

State of Nevada
Department of Business & Industry
Real Estate Division
Common-Interest Communities and
Condominium Hotels Program





Governing Documents

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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 understand...
 - What's included in the HOA's governing documents
 - What each governing document is designed to accomplish
 - Why it's important for owners to read, understand and comply with their HOA's governing documents
 - The relationship between the governing documents and NRS 116 and NAC 116



Governing Documents

NRS 116.049

- ▶ The documents that specify the purpose of the association, its powers, how it conducts business, and the activities allowed or prohibited within its boundaries
 - Articles of Incorporation
 - Bylaws
 - CC&Rs (declaration)
 - Rules, Policies, Procedures
 - Any other documents that govern the operation of the CIC/HOA



Governing Documents

- ▶ Articles of Incorporation
 - Creates the corporate structure (NRS 82)
 - Filed with the Secretary of State
- ▶ Bylaws
 - Describes the internal rules/procedures
- ▶ Declaration (CC&Rs)
 - Creates the CIC and the rules it lives by
 - Filed with the county by the declarant



Rules– NRS 116.31065

- ▶ **Must be:**
 - reasonably related to the purpose for which they are adopted
 - sufficiently explicit in their prohibition, direction or limitation to inform a person of any action or omission required for compliance
 - consistent with the governing documents
 - uniformly enforced
- ▶ **Must not**
 - be adopted to evade obligations of the association
 - arbitrarily restrict conduct
 - require capital improvement construction not required by governing documents
- ▶ **Violations may result in fines**



Resale Package or Public Offering– Disclosures to buyers

- ▶ NRS 116.4108, 4109
- ▶ Governing documents
- ▶ Certificate
- ▶ Demand Statement
 - Current financial statements
 - Monthly assessments, unpaid assessments
 - Outstanding fines, fees
 - Late charges or penalties, interest rate
 - Collection policy
 - Pending legal action?



The Big Three

- ▶ **NRS** – Nevada Revised Statutes
 - NRS 116 – Common-Interest Ownership
 - NRS 116A – Community Association Managers
 - NRS 116B – Condominium Hotels
- ▶ **NAC** – Nevada Administrative Code
 - NAC116
 - NAC 116A
- ▶ **Governing Documents**

- ▶ **WHICH DO YOU FOLLOW?**



Which do you follow?

- ▶ Follow NRS unless the statute defers to Governing Documents
- ▶ For example, Governing Documents require board meetings twice a year but...
- ▶ NRS 116.31083 requires the board to meet not less than every 100 days (once per quarter)
- ▶ FOLLOW NRS



Which do you follow?

- ▶ NRS 116.31083 requires the board to meet not less than every 100 days (once per quarter)
- ▶ Governing Documents require monthly board meetings
- ▶ FOLLOW THE GOVERNING DOCUMENTS



Amending the Governing Documents

- ▶ The documents themselves define the process for amendment
- ▶ Board action
 - Percentage of affirmative votes required
- ▶ Unit owner vote
 - Percentage of affirmative votes required
- ▶ Others?
 - Lenders, banks, mortgage holders
- ▶ NRS 116.12065
 - Owners must be notified within 30 days after adoption/recordation



Violations

- ▶ By Unit Owners
 - NRS 116. Owners can be fined.
- ▶ By the Executive Board
 - NRS 116. Owners can have alleged violations placed on the agenda for discussion/action.
- ▶ Intervention Affidavit
- ▶ Alternative Dispute Resolution (ADR)
- ▶ Statement of Fact
 - Community Managers
 - Reserve Study Specialists



Summary

- ▶ The association's governing documents define the community..
 - Declaration
 - Articles of Incorporation
 - Bylaws, Rules, Policies and Procedures
- ▶ NRS 116, 116A
- ▶ NAC 116, 116A
- ▶ All work together to govern the community
- ▶ Follow NRS/NAC unless they defer to the governing documents



Questions?

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