



Understanding CIC/HOA Record Keeping

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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 PROGRAM

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Introduction

- The declarant creates the community by drafting and recording the declaration and constructing the community.
- Within **30 days** after unit owners other than the declarant elect a majority of the members of the executive board, the declarant shall deliver to the association **all property**, including **its records**.
- The association's board of directors is then responsible for maintaining the records for their common-interest community (CIC).

Learning Objectives

Complaints Process

Attendees will understand how to file a complaint should an association fail to provide records/make them available for review.

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Best Record Keeping Practices

Attendees will understand why it is important to develop and adhere to best practices in maintaining records.

Records Available for Review

Attendees will understand which records must be made available for review by a unit's owner.

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Common Records

Attendees will generally understand the types of records associations maintain.

Providing Copies of Records

Attendees will understand which records must be provided upon a written request from a unit's owner.

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Community Manager

Attendees will understand the manager's role in maintaining the association's records, when applicable.

Record Keeping Best Practices

- Establishing and maintaining good record keeping practices and systems is extremely important for any organization.
- **A good record keeping system should be:**
 - Well organized
 - Thorough
 - Accurate
 - Reliable
 - Easy to follow
 - Simple to use in procuring necessary records
 - Secure (both physical and electronic records)



Record Keeping Best Practices



- **Creating and maintaining a good record keeping system enables the board to:**
 - **easily** procure records as needed/when requested;
 - **justify** expenditures;
 - **monitor** progress;
 - conduct **efficient** analysis;
 - make **informed** and **consistent** decisions;
 - **capture** the financial status of the association over time; and
 - **remain** compliant with the NRS.
- An efficient record keeping system is a major part of the equation for gaining a maximum return on any investments (think of the manhours).

Electronic Records

NRS 82.188

- Except as otherwise required by federal or state law, any records maintained by a corporation in its regular course of business may be kept electronically.
- A clear and legible paper form produced from electronic records is admissible in evidence and accepted for all other purposes to the same extent as an original paper record with the same information if the paper form portrays the record accurately.



Common Records

➤ Common examples of association records include:

- The governing documents (CC&Rs, articles, bylaws, rules & regulations, resolutions, collection policies, fine schedule, reserve study, etc.).
- Meeting minutes & audio recordings.
- Financial statements and related accounting statements (i.e. cash flows, balance sheets, general ledger, etc.).
- Financial records (i.e. receipts, invoices, etc.), including documentation for the verification of expenditures.
- Unit owner records for both assessments and compliance (i.e. assessment ledger, fine ledger, etc.).
- Association forms used for various processes (i.e. ARC request forms, impact statement forms, etc.).
- Election records (nomination forms, disclosure statements, envelopes, ballots, tally sheets, etc.).
- Employee and vendor contracts, including all insurance policies and any **claims** filed.
- Manufacturer's documentation involving the common elements, including any warranties still in force.
- All other documents involved in the association's business transactions.

Additional Records

NRS 116.31038

- Certificate of: registration, limited partnership, or trust (filed with SOS)
- Financial audits
- A copy of any plans and specifications used in the construction of improvements
- Renewable permits issued by government bodies
- A roster of unit addresses and proof of mailing for any notices sent out
- Lease agreements for tracking of rental units for cap requirements
- Notices and any waivers sent to unit owners, newsletters, meeting agendas, any business conducted by email, etc.

Recording the Declaration

NRS 116.2101

- The first document that any community **must** record as part of the records of the association is the declaration of covenants, conditions and restrictions (CC&Rs). This declaration is created and recorded by the declarant who is often the developer.
- A common-interest community (CIC) is created by recording this declaration in every county in which any portion of the common-interest community is located.



Recording Amendments

- The declaration, including any plats, may be amended only by vote or agreement of at least a majority of unit owners. This is true unless the declaration specifies a different percentage.
- If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.
- Any amendment made to the CC&Rs is not effective until a certified copy is recorded by a designated officer of the association in the county in which the community is located.
- Not later than 30 days after the date on which the amendment is recorded, the association shall deliver to all unit owners a copy of the recorded amendment.
- No action to challenge the validity of an amendment may be brought more than 1 year after the amendment is recorded.

➤ NRS 116.2117

What else must be recorded?



- A lien for *unpaid assessments* is extinguished unless a **Notice of Default** is recorded with the county by the association [NRS 116.3116].
- To be able to collect 9 months of past due assessments after a unit has been foreclosed by the bank, the board must have properly recorded the notice of default.
- The association shall, before selling a unit due to foreclosure, give notice of the time and place of the sale by recording the **Notice of Sale** with the county recorder [NRS 116.311635].

Resale Packages

NRS 116.4109

- The first record that any **prospective purchaser** of a unit obtains from the association (via the seller) comes in the form of a **RESALE PACKAGE** containing the following:
 - A copy of the declaration, bylaws, rules and regulations and the information statement (“Before you purchase, did you know?”)
 - A statement of demand setting forth the amount of the monthly assessment and any unpaid obligation of any kind, including fees, fines, interest, etc., currently due from the seller.
 - A copy of the current operating budget and current year-to-date financial statement, including a detailed summary of the reserves.
 - A statement of any unsatisfied judgements or pending legal actions against the association and the status of any pending legal actions.
 - A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.
 - A statement describing fine policies, late charges, penalties, interest rates on delinquent assessments, and any additional costs for collecting past due fines and charges.
- Must be provided by the association to the unit owner or the prospective purchaser within 10 days after request.

General Record of Violations

NRS 116.31175(5)

- The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a failure to pay an assessment, for which the executive board has imposed a fine or other sanction.
- The general record **MUST**:
 - a) contain a general description of the nature of the violation and the type of sanction imposed.
 - If the sanction imposed was a fine or construction penalty, the general record must specify the amount;
 - b) **not** contain the name or address of the person or any other personal information which may be used for identification;
 - c) be maintained in an organized and convenient filing or data system for easy search and review.



Retention - Maintenance of Records

- The books, records and other papers of an association must be maintained for **at least 10 years**.
- The provisions of this subsection do not apply to meeting minutes. All meeting minutes **must** be maintained until the **CIC is terminated (indefinitely)**.

NRS 116.31175(7)

Custodian of Records

- A custodian of records is the person responsible for maintaining the records at their physical location, which must be within **60 miles** of the community.
- This individual is identified on the Division's Annual Registration form 562.
- This individual is *often* the community manager.
 - Any management agreement entered into between the association and a community manager **MUST** acknowledge that all records and books of the association are the **property of the association**.
 - Upon termination or reassignment of the management agreement, the community manager **MUST**, within **30 days**, transfer possession of all books, records and other papers back to the association, or to the next manager, **regardless of any fees or charges still due by the association**.



NRS 116A.620

Community Manager & Records

NRS 116A.630 – Standards of Practice

- A community manager **shall**:
 - Act as a **fiduciary** and exercise **ordinary and reasonable care** in the performance of duties.
 - At all times ensure that:
 - The **financial transactions** of a client are **current, accurate and properly documented**; and
 - There are established procedures to provide reasonable assurances in the reliability of the **financial reporting**, including:
 - **Proper maintenance of accounting records**;
 - **Documentation** of the **authorization** for any purchase orders, expenditures or disbursements;
 - Facilitation of fraud detection and prevention; and
 - Compliance with all applicable laws and regulations governing financial records;
- **Make records available for inspection by the Division and cooperate with the Division in resolving complaints filed.**
- Provide timely updates and reports as necessary.

Availability of Records – SB 186

- **Effective January 1, 2022**, each association in a CIC that contains 150 or more units shall establish and maintain a secure internet website or electronic portal that may be accessed by any unit's owner. The association shall make available on the website or within the electronic portal any documents relating to the CIC or association, including without limitation:
- a) The association's declaration of covenants, conditions & restrictions, articles, bylaws, rules & regulations, and any other documents used to govern the operation of the CIC;
 - b) The annual budget of the association and any proposed budgets;
 - c) The notices and agenda for any upcoming meetings of the association; and
 - d) Other non-confidential documents required to be provided by law or regulation (i.e., reserve study, financial statements, collection policy, fine schedule, anonymous general violation record, approved meeting minutes, etc.).

Availability of Records

NRS 116.31175(1)

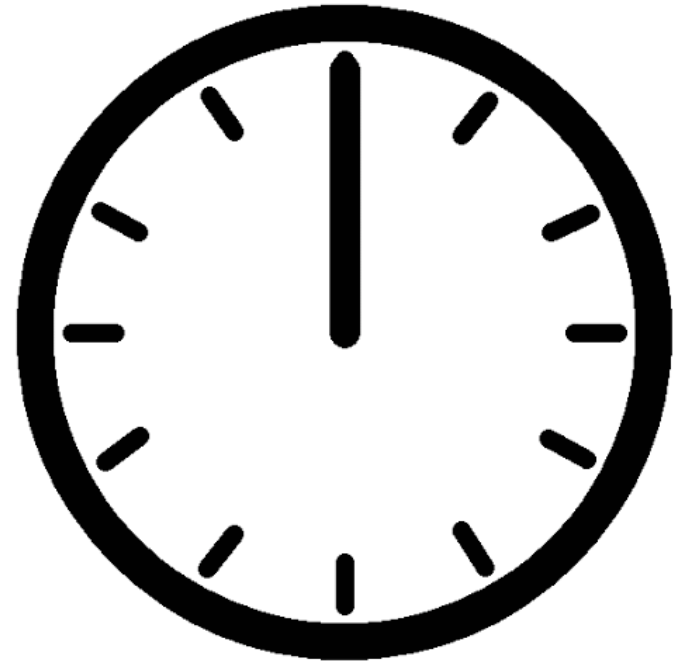
- The executive board or a community manager of an association shall, upon the **written request** of a unit's owner, make available the books, records and other papers of the association for review at:
 - the business office of the association; or
 - a designated business location **not to exceed** 60 miles from the physical location of the common-interest community;
 - and during the regular working hours of the association.



“Regular working hours” defined:

NAC 116.440

- As used in [NRS 116.31175](#), “regular working hours” means a period of at least 4 consecutive hours per week.



What records must be provided vs. made available?

- The board must **provide a copy** of the following records to unit owners upon request (in electronic format at **no charge whenever possible** [NRS 116.31175(2)]):

MUST be provided within **21 days** of the unit owner's written request. Provided upon request.

1. Financial statements of the association;
2. Budgets of the association;
3. Study of the reserves; and
4. The audio recording, minutes or a summary of the minutes of an association meeting upon request, made available not more than **30 days** after the meeting (NRS 116.3108[5] & NRS 116.31083[8]).

- The association must at least allow **review of**:
 1. All contracts to which the association is a party;
 2. All records filed with a court relating to a civil or criminal action to which the association is a party; and
 3. Other non-confidential records of the association, including all **financial records**.

NRS 116.31175(1)

Providing Records

- Any records required to be copied and provided **pursuant to NRS 116.31175(2)** must be provided in electronic format, at no charge to the unit owner whenever possible, **within 21 days** of a written request.
- If the association is **unable** to provide records in electronic format, the executive board may charge a fee to cover the actual costs of preparing a copy.
 - The fee may not exceed 25 cents per page for the first 10 pages and 10 cents per page thereafter.



Review of Records

NRS 116.3118

- The association shall keep financial records sufficiently detailed to enable the association to comply with [NRS 116.4109](#).
- **All financial and other records** of the association **must** be:
 - **Made reasonably available for any unit's owner and his or her authorized agents to inspect, examine, photocopy and audit.**
- The executive board shall not require a unit owner to pay an amount in excess of **\$10 per hour to review** any books, records, contracts or other papers of the association on site.



“Financial Records” Defined

NAC 116.0433

- Financial records, unlike financial statements, do not have to be copied and provided to unit owners, but must be made available for review upon a written request.
- **“Financial records”** means the financial or transaction records necessary to support the financial statements of an association which include, without limitation:
 - receipts,
 - bank statements,
 - income tax reports,
 - reserve studies,
 - budgets,
 - contracts,
 - minutes of executive board meetings,
 - inventories,
 - investments,
 - expenses,
 - disbursements,
 - obligations,
 - depreciation in property or equipment,
 - contingent liabilities,
 - and any other records deemed necessary by the Division or by the accountants or auditors of an association.

Liens & Record of Fees



- The association shall keep a record of any costs and interest charged against a unit that has a lien on it for any unpaid amount (fine or assessment). This includes:
 - Collection fees
 - Filing fees
 - **Recording fees** [NAC 116.470]
 - Fees related to the preparation or delivery of a lien
 - Fees for postage or delivery
 - And any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation.

The Board shall NOT provide:

NRS 116.31175(4)

- ❑ The personnel records of employees of the association, EXCEPT for those records relating to the number of hours worked and the salaries and benefits of those employees;
- ❑ Any records relating to another unit's owner, including any architectural plan or specification submitted to the association during an approval process;
- ❑ Any document, aside from minutes, if it is in the process of being developed and has not yet been placed on an agenda for final approval by the executive board.



Transparency of Records

NRS 116.31085(6)



- Any specifics discussed by the executive board when it meets in executive session are **confidential**, but the matters discussed must be generally noted in the minutes of the next meeting of the executive board, thus becoming records of the association.
 - The executive board shall maintain minutes of any decision made concerning an alleged violation and, upon request, provide a copy of the decision *to the person who was subject* to being sanctioned at the hearing.
- Any written complaint filed with the Division is considered confidential until a decision is rendered, and a final letter is sent to the association [NRS 116.757]. This final letter becomes a record of the association.

Transparency of Records, Cont'd

NRS 82.271(2); AO 11-01

- **Unless prohibited or restricted** by the association's articles or bylaws, the board may take action without a meeting if a written consent of at least a quorum of the board is signed (NRS 82.271[2]).
- **This written consent becomes an association record**, of which unit owners may request to review (NRS 116.31175).
- Generally, a vote via email or possibly another method **may not satisfy** the **fiduciary duty** of a board member, thus these methods of voting for members of an executive board is **greatly disfavored** (NRED Advisory Opinion 11-01).

Intervention Affidavit form 530

- If a unit owner has not received required records or been able to coordinate a time to review records **within 21 days** after the written request, he or she can:
 - Complete the Intervention Affidavit form 530 after following the appropriate process as dictated/mandated on the form.

Intervention Affidavit form 530, Cont'd

○ Form 530 REQUIRES THAT THE COMPLAINANT:

1. Is filing the complaint not later than 1 year after they discovered or reasonably should have discovered the alleged violation.
2. Has mailed to the Respondent's last known address **a certified letter, return receipt requested**, specifying in reasonable detail: all alleged violations, any actual damages suffered, and any corrective actions proposed. A copy of this letter and the certified return receipt from the post office must be attached to this form. Any and all allegations included in the certified letter must also be included on this form. Any allegation not indicated will not be considered by the Division.
3. Has provided the Respondent with at least 10 business days to correct the alleged violation(s) pursuant to the governing documents or NRS and NAC 116. All other reasonable efforts to resolve the allegation(s) must have failed prior to filing this Intervention Affidavit.
4. Has stated only one alleged violation per page and have included applicable attachments (exhibits) behind each such page. It is advised that the complainant make a copy of this package for themselves prior to submission. The Division may take up to 14 working days to process this request.

Your Duty to Comply with the Division

NAC 116.405

- In determining whether a member of the executive board has performed his or her duties, the Commission may consider whether the member:
 - Disclosed **confidential** information and records without consent;
 - **Failed to comply** with a request by the Division to provide information or documents;
 - Supplied **false or misleading** information to the Division;
 - Failed to make the **financial records** of the association **available for inspection** by the Division;
 - Concealed any facts or documents relating to the business of the association; or
 - Failed to cause the association to maintain current, accurate and properly documented financial records, including proper documentation of the authorization for receipts and disbursements and verification of the integrity of the data used in making business decisions.

Summary

- Records are initially created by the declarant and transferred to the board elected by unit owners.
- The association then provides records to unit owners either through the resale package or by written request.
- Unit owners are entitled to at least review all records of the association, excluding any record containing personal information of another individual or any documents still in process.
- Any board member or community manager who refuses to make records of the association available to unit owners upon request is in breach of their fiduciary duty and can be brought before the Commission for Common-Interest Communities for appropriate discipline.

Questions?

- <http://red.nv.gov> – Main Website
- CICOmbudsman@red.nv.gov – Email Questions
- http://red.nv.gov/Content/CIC/Program_Training