

BOARD SUCCESS: BOARD RESPONSIBILITY

A woman in a white shirt and light blue pants is standing at the front of a room, presenting to a group of people. She is gesturing with her hands. In the foreground, the backs of three people's heads are visible: a woman with dark curly hair on the left, a man with short dark hair in the center, and a woman with dark curly hair on the right who has her right hand raised. They are all looking towards the presenter. In the background, there is a whiteboard with some faint writing, including the letters 'S W' and 'Q T'.

BEING A BOARD MEMBER REQUIRES:

- *Being A Fiduciary*
- *Following the Business Judgement Rule*
- *Avoiding Conflicts of Interest*
- *Acting as a group, not individually*

Laws & Documents that Govern

Homeowners' associations operate on democratic principles. Members of the community (unit owners) have the power to elect the Members of the board. Once elected, it is then the board who makes the decisions on behalf of the association and its members.

Board members are required to read and understand (to the best of their ability) the laws governing Common Interest Communities (CICs); primarily [NRS 116](#) and [NAC 116](#). NRS is *Nevada Revised Statutes*, which are the codified laws of the State of Nevada. NAC, is the *Nevada Administrative Code*, the regulations that clarify and govern how these laws are to be enforced. NRS chapter 116 pertains exclusively to common-interest ownership. [Chapter 116A](#) deals specifically with the regulation of community managers and reserve study specialists. The Office of the Ombudsman for CICs has developed this manual to assist board members in understanding their obligations as defined by NRS and NAC 116.

NEVADA: NRS & NAC

Specific State Statutes of Interest (Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC):

1. **NRS 116 – Common Interest Ownership (Uniform Act)**
2. NRS 116A – Regulation of CAMs and Other Personnel
3. NAC 116 – Common Interest Ownership
4. NAC 116A – Regulation of CAM and Other Personnel

NRS 116 – Where to find: <http://www.leg.state.nv.us/NRS/NRS-116.Html>

(the site offers a search function, just type in a key word for what you are looking for)

Laws & Documents that Govern

The actions and decisions of the Board of Directors are directed by both the law and the governing documents of the Association.

*Laws that Govern:

- Federal Laws
- State Laws
- Local Laws

Governing Documents:

- Declarations of Covenants Conditions & Restrictions (CCRs)
- Articles of Incorporation
- Bylaws
- Rules, Resolutions

****Laws may supersede anything written within the Association's Governing Documents***

Association Governing Documents

Association Governing Documents- Create the legal foundation for a CIC:

- 1. Declaration of Covenants, Conditions & Restrictions (CC&R)** – Recorded. Brings the Association into existence. Is the basic ‘law’ for the Association. Empowers the Board. Mandates the Assessment and fiscal requirements. Frequently contains property use and restrictions. Maps, Plats or Plans are also part of the CCRs
- 2. Articles of Incorporation** – Recorded. Creates the business entity
- 3. Bylaws** – Often not recorded. Provides the administrative duties. Discusses procedures for Board & Community. Describes Association Officers and their duties, quorum for meetings, voting procedures, etc.

*Amendments of these documents usually require approval by a majority plus percentage of the membership as indicated in the documents themselves.

Association Governing Documents

Other Governing Documents:

Rules & Regulations— Created by the Board. The Rules shall not be in conflict with CCRs, Bylaws, Articles or any Federal or State laws but can reiterate existing use restrictions from the CCRs, can further clarify existing restrictions and can have additional items added as needed for the harmony and benefit of the Association.

Architectural Rules – May be incorporated within the CCRs, or may be a separate document as dictated by the CCRs, or a combination of both. The CCRs may state who has the authority to create this document and/or who has the authority to oversee architectural requirements.

Governing Documents: RESOLUTIONS

Resolutions – A formal policy. Commonly used to expand upon something already stated in another document or establishes a new policy on something not yet addressed. Often requires only the approval by the Board at a meeting.

There are four (4) resolutions that every association should have:

- 1. Collection Policy**
- 2. Parliamentary Procedure Resolution**
- 3. Investment Policy**
- 4. Rules Enforcement Policy & Fine Schedule**
(does not apply to LMAs!)

What is an Association Board

The Board Acts on behalf of the Association (NRS 116.3103)

- The Board is elected by the Members
- Officers of the Board; President, VP, Secretary, Treasurer, are selected by the Board (Officer positions are dictated in the Bylaws)

Board Members are, per Statute and the governing documents:

- Fiduciaries
- Required to Exercise Ordinary and Reasonable Care
- Subject to the Business Judgement Rule
- Subject to Conflict of Interest Rules

Board's Role: NRS 116.3103

The Board must ensure that the Association is conducting its business in accordance with the Nevada Revised Statutes (NRS) as well as the stipulations of the governing documents.

NRS 116.3103 Power of executive board to act on behalf of association; members and officers are fiduciaries; duty of care; application of business-judgment rule and conflict of interest rules; limitations on power.

1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board acts on behalf of the association. In the performance of their duties, the officers and members 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.** Officers and members of the executive board:

- (a) Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule; and**
- (b) Are subject to conflict-of-interest rules governing the officers and directors of a nonprofit corporation organized under the law of this State.**

WHAT IS A FIDUCIARY?

FIDUCIARY MEANS:

- ❖ Involves being in a position of confidence and trust
- ❖ A fiduciary owes a responsibility to the association and its members
- ❖ Must put personal needs and desires aside for the greater need (putting personal agendas aside)
- ❖ Must act in good faith and in the best interests of the association and the **entire** membership

WHAT IS ORDINARY CARE?

ORDINARY CARE MEANS:

The care, diligence and skill that an ordinarily prudent director in a similar position and under similar circumstances, would reasonably be expected to exercise.

Business Judgment Rule

- Act in good faith
- Fair dealing
- Act within limits of expertise
- Defer to your experts!
- Act lawfully & with ethical intent
- Maintain Confidentiality



Board's Role: Responsibilities

PRESERVE * MAINTAIN * ENHANCE

Though the board typically utilizes management to assist with many of the below tasks, the board is ultimately responsible for:

- Management of Association – Setting goals, directives, policies and procedures (high view)
- Enforcement of Governing Documents
- Creation of Association Rules, Policies and Resolutions
- Disciplinary action for rule violations, including fining and liens and rendering decisions on homeowner appeals
- Contracting for services, goods & insurance on behalf of the Association
- Maintenance, repair and possible improvement of common areas and amenities
- Preparation of the annual budget and financials
- Completing a full Reserve Study at least every 5-years with annual updates
- Assessment Collection
- Approving payments for services rendered and goods purchased

Board's Role: Work with your CAM

INVOLVE YOUR CAM!

Your CAM is the “hub of the wheel”. Not only does your licensed CAM have an understanding of the industry, the CAM has additional history and information on several issues specific to your association that can assist the board. The CAM will record information and respond to owners as required by NRS.

If a resident addresses a board member directly with an issue, listen, and respond by confirming they were heard, and request that they put their concern in writing to the CAM. The CAM can then handle the concern, and if needed, will forward to the entire board.

REMEMBER THAT THE BOARD ACTS AS A GROUP. ONE PERSON CAN NOT MAKE DECISIONS OR TAKE ACTION FOR THE GROUP

Role: Community Manager (CAM)

ROLE OF THE COMMUNITY ASSOCIATION MANAGER (CAM)

COMMUNITY ASSOCIATION MANAGER

The role of the Community Association Manager (CAM) is to partner with the Board of Directors to oversee the operations of the Association. The CAM implements the policies and operations of the association within the policies and guidelines set by the Board, the Association's Governing Documents, and governing laws. For efficiency, the Board President or their designee is generally the Manager's primary point of contact.

Best Practices for a Successful Board

- ✓ Come to the meetings **prepared** – Review the meeting packet in advance.
- ✓ Ask **questions** ahead of time. **Avoid** surprising other board members and/or the CAM at the meeting.
- ✓ Maintain a **professional** demeanor. You may not always agree, but you can agree to disagree respectfully and professionally.
- ✓ **Accept** and **support** the President as the leader. (Reminder, the President is the Leader but not “the Boss”. The Boss is the collective Board!)
- ✓ **Put Personal issues aside** (fiduciary duty!).
- ✓ Encourage how others participate by being a good **example**.
- ✓ Be open and fair, remember to **listen**.
- ✓ Keep a **healthy perspective** and have a little **fun**!



BOARDS MAY NOT (NAC 116.405)

Members of the executive board must be careful not to:

- **Act outside the scope of the authority granted in the governing documents;**
- **Act for reasons of self-interest**, gain, prejudice or revenge;
- Commit an act or omission which amounts to incompetence, negligence or gross negligence;
- **Disclose confidential information** without the consent of the person to whom the information relates;
- **Impede or otherwise interfere** with an investigation of the Nevada Real Estate Division (NRED) by failing to comply with a request, providing false information or concealing facts [NAC 116.405].`

BOARD MEMBERS SHOULD

MEMBERS OF THE BOARD SHOULD:

- **Hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association** (at least once every quarter by NRS). Refer to the Bylaws for meeting frequency direction.
- **Obtain, when practicable, at least three bids** from reputable service providers who possess the proper licensing before purchasing any service for use by the association (NAC 116.405). And, if an association bids, the board must follow the requirements set for in NRS 116.31086.
- **Consult with appropriate professionals as necessary before making any major decision affecting the association** or the common elements (Business Judgement Rule).
- Comply with laws and requirements of the governing documents regarding financial and accounting practices including fair enforcement of the collection policies of the association [NAC 116.405]. An approved collection policy is a requirement of Statute!

CIC MUST BE MAINTAINED

Any portion of the CIC which is damaged or destroyed must be repaired or replaced promptly by the association *[NRS 116.3113]*

Common elements enjoyed by all unit owners within a CIC must be cared for and maintained. For this reason, each unit owner contributes to the funds (operating and reserve) used to care for these elements by paying monthly dues (assessments). *[NRS 116.3115]*

PERSONAL PROFIT

CONFLICT OF INTEREST!

A member of an executive board or an officer of an association shall not:

(a) Enter into a contract or renew a contract with the association to provide financing, goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing financing, goods or services to the association.

[NRS 116.31187]

PERSONAL PROFIT

No member of an executive board or officer of an association shall receive, in the aggregate, any gift, incentive, gratuity, reward or other item of value in any calendar year which exceeds the sum of \$100 [NAC 116.480].

On or before the annual distribution to each unit's owner of the budgets of the association, each manager, member and officer shall deliver to the executive board a statement of any gifts, incentives, gratuities, rewards or other items of value received which exceed \$15.

RETALIATION AND HARASSMENT

Per NRS 116.31183 and NRS 116.31184:

An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has: complained in good faith about any alleged violation of the association; recommended the selection or replacement of an attorney, community manager or vendor; or requested in good faith to review the books, records or other papers of the association.

RETALIATION AND HARASSMENT

Per NRS 116.31183 and NRS 116.31184,

No person shall willfully and without legal authority threaten, harass or otherwise engage in a course of conduct against any other person which causes harm or serious emotional distress, or creates a hostile environment for that person.

A person who violates this provision is guilty of a misdemeanor enforceable by a law enforcement agency.