

State of Nevada

Department of Business & Industry

Real Estate Division

Office of the Ombudsman for Owners In
Common-Interest Communities and
Condominium Hotels



Office of the Ombudsman for Owners in
Common-Interest Communities
and Condominium Hotels

Our Mission:

To provide a neutral and fair venue to assist homeowners in handling issues that may arise while living in a common-interest community.



An Overview of HOA Living

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Program Training Officer

Disclaimer

This is a general education class based on NRS 116 and related laws and regulations. It is NOT intended to provide legal advice. The instructor CANNOT comment on specific cases.



Learning Objectives

- ▶ Upon completion of this class, participants will have a basic understand of the following:
 - HOA Living
 - The role and responsibilities of:
 - Unit Owners
 - Board Members and Officers
 - Nevada Law (NRS 116)
 - Governing Documents



HOA Living

- ▶ An HOA is...
 - A self-governing organization of homeowners
 - Designed to protect, maintain and enhance the beauty and value of real property
 - Defined and explained in law (NRS 116)
 - Also known as a common-interest community
- ▶ An HOA provides...
 - A desirable lifestyle
 - Common areas for owner's enjoyment



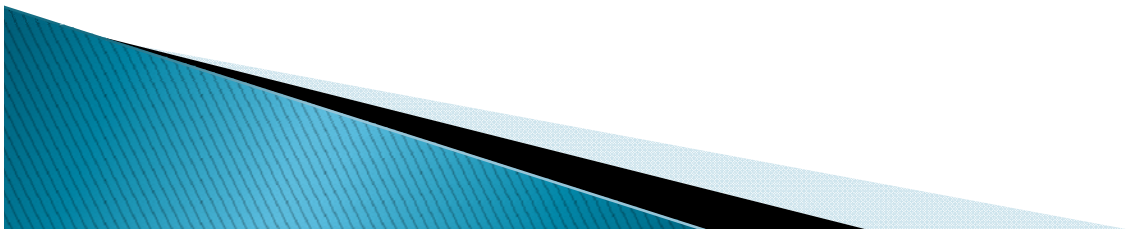
Terminology

- ▶ Common-Interest Community (CIC)
 - Homeowners Association (HOA) or simply, Association
- ▶ Unit Owner
 - Home Owner, Owner, Member
- ▶ Board of Directors
 - Executive Board, Board, Directors
- ▶ Governing Documents
 - Covenants, Conditions and Restrictions, (CC&Rs, the Declaration)
 - Articles of Incorporation
 - Bylaws
 - Rules, Resolutions, Procedures



In Nevada...

- ▶ Approximately
 - 3,000 Associations
 - 486,000 units (homes)
 - 1.2 million people
 - 79% located in Southern Nevada, primarily Clark County
 - 19% located Northern Nevada, primarily in Washoe and Douglas Counties and Carson City area
 - 2% located in rural areas



A Few Nevada Laws....

- ▶ NRS 116
 - Common-Interest Communities
- ▶ NRS 116A
 - Community Association Managers
- ▶ NRS 116B
 - Condominium Hotels
- ▶ NAC 116, 116A
 - Nevada Administration Code
- ▶ NRS 81, 82
 - Corporate Law
- ▶ NRS 38
 - Alternative Dispute Resolution



NRS 116

- ▶ Article 1 – Definitions, General Provisions, Applicability
 - NRS 116.001 – Nrs 116.1209
- ▶ Article 2 – Creation, Alteration, & Termination of Common-Interest Communities
 - NRS 116.2101 – NRS 116.2124
- ▶ **Article 3 – Management of CICs**
 - NRS 116.3101 – NRS 116.350
- ▶ Article 4 – Protection of Purchasers
 - NRS 116.4101 – NRS 116.412
- ▶ Administration & Enforcement
 - NRS 116.600 – NRS 116.680
- ▶ Investigation of Violations
 - NRS 116.745 – NRS 116.795



NRS 116, Article 3

- ▶ General Provisions
 - 116.3101–116.31073
- ▶ Meetings & Voting
 - 116.31075–116.31107
- ▶ Liabilities, Insurance and Fiscal Affairs
 - 116.31111–116.31158
- ▶ Liens
 - 116.31116–116.31117
- ▶ Books, Records and Other Documents
 - 116.31175–116.31118
- ▶ Miscellaneous Rights, Duties and Restrictions
 - 116.31183–116.359



What is the HOA's purpose?

- ▶ Protect, maintain and enhance the assets of the Association.
- ▶ Assets include...
 - Common areas
 - Entry, gates, guardhouses
 - Pool, spa, clubhouse, playground, golf course
 - Parks, trails, trees, bushes, shrubs
 - Roads, streetlights, walls, fences
 - Landscaping
 - And more....



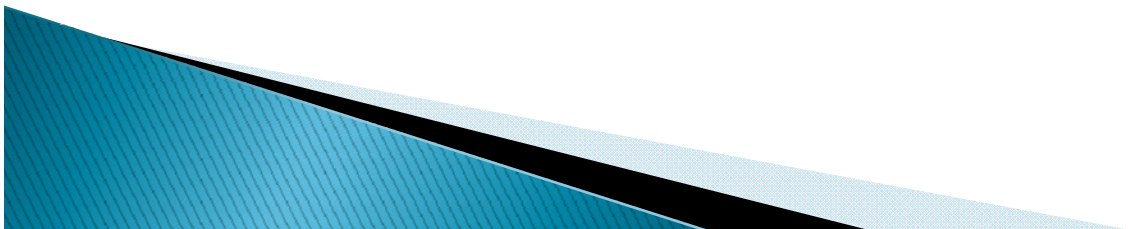
Business Functions

- ▶ Day to day operations
 - Receive payments, pay the bills
 - Bookkeeping
 - Records Management
 - Contract Management
 - Maintenance–Urgent and planned
 - Correspondence
 - Complaints
- ▶ Long and short term planning
 - Annual budget management
 - Reserve Study



Executive Board

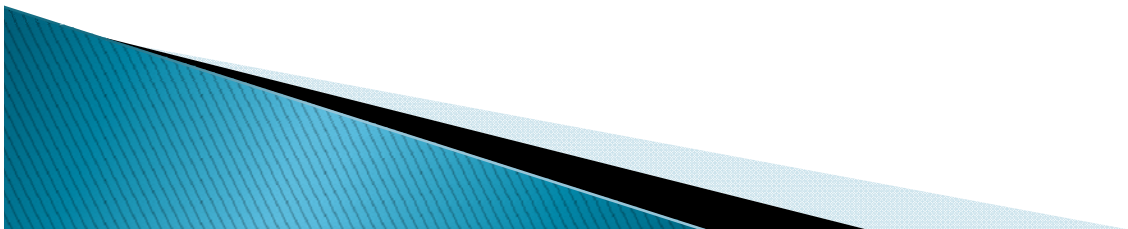
- ▶ Elected by homeowners
 - The Board elects officers (President, Secretary...)
- ▶ Maximum term – 3 years
 - May be elected to successive terms
- ▶ Subject to recall with or without cause
 - Petition signed by 10% of owners
 - Recall election with at least 35% AND a majority of votes cast in support



Executive Board

▶ Fiduciary Duty

- Act in the best interest of the association.
- NRS 116.3103
 - [M]embers of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation subject to the business-judgment rule.



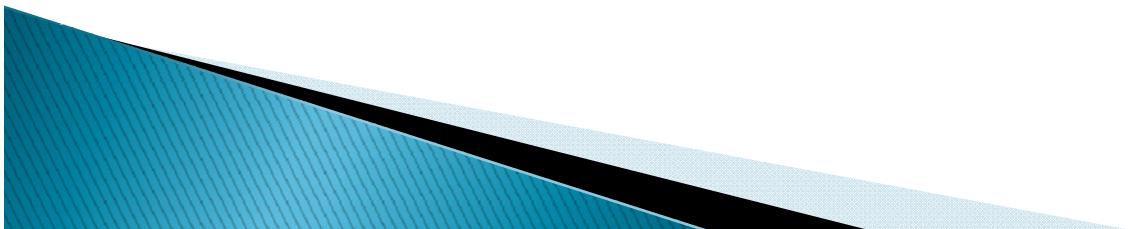
Executive Board

- ▶ Business–judgment rule
 - Would an ordinarily prudent person make a similar decision under similar circumstances?
- ▶ Duty of Care
 - Exercise ordinary and reasonable care
 - Identify risks and adopt policies to prevent harm
 - Failure to act may be a breach
- ▶ Disclosure
 - Disclose any and all potential/actual conflicts of interest
 - A director cannot provide paid services to the association
 - Disclose relationships with potential providers
 - Do not accept gifts, rewards, incentives, gratuities



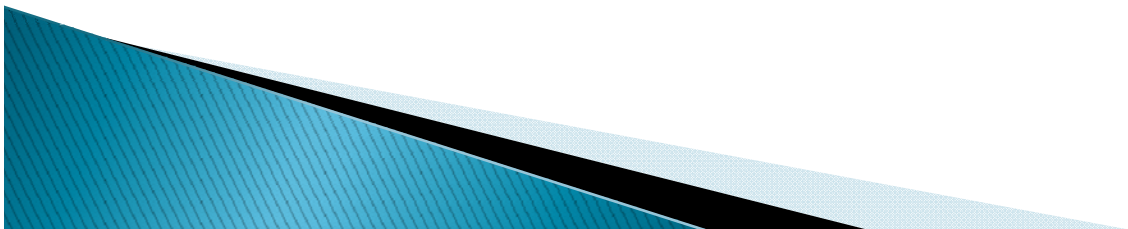
Executive Board

- ▶ Responsible for overall management of the Association.
- ▶ Meets at least every 100 days.
- ▶ Two meetings per year must be outside of normal business hours.
- ▶ Meeting notice sent to all owners at least 10 days before the meeting.
- ▶ Meeting agenda available before the meeting.



Executive Board Meetings

- ▶ Meeting agenda available before the meeting.
- ▶ Action items clearly noted.
- ▶ Owners opportunity to speak
 - Start of meeting – limited to agenda items
 - End of meeting – open to any association issue
- ▶ Meetings must be recorded
- ▶ Minutes must be taken



Unit Owner Rights – Records

▶ Business Records

- Meeting notice and agenda
- Meeting minutes/audio recording
- Annual Budget for ratification
- Association financial statements
- Reserve studies
- Audits, contracts, etc..

▶ Governing Documents

- Covenants, Conditions & Restrictions (CC&Rs)
- Bylaws
- Articles of Incorporation
- Rules
- Policies



Unit Owner Rights – Records

- ▶ Business Records
 - IF available electronically, no charge
 - Paper copies – \$0.25 per page for the first 10 pages, \$0.10 per page thereafter.
 - Access to review records – \$10/hour
- ▶ Physical location of records
 - Not more than 60 miles from the community
- ▶ Record retention
 - Minutes – forever (termination of the CIC)
 - Other documents – 10 years



Governing Documents

- ▶ Covenants, Conditions, & Restrictions–CC&Rs
 - HOA “Constitution”; the general scope of the CIC
- ▶ Articles of Incorporation
 - Creates the corporate structure
- ▶ Bylaws
 - Defines the internal rules of the HOA
- ▶ Rules
 - Specific requirements residents and owners must follow
- ▶ Policies
 - Assessments, fees, fine schedules, interest rates for late payments, any other cost billed to the unit owner



Unit Owner Rights –Violations

NRS 116.31031

- ▶ Violation of the governing documents
 - 30 day's written notice of the specific violation
 - Written notice of the details of the violation, the amount of the fine, date, time and location of the hearing
 - An opportunity to contest the violation at the hearing
 - If violation is upheld, a fine not to exceed \$100/violation or a maximum of \$1,000, whichever is less
 - If violation not cured in 14 days, it becomes a continuing violation. Fines can then be assessed every 7 days
- ▶ Other sanctions
 - Revocation of voting rights for a specified time period
 - Revocation of the right to use common elements



Unit Owner Rights – Dispute Resolution

- ▶ Right to Due Process
 - Request an open or closed hearing regarding violations
 - Attend all hearings/discussions except deliberations
 - Legal representation
- ▶ Office of the Ombudsman
 - Intervention Affidavit (Form 530)
 - Violations of NRS 116 or association governing documents
 - Statement of Fact (Form 514a)
 - Community Managers or other professional
 - Alternative Dispute Resolution (ADR–Form 520)
 - Violations of the governing documents



Unit Owner Rights

- ▶ Peaceful enjoyment
 - Display the flag
 - Exhibit political signs
 - Make certain improvements
 - Install drought-tolerant landscaping
 - Install wind and solar energy systems
 - Install rolling shutters
 - Install additional locks
 - Install access systems for disabled persons
 - Transfer rights to tenants (use of the unit & common areas)



Unit Owner Rights– Tenants/Guests

- ▶ Occupancy by tenants may be limited
 - Restrictions in the governing documents may limit percentage of units leased/rented. Exceptions may be granted.
- ▶ Unit owner has the right to have guests. Guests are expected to abide by the Governing Documents.
- ▶ If the unit owner knowingly allows a tenant or guest to violate the governing documents, the association may impose sanctions against the owner, as well as the tenant or guest.



Unit Owner Responsibilities

- ▶ Read & abide by governing documents
 - CC&Rs
 - Bylaws
 - Rules
 - Policies
- ▶ Pay assessments/fines in full and on time
- ▶ Provide resale package
 - Obtained from Association
- ▶ Be a good neighbor (Not required by law but highly recommended)



QUESTIONS?

- ▶ Web Site
 - www.red.state.nv.us
- ▶ Phone
 - 702.486.4480/877.829.9907/775.687.4280
- ▶ FAX
 - 702.486.4520/775.687.4868
- ▶ E-Mail
 - CICOmbudsman@red.state.nv.us
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