

community interests

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Nevada Revised Statutes (NRS) vs. Nevada Administrative Code (NAC)

By William Paul Wright, Esq.

We in the Common-Interest Community (CIC) industry often cite NRS Chapter 116 in discussion, but you do not often hear about NAC Chapter 116. As a general rule, this is probably due to the fact that NRS supersedes NAC when in conflict, as NRS is the superior law in the hierarchy of state law. However, both the NRS and NAC are law. Board members are required to certify on Real Estate Division Form 602 that they have read and understand, to the best of their ability, both the NRS and NAC. NRS 116A.630 requires managers to keep abreast of the law. Therefore, both need to be studied and understood to get a full picture of the legal landscape with regard to CICs.

I like to compare the differences between NRS and NAC with the differences between CC&Rs and Rules. The Nevada Legislature revises the NRS by enacting bills. The process is long, difficult, and usually only occurs every two years. Likewise, CC&R revisions are difficult to perform in that you need a majority, or supermajority, of unit owners to agree (and sometimes the consent of holders of security interests, and/or their insurers or guarantors), and the balloting process can be long.

The NAC is adopted and revised by the administrative agency authorized under a particular NRS Chapter instead of the Legislature; in the case of NAC Chapter 116, it is

the Commission for Common-Interest Communities and Condominium Hotels (Commission). The Rules of an association are revised by the Board of Directors instead of the Membership. Both the NRS and CC&Rs are written in a manner that allows the NAC, or Rules, respectively, to further clarify, expand upon, or define the NRS or CC&Rs. In fact, the NRS and CC&Rs frequently refer to the adoption of the NAC or Rules for that very purpose.

For example, while NRS 116.3103 provides that the members of a board are fiduciaries in the performance of their duties, NAC 116.405 outlines the factors which the Commission uses to determine if a director has properly

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fulfilled their fiduciary duty. While NRS 116.31152 requires reserve studies to be conducted, NAC 116.425 outlines the required contents of the study. While NRS 116.310313 states that an association may charge reasonable fees for collection of assessments, NAC 116.470 lists the fees considered reasonable that may be charged.

Another important example of the interplay between NRS and NAC is in the review of association records. As you know, NRS 116.31175(1) states that: "... the executive board 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 ..." However, do you know the definition of "regular working hours"?

Statutes do not capitalize terms that have definitions (as is usual for CC&Rs or Bylaws), and "regular working hours" sounds very much like "business hours," but it is not. NAC 116.440 states that: "As used in NRS 116.31175, "regular working hours" means a period of at least 4 consecutive hours per week."

Some managers believe that their associations have up to twenty-one days once a unit owner makes a records review request. However, the 21-day rule found in NRS 116.31175(2) only applies to select records which the association must

produce (financial statement, budgets, and the study of reserves), not to a review of the other association records. In fact, based upon NAC 116.440, defining "regular working hours" in NRS 116.31175(1), the time period can be less than a week.

Each week is supposed to have a period of four consecutive hours for unit owner records review. Do your associations have a designated period of four consecutive hours per week set aside for records inspections? If not, do you schedule four hours for review within a week each time that such a request is made? A savvy unit owner might know they are entitled to the full four hours. Not allowing the review within the week, for four consecutive hours, could result in a complaint for violation of NRS 116.31175.

Therefore, it is advisable that managers and directors familiarize themselves with both NRS and NAC Chapters 116. In fact, it is a requirement by law. 



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