

**XYZ  
Homeowner's Association**

**Official  
Covenants, Conditions &  
Restrictions  
(CC&R's)**

**VS.**

CHAPTER 116 - COMMON-INTEREST OWNERSHIP (UNIFORM ACT)

ARTICLE 1  
GENERAL PROVISIONS

PART I  
DEFINITIONS AND OTHER GENERAL PROVISIONS

<a href="#">NRS 116.001</a>	Short title.
<a href="#">NRS 116.003</a>	Definitions.
<a href="#">NRS 116.005</a>	"Administrator" defined.
<a href="#">NRS 116.007</a>	"Affiliate of a declarant" defined.
<a href="#">NRS 116.009</a>	"Allocated interests" defined.
<a href="#">NRS 116.011</a>	"Association" and "unit-owners' association" defined.
<a href="#">NRS 116.013</a>	"Certificate" defined.
<a href="#">NRS 116.015</a>	"Commission" defined.
<a href="#">NRS 116.017</a>	"Common elements" defined.
<a href="#">NRS 116.019</a>	"Common expenses" defined.
<a href="#">NRS 116.021</a>	"Common-interest community" defined.
<a href="#">NRS 116.023</a>	"Community manager" defined.
<a href="#">NRS 116.025</a>	"Complaint" defined.
<a href="#">NRS 116.027</a>	"Condominium" defined.
<a href="#">NRS 116.029</a>	"Converted building" defined.
<a href="#">NRS 116.031</a>	"Cooperative" defined.
<a href="#">NRS 116.033</a>	"Dealer" defined.
<a href="#">NRS 116.035</a>	"Declarant" defined.
<a href="#">NRS 116.037</a>	"Declaration" defined.
<a href="#">NRS 116.039</a>	"Developmental rights" defined.
<a href="#">NRS 116.041</a>	"Dispose" and "disposition" defined.
<a href="#">NRS 116.043</a>	"Division" defined.
<a href="#">NRS 116.045</a>	"Executive board" defined.
<a href="#">NRS 116.047</a>	"Financial statement" defined.
<a href="#">NRS 116.049</a>	"Governing documents" defined.
<a href="#">NRS 116.051</a>	"Hearing panel" defined.

# Governing Documents vs. NRS 116

*Which takes precedence when?*



## 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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- 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.
- Please review the course calendar, training request form, and presentations published on the training webpage to gain an understanding of additional opportunities for education and training. See our training webpage at [http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/).

# Agenda



- Key Phrases
- Priority of Governance
- Governing Documents Defined
- Declaration
- Other Governing Docs
- Meetings
- Elections
- Violations
- Enforcement



# Key Phrases

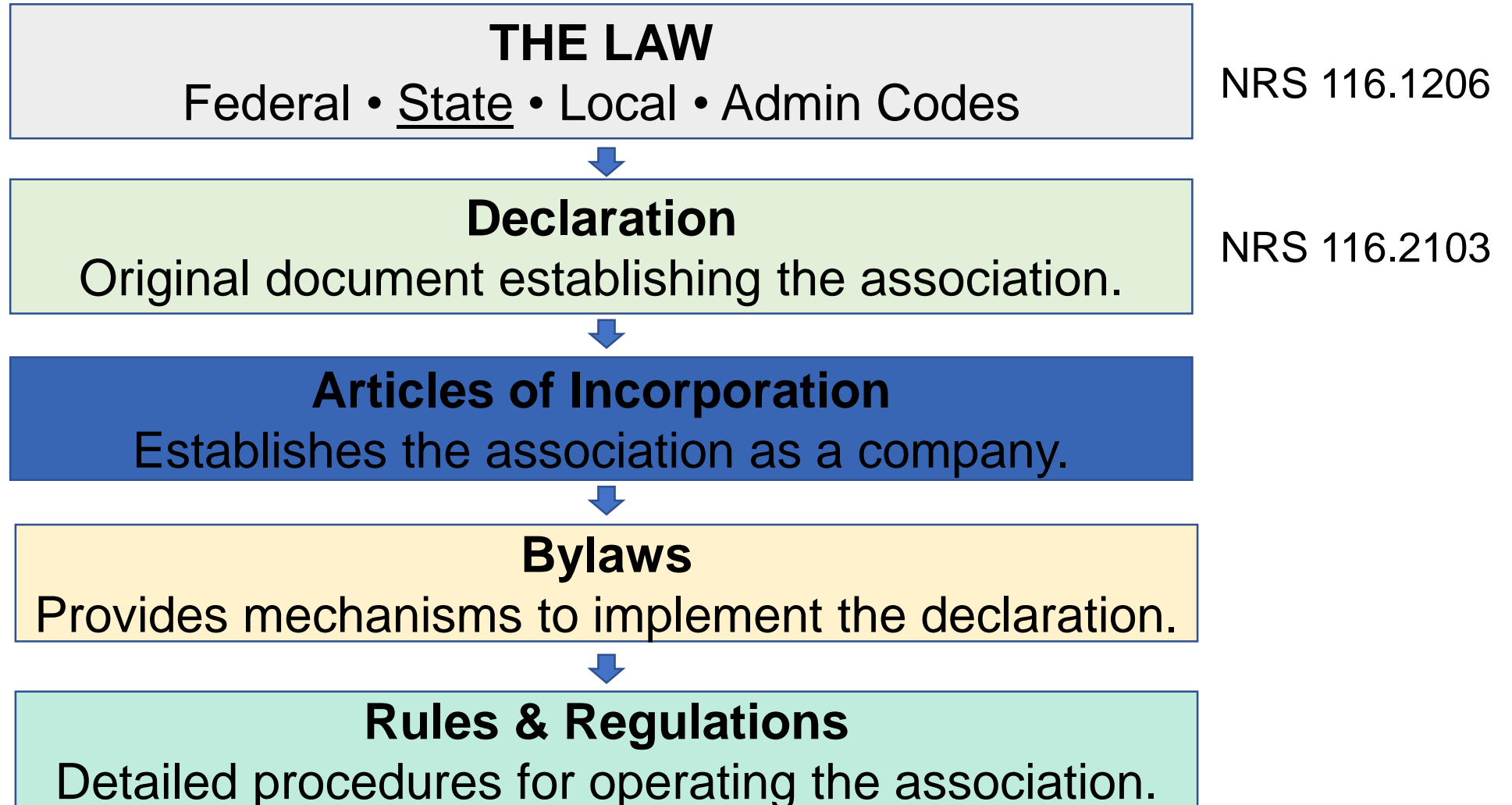
<b><u>NRS/NAC Phrase</u></b>	<b><u>Meaning</u></b>
Shall; Must	Required
May	Authorized but not required.
Shall not; must not; may not	Prohibited
Unless otherwise provided	Specified governing document prevails. If the governing documents are silent, the provision of law prevails
Unless the declaration imposes more stringent standards	Declaration may be stricter but not more lenient.



# Key Phrases continued

<b><u>NRS/NAC Phrase</u></b>	<b><u>Meaning</u></b>
Except as otherwise provided in the governing documents	CC&R, Bylaws and/or rules of the association may dictate other procedures.
In accordance with the declaration or governing documents	Governing documents dictate.
Notwithstanding any provision of the governing documents to the contrary	The statute/code supersedes the governing documents. Governing documents cannot change this rule or provision.

# Priority of Governance



# Priority of Governance: NRS Supremacy



- The principles of law and equity, including the law of corporations (e.g. NRS 82) and any other form of organization authorized by Nevada law are **supplemental** to the provisions of NRS 116.

NRS 116.1108

- If a matter governed by NRS 116 is also governed by NRS 78, 81, 82, 86, 87, 87A, 88 or 88A and there is a conflict between the provisions, **NRS 116 prevails.**

NRS 116.11085

# Provisions in Violation of NRS 116

NRS 116.1206

- Any provision contained in an association's governing documents that violates any provision of NRS 116:
  - **SHALL** be deemed to conform with those provisions by operation of law and the provision is **not required** to be amended to conform.
  - **Is superseded** by the provisions of NRS 116, regardless of whether the provision became effective **before** the enactment of the provision of law.

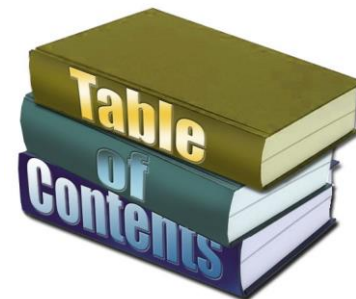




# Governing Document Defined

NRS 116.049

- The declaration:
  - The original document that creates the community, recorded against all properties **before** they are sold.
- Articles of Incorporation:
  - The articles that organize the non-profit organization that is the association, submitted to the Secretary of State's office.
- The Bylaws:
  - Contain provisions pertaining to meetings, elections, board officer positions and duties.



# Governing Document Defined continued

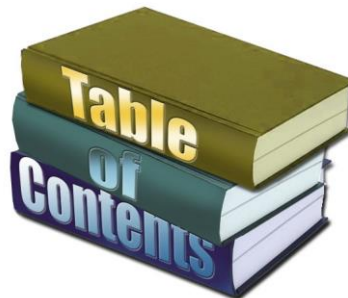
NRS 116.049

## ➤ Rules & Regulations

➤ Created by the board to clarify provisions of the governing documents that already exist

## ➤ Any other documents governing the operation of the association:

➤ Reserve Study, architectural review guidelines, collection policy, fine schedule, *Robert's Rules*, resolutions, etc.



# Knowledge Check



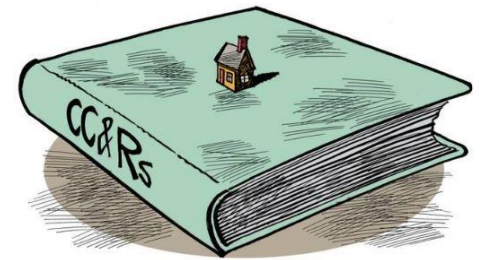
What does each phrase mean?

1. “Unless otherwise provided”
2. “Unless the declaration imposes more stringent standards”
3. “Except as otherwise provided in the governing documents”
4. “Notwithstanding any provision of the governing documents to the contrary”

# Declaration (CC&Rs): Contents

NRS 116.2105

- The declaration **MUST** contain:
  - 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;
  - Developmental rights reserved by the declarant;
  - An allocation to each unit of voting rights & liability to pay assessments;
  - Any restrictions on use & occupancy;
  - **Any other matters** the declarant considers appropriate.



# Declaration: Amendments

NRS 116.2117

- The declaration may be amended **only** by vote or agreement of units' owners of units to which at least a majority of the votes are allocated,
  - **UNLESS** the declaration specifies a **different percentage**.
- **NO** action to challenge the validity of an amendment may be brought more than one (1) year after the amendment is recorded.
- Every amendment **MUST** be recorded in every county in which any portion of the CIC exists and is effective only upon recordation.



# Declaration: Amendments continued

NRS 116.2117

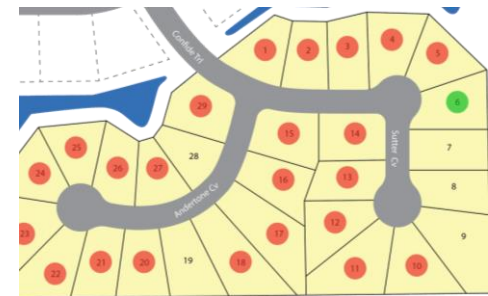
- Amendments to change the boundaries of any unit **MUST** be approved by
  - a majority of the units owners **and**
  - ALL owners who are affected.
- Amendments to materially restrict the permitted uses or who may occupy a unit **MAY NOT** be enforced against those who owned their units on the date of recordation of the amendment.



# Declaration: Unit Boundaries

NRS 116.2102

- Unit boundaries are defined by the Declaration
- **EXCEPT** as otherwise provided by the **declaration**:
  - If walls, floors or ceilings are designated as boundaries of a unit, all *interior* materials constituting the finished surfaces are a part of the unit, and all other portions of the walls, floors or ceilings are part of the common elements.



# Declaration: Limited Common Elements

NRS 116.2108

- Defined as a portion of the common elements allocated by the **declaration** for the exclusive use of 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; and
  - 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.
- **EXCEPT** as the **declaration** otherwise provides, a limited common element may be reallocated by an amendment to the declaration (**all** unit owners affected must consent).





# Declaration: Maintaining the Community

NRS 116.3107

- **EXCEPT** to the extent provided by the **declaration**,
  - the association has the **duty** to provide for the maintenance, repair and replacement of the common elements (each unit owner is responsible for his or her unit).
    - Each unit's owner **SHALL** afford to the association access through his or her unit reasonably necessary for those purposes.
    - If damage is inflicted to any unit through which access is taken, the association, if responsible, is liable for the prompt repair thereof.



# Declaration: Reserve Study

NRS 116.31152

- Finances the maintenance of the community
- The executive board **SHALL:**
  - At least once every 5 years, cause to be conducted a study of the reserves required to repair, replace and restore major components of the common elements; and
  - At least annually, review the results of the study to determine whether reserves are sufficient and make any adjustments to the association's funding plan necessary to cover costs.



**RESERVE  
STUDY**



# Declaration: Reserves

NRS 116.3115

➤ The association SHALL establish adequate reserves.

➤ “Adequately funded reserves” means:

NAC 116.425

- having funds sufficient to maintain the common elements
- at the level described in the governing documents
- without using funds from the operating account or
- imposing special reserve assessments.



# Declaration: Reserves continued

NRS 116.31144

- The executive board **SHALL** cause financial statements of the association to be audited or reviewed if the:
  - annual budget is **\$45,000 - \$75,000**, reviewed by an independent CPA every 5 years.
  - annual budget is **\$75,000 - \$150,000**, reviewed by an independent CPA every fiscal year.
  - annual budget is **\$150,000** or more, audited by an independent CPA every fiscal year.



# Declaration: Powers of the Association

NRS 116.3102

- Except as otherwise provided in NRS 116, and **subject to the provisions of the declaration**, the association (not all inclusive):
  - **SHALL** adopt and, **except as otherwise provided in the bylaws**, may amend bylaws and may adopt and amend rules and regulations.
  - **SHALL** adopt and may amend budgets in accordance with NRS 116.31151, may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with NRS 116.311395.



# Declaration: Powers of the Association continued

NRS 116.3102

- Except as otherwise provided in NRS 116, and **subject to the provisions of the declaration**, the association (not all inclusive):
  - **MAY** hire and discharge managing agents and other employees, agents and independent contractors.
  - **MAY** institute, defend or intervene in litigation or in arbitration
  - **MAY** make contracts and incur liabilities
  - **MAY** regulate the use, maintenance, repair, replacement and modification of the common elements.
  - **MAY** cause additional improvements to be made as part of the common elements.
  - **MAY** impose charges for late payment of assessments, construction penalties, and reasonable fines for violations of the governing documents



# Declaration: Alteration of Unit by Owner

NRS 116.2111

- **SUBJECT TO** the provisions of the declaration, a unit owner **MAY NOT** change the appearance of common elements, or the exterior appearance of a unit without permission of the association.
- Any improvement or alteration made that is visible from any other portion of the community **MUST** be added in accordance with the procedures set forth in the governing documents and must be selected or designed to be compatible with the style of the community.



# Declaration: Alteration of Unit by Owner continued

NRS 116.2111

- An association **MAY NOT** unreasonably:
  - Restrict, prohibit or otherwise impede the lawful rights of a unit owner to have reasonable access to his or her unit; or
  - Restrict, prohibit or withhold approval for a unit's owner to add to a unit:
    - Improvements necessary to improve access to the unit for any occupant who has a disability;
    - Additional locks to improve security; or
    - Shutters to improve security or reduce costs of energy.





# Declaration: Construction Penalties

NRS 116.310305

- The association **MAY** impose a construction penalty against a unit owner who fails to adhere to the schedule if the right to assess a construction penalty is set forth in the **declaration**.
- A unit owner shall adhere to a schedule required by the association for:
  - The completion of the design for improvement to a unit;
  - The commencement of construction;
  - The completion of construction; or
  - The issuance of any permit necessary.



# Declaration: Construction Penalties continued

NRS 116.310305

- The unit owner must receive notice of the alleged violation and be invited to a hearing on the alleged violation prior to any penalty being effective.
- **A construction penalty is NOT a fine.**
- The association **MAY** foreclose for a failure to adhere to a construction schedule.



# Declaration: Budgets

NRS 116.31151

- **UNLESS** the declaration imposes *more stringent* standards, the executive board **SHALL**, not less than 30 or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of the budget, along with the collection policy.
- The budget **MUST** include, without limitation:
  - The current estimated replacement cost and remaining useful life of each major component;
  - The current estimate of the amount of cash reserves necessary and amount set aside;
  - A statement as to whether the executive board has determined or anticipates the levy of one or more special assessments; and
  - A general statement describing the procedures used for the estimation and accumulation of cash reserves.



# Declaration: Surplus Funds

NRS 116.3114

- ***Unless otherwise provided in the declaration,***
  - any surplus funds of the association remaining after payment of the common expenses and any prepayment of reserves **MUST be** paid to the units' owners in proportion to their liabilities for common expenses.
    - Unless the **declaration** provides otherwise, surplus funds must be credited to the units' owners accounts.
    - If the **declaration** is silent on the matter, surplus funds must be credited to the units' owners accounts.



# Knowledge Check



1. Who may amend the declaration?
2. Define “Adequate Reserves”.
3. May an association prevent a unit owner from change the exterior appearance of their unit?
4. Is a construction penalty a “fine”?
5. Unless the declaration provides otherwise, what must be done with surplus funds?

# Other Governing Documents: Articles

NRS 116.3101(4)

- The association **MUST**:
  - Be organized as a profit or nonprofit corporation, association, limited-liability company, trust, partnership or any other form of organization authorized by Nevada law;
  - Include in its articles of incorporation that the purpose of the corporation is to operate as an association pursuant to NRS 116;
  - Contain in its name the words “common-interest community,” “community association,” “master association,” “homeowners’ association” or “unit-owners’ association;” and
  - Comply with the applicable corporate law (such as NRS 82) when filing with the Secretary of State’s office.



# Other Governing Documents: Bylaws

NRS 116.3106

- Subject to provisions of the declaration, the association may amend bylaws.
- The bylaws of the association **MUST**:
  - Provide the number of members of the executive board and the titles of the officers;
  - Provide for election by the board of a president, treasurer, secretary and any other officers;
  - Specify the qualifications, powers and duties, terms of office and manner of electing and removing officers and filling vacancies;
  - Specify the powers that the board/officers may delegate to other persons or to a community manager;
  - Specify the officers who may prepare, execute, certify and record amendments to the declaration on behalf of the association;
  - Provide procedural rules for conducting meetings;



# Other Governing Documents: Bylaws continued

NRS 116.3106

- The bylaws of the association **MUST**:
  - Specify a method for the units' owners to amend the bylaws;
  - Provide procedural rules for conducting elections;
  - Contain any provision necessary to satisfy NRS 116 or the declaration concerning meetings, voting, quorums, etc.; and
  - Provide for any matter required by law other than NRS 116 to appear in the bylaws of organizations of the same type.
- The bylaws **may** provide for **any other** necessary or appropriate matters.
- The bylaws **MUST** be written in plain English.





# Other Governing Documents: Rules & Regulations

NRS 116.31065

- Subject to provisions of the declaration, the association may adopt and amend rules and regulations.
- The rules adopted by an association:
  - **MUST** be reasonably related to the purpose for which they are adopted;
  - **MUST** be sufficiently explicit in their prohibition, direction or limitation to inform a person of any action or omission required for compliance;
  - **MUST NOT** be adopted to evade any obligation of the association;

# Other Governing Documents: Rules & Regulations

continued

NRS 116.31065

- The rules adopted by an association:
  - **MUST** be **consistent** with the **governing documents** and **MUST NOT arbitrarily** restrict conduct or require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association.
  - **MUST** be uniformly enforced under the same or similar circumstances against all units' owners. **Any rule that is not uniformly enforced may not be enforced against any unit's owner.**
  - **MAY** be enforced by the association through the imposition of a fine, if the association complies with NRS 116.31031 (fining process).

# Other Governing Documents: Threats & Harassment

NRS 116.31184

- No one in a CIC shall willfully and without legal authority threaten, harass or otherwise engage in a course of conduct against any other person in the community which:
  - Causes harm or serious emotional distress; or
  - Creates a hostile environment.
- A person who violates this provision is guilty of a misdemeanor **NOT** enforceable by the Division.

NRS 116.745

- In order to hold the harasser accountable, the **governing documents** of an association **MAY** include a provision stating that any violent, abusive or threatening misconduct within the association is prohibited and such activity may be subject to a fine or other sanctions.



# Meetings

NRS 116.31083

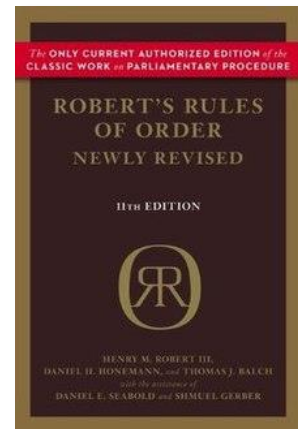
- A meeting of the executive board **MUST** be held at least once every quarter, and
  - not less than once every 100 days, and at a time other than during standard business hours at least twice annually (**must** be audio recorded).
    - **UNLESS** the bylaws require a *longer* period of notice, the secretary or other officer specified **SHALL**, not less than 10 days prior, cause notice of the meeting to be given to unit owners, stating the time and place and indicating where and when copies of the agenda can be obtained.
    - At least once every quarter, not less than once every 100 days, **UNLESS** the declaration or bylaws of the association impose *more stringent standards*, the board shall review at a meeting, the financial information of the association.



# Meetings: Procedures

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.



# Meetings: Quorum

NRS 116.3109

- **EXECUTIVE BOARD MEETING** – *Unless the governing documents specify a larger number* a quorum of the executive board is present
  - **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.

# Meetings: Quorum continued

NRS 116.3109

- **UNIT OWNER MEETING – EXCEPT** when the **governing documents** **provide otherwise**, a quorum is present throughout any meeting of the units' owners if persons entitled to cast 20% of the votes:
  - Are present in person;
  - Are present by proxy;
  - Have cast absentee ballots; or
  - Are present by any combination of the above.
    - The **governing documents** may limit the methods by which unit owners can vote (NRS 116.311).



# Meetings: Quorum continued

NRS 116.3109

- If the governing documents have a quorum requirement that is greater than 20% and a quorum cannot be met,
  - at a subsequent meeting (held not less than 48 hours or more than 30 days from the meeting), the quorum requirement defaults to 20%.
- Remember, a quorum of the unit owners is **NOT** required:
  - For the election or removal (35% in favor) of any member of the executive board.
  - To ratify the proposed budget.
  - To approve the meeting minutes of the prior annual meeting and any special meetings of the units' owners (NRS 116.3108[10]).



# Elections

NRS 116.31034

- Unit owners **SHALL** elect an executive board of at least **3 members**, all of whom **MUST** be unit owners.
- The term of office of a member of the executive board **MAY NOT** exceed 3 years.
  - Unless the **governing documents** provide otherwise, there is **no limitation** on the number of terms that a person may serve on the board.
- The governing documents of the association **MUST** provide for terms of office that are staggered so that, an equal number of candidates are elected at each election to extent possible (if longer than 1 year terms).



# Elections continued

NRS 116.31034

- A unit owner **MAY NOT** be a candidate for the board if he or she:
  - Resides with, is domestic partners with, or is related by blood, adoption or marriage to another person who is also a member of the board (unless duly elected);
  - Stands to gain any personal profit or compensation of any kind from the association (NRS 116.31187);
  - Or the unit owner's spouse, parent or child by blood, marriage or adoption is the community manager for that association.



# Elections continued

NRS 116.31034

- **Not less** than 30 days before the preparation of ballots for an election, the association **SHALL** cause notice to be given (nomination/eligibility and disclosure forms).
- If the number of candidates is greater than the number of vacancies,
  - the association **SHALL** prepare and mail (prepaid by U.S. mail) a return envelope & secret written ballot with candidate disclosure statements to each member of the association.
- Each unit owner **MUST** be provided with at least 15 days to return the secret written ballot to the association.
  - Incumbent members and each candidate **MAY NOT** possess, be given access to or participate in the opening or counting of the secret written ballots.



# Elections continued

NRS 116.31034

- Secret written ballots **MUST** be opened and counted at the annual meeting of the units' owners (or duly elected members announced).
- Member of the executive board and officers of the association **SHALL** take office upon election.
- The executive board **SHALL** elect the officers of the association.
  - **UNLESS** the governing documents provide otherwise, officers of the association are not required to be unit owners.



# Violations: Of Governing Documents

NRS 116.31031

- Except as otherwise provided in this section, if a unit owner or guest violates any provision of the governing documents of an association, the executive board **MAY**, if the **governing documents** so provide:
  - prohibit voting,
  - prohibit access to common elements,
  - impose a fine, or
  - send a courtesy notice.



# Violations: Of Governing Documents continued

NRS 116.31031

- The executive board **MAY NOT** impose any fine for a violation of the governing documents unless the violator has been provided with written notice including:
  - The alleged violation in detail, a clear and detailed photograph when possible, a proposed action to cure, the amount of the fine, and the date, time and location for a hearing.



# Violations: Of Governing Documents continued

NRS 116.31031

- If the association adopts a policy imposing fines for any violations, the officer specified in the bylaws **SHALL** prepare and cause to be sent by U.S. mail to each unit a schedule of the fines that may be imposed.
- A fine (not for health and safety) **MUST NOT** exceed \$100 for each violation or a total amount of \$1,000, whichever is less.
- A member of the executive board **SHALL NOT** participate in any hearing or cast any vote relating to a fine if the member has not paid all assessments.
- The association **SHALL** establish a compliance account to account for fines, which must be separate from any account established for assessments (NRS 116.310315).



# Violations: Of Governing Documents continued

- If a board member is suspected of:
  - Violating NRS 116 (**EXCEPT** NRS 116.31184 – threats and harassment);
    - A unit owner can file a complaint using Intervention Affidavit form 530.
  - Misinterpreting the association's governing documents;
    - A unit owner can file an Alternative Dispute Resolution claim on form 520.





# Enforcement

NRS 116.3102(3)&(4)

- The executive board **MAY determine** whether to take enforcement action for a violation of the governing documents, including for unpaid assessments or other claim made by or against it.
- The executive board **does not** have a duty to take enforcement action if it determines that, under the **facts and circumstances presented**:
  - The association's legal position does not justify taking any or further enforcement action;
  - The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;
  - Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or
  - It is not in the association's best interests to pursue an enforcement action.

# Enforcement continued

NRS 116.3102(3)&(4)

- The executive board's decision not to pursue enforcement under **one set of circumstances** does not prevent the executive board from taking enforcement action **under another set of circumstances**, but
  - the executive board **MAY NOT** be arbitrary or capricious in taking enforcement action.



# Knowledge Check



1. In which governing document would a Unit owner find the terms of office for a board member?
2. Who may amend or change the bylaws?
3. Association meetings must be conducted in accordance with what?
4. May unit owners send a proxy to represent them at a unit owners meeting?
5. Is an executive board required to take action against a unit owner for a possible violation of the governing documents?

# Conclusion!



- Key Phrases
- Priority of Governance
- Governing Documents Defined
- Declaration
- Other Governing Docs
- Meetings
- Elections
- Violations
- Enforcement

# 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/)