association one copy in electronic format, and the association will email the material for the candidate.

# Campaigning, Continued

- The candidate must provide a *signed written statement* to the association, stating that the request for addresses is to communicate campaign material only, and nothing else.
- An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election.
  - Except that the candidate's campaign may be limited to **90 days** before the date that ballots are required to be returned.

# FAQ – Mailing List

## *Disposition of the Candidate's Request*

- If a candidate who has submitted a nomination form for election requests that the association, or its agent, provide a list of mailing addresses of each unit in order to communicate campaign material directly to the units' owners, must the association provide such a list?
  - The association or its agent **must** provide the list of mailing addresses of each unit, NOT including the names of units' owners or tenants, **only** to a *candidate* who provides a signed written statement stating that he or she will use the list solely to communicate campaign material directly to units' owners and NOT for any other purpose.
- The association may **refuse** to provide the list of mailing addresses:
  - If the candidate fails or refuses to provide the signed written statement, or
  - the candidate has already requested that the association send their candidate informational statement at the association's expense,
    - The list should **NOT** be provided by the association outside of an election period.

# Official Publication

- If an official publication (official website, newsletter, bulletin board, etc.) contains any mention of a candidate, the official publication must, upon request and under the same terms and conditions, provide equal space to all candidates.
- The association and its officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person ([NRS 116.31035](#)).

# Secret Written Ballots

- If the number of candidates is *greater* than the number of vacancies, then the association shall:
  - Prepare and mail ballots to unit owners whose voting rights have not been temporarily revoked; and
  - Conduct an election accordingly.
- The ballot should:
  - Describe the number of vacancies to be filled.
  - If the declaration allows for cumulative voting, explain the fact that each voter is allowed as many votes as there are vacancies and that he or she may give all votes to one candidate or varying numbers to several [NRS 116.2107(4)(b)].
  - Contain the names of eligible candidates.
  - Specify the date, time and method by which a ballot must be delivered to the association to be counted.



# Sending Out Ballots

- The secretary or other officer specified in the bylaws shall cause a secret written ballot and return envelope to be sent, prepaid by U.S. mail, to the designated mailing address of each unit.
  - A 3-envelope system can be used to track receipt of the ballot and maintain confidentiality.
  - There is no statutory requirement that an association provide for or pay for postage for any return ballot (AO).
  - Each unit owner must be provided with at least **15 days** after the date the secret written ballot is mailed to return the ballot to the association.

# Advisory Opinion (AO) 20\02

## *Sending Multiple Ballots*

- 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**.

# The 3 Envelope System

## 1. Association Address

**Unit Owner's Address**

Place  
Stamp  
Here

This envelope contains:

1. Ballot & Disclosure Statement
2. Secret Ballot Envelope
3. Return Ballot Envelope

## 3. Unit Owner's Address

**Association Address**

Place  
Stamp  
Here

Return Envelope



| Ballot                         | Disclosure Statement |
|--------------------------------|----------------------|
| <input type="checkbox"/> ~~~~~ | ~~~~~                |
| <input type="checkbox"/> ~~~~~ | ~~~~~                |
| <input type="checkbox"/> ~~~~~ | ~~~~~                |
| <input type="checkbox"/> ~~~~~ | ~~~~~                |



## 2. Secret Ballot Envelope

Do not write any identifying marks on the ballot or on this envelope.

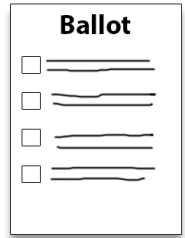
After completing the ballot, place inside this envelope and seal it. Place this sealed envelope inside the included return envelope.

**OFFICIAL USE ONLY**  
DO NOT OPEN! THIS ENVELOPE MUST REMAIN SEALED UNTIL APPROPRIATE TIME WHEN ALL BALLOT ENVELOPES ARE OPENED AND TALLIED.



# Returning Ballots

[NRS 116.31107](#)



- ***A person shall not knowingly or willfully engage in any of the following acts:***
  - a) Changing or falsifying a ballot.
  - b) Forging or falsely signing a ballot.
  - c) Fraudulently casting a vote.
  - d) Rejecting, failing to count, destroying, defacing or otherwise invalidating the ballot of another voter.
  - e) Submitting a counterfeit ballot.
- ***A person who violates this section is guilty of a [category D felony](#) (enforced by the court through conviction, pursuant to [NRS 193.130](#)).***

# Knowledge Check

- 1.** The candidate information statement must not contain any \_\_\_\_\_.
- 2.** To allow the candidate to communicate campaign material directly to the units' owners, the association may provide a list of \_\_\_\_\_ when requested.
- 3.** If an official publication (official website, newsletter, bulletin board, etc.) contains any mention of a candidate, the official publication must \_\_\_\_\_.
- 4.** Is an association permitted to mail secret election ballots to multiple addresses requested by a unit owner?
- 5.** When may an association refuse to provide a mailing list to a candidate who has submitted a nomination form and has requested such a list?

# Election

- A quorum is not required to be present when secret written ballots are opened and counted at the meeting of the unit owners.
- Only secret written ballots returned to the association may be counted (no quorum necessary to decide outcome).
- Incumbent members of the executive board and each person whose name is on the ballot **may NOT** possess, be given access to, or participate in the opening or counting of the secret written ballots before those ballots have been opened and counted (may use neutral 3<sup>rd</sup> party).
- Secret written ballots must be opened and counted in plain sight (tallies are taken; ballots and identifying envelopes are placed into piles to become association record, maintained for at least **10 years**).
- Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death, disability or attempted revocation by the person who cast that vote ([NRS 116.311\[9\]\[e\]](#)).

# Once Elected

- Each member of the executive board SHALL, within **90 days**, after his or her appointment or election, certify in writing **to the association** on NRED form 602 that the member has read and understands the governing documents of the association and the provisions of NRS & NAC 116 to the best of his or her ability.
  - This form should **not** be submitted to the Division unless requested.
- Within **30 days** after an election or appointment of a new member to the executive board:
  - The community manager **shall** provide the new member with a copy of the management agreement ([NRS 116A.620](#)).

# Recalling a Board Member

[NRS 116.31036](#)

- Any member of the executive board, other than a member appointed by the declarant, may be removed with or without cause.
- A removal election may be called by at least 10% of unit owners who are eligible to vote (or any lower percentage specified in the bylaws) who:
  - Sign and submit a written petition by mail, return receipt requested, to the association,  
or
  - Serve the executive board or community manager with the petition by process server.
- The petition should include the date, name and addresses of all signatories (names should be printed and signed).
- The board shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures.



# Removal Ballots

- Between **15 and 60 days** after the date on which the recall petition is received by the association, secret written ballots and return envelopes (3 envelope system) for the removal election must be mailed to each unit owner.
  - Ballots must state the percentage of votes necessary (35%+); and
  - Specify the time, date and method by which a ballot must be delivered to the association to be counted.
- Each unit owner must be provided with at least **15 days** after the date the secret written ballot is mailed to return the ballot to the association.
- No later than **90 days** after the date on which the petition was received, the executive board shall hold the special meeting to open and count the secret written ballots.

# Removal Election

- The removal election should be conducted pursuant to the provision guiding regular elections [NRS 116.31034(15)].
- Only secret written ballots that are returned to the association may be counted to determine the outcome.
- Incumbent members of the executive board and any member subject to removal may not possess, be given access to, or participate in the opening or counting of secret written ballots returned to the association before those ballots have been opened and counted in plain sight at a special meeting of the association.
- A quorum is not required to be present when the secret written ballots are opened and counted.

# Removal

- In order for a board member to be removed by the units' owners:
  - a) At least **35%** of the **total number of voting members** of the association must cast votes **IN FAVOR** of removal; and
  - b) Those votes cast must also represent **A MAJORITY** of **all** votes cast.
- Example:
  - *If there 100 total voting members in the association, **at least** 35 votes must be received **AND** cast **in favor** of removal (meets first requirement).*
- Question:
  - *If 50 total votes are received out of 100 units, with 37 votes cast in favor of removal, can the recalled board member be removed?*

# Final Knowledge Check

- 1.** A \_\_\_\_\_ is not required to be present at the annual meeting of the units' owners to open and count the ballots.
- 2.** Are incumbent members of the executive board allowed to possess, be given access to, or assist in the counting of the secret written ballots?
- 3.** Secret written ballots are to be opened and counted in plain \_\_\_\_\_ .
- 4.** What happens if a unit owner passes away after they submit their secret written ballot?
- 5.** At least what percentage of unit owners must vote to approve the removal of a board member for it to pass?

# Summary

- When an election is set to take place, initial notice, including the Nomination/Eligibility Form and Disclosure Statement, is sent by the association to all unit owners.
- Forms mentioned above are received by the association from **interested** unit owners. If there are **more** nominees than vacancies, an election will be held and the names of eligible candidates will be placed on the ballot. Ballots and a disclosure statement for each candidate are then mailed out to all unit owners. If there are **less** nominees than vacancies, candidates will be duly elected and the new board will appoint unit owners to fill remaining vacancies at the next board meeting.
- During an election, secret written ballots are completed, returned by **eligible** unit owners to the association, and opened and counted in plain sight at the annual meeting.

At least 30 days

At least 15 days

# Questions?

- <http://red.nv.gov/> - Main Page
- [CICOmbudsman@red.nv.gov](mailto:CICOmbudsman@red.nv.gov) – Email Questions
- [http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/)