

Via Email

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To:

Administrator
Nevada Real Estate Division (NRED)
Department of Business and Industry
3300 W. Sahara Avenue, Suite 325
Las Vegas, NV 89102

Date: July 28, 2025

RE: Petition for Rulemaking and Regulatory Clarification on Director Conflicts of Interest, Eligibility Standards, and Declarant Contracting Under NRS 116.31034 and NRS 116.31084

Submitted Pursuant to NRS 233B.100 and NRS 116.623

Dear Administrator,

Pursuant to NRS 233B.100 and NRS 116.623, I respectfully petition the Nevada Real Estate Division (NRED), in coordination with the Commission for Common-Interest Communities and Condominium Hotels (CICCH Commission), initiate rulemaking and/or adopt regulatory clarifications addressing material ambiguities and enforcement gaps in NRS 116.31034 (board eligibility and disqualification) and NRS 116.31084 (conflicts of interest and recusal). These provisions, without clarification, allow for inconsistent application, selective enforcement, and increasing abuse by both sitting board members and declarant-appointed directors. Anticipated concerns about feasibility or potential Commission overreach are addressed in Attachment A (Policy Clarifications and Anticipated Objections).

To the best of the undersigned's knowledge, no Nevada court has directly interpreted NRS 116.31034, NRS 116.31084 or associated regulations nor has the Commission engaged in a review as requested.

This petition identifies four priority areas for rulemaking:

1. Clarifying when and how a candidate or sitting director is disqualified under NRS 116.31034(10);
2. Addressing compliance ambiguity with NRS 116.31034(13).
3. Clarifying the duty to recuse under NRS 116.31084, particularly in the context of affiliated vendor contracts and declarant-controlled boards;
4. Adopting structural safeguards to prevent self-dealing, including a rule barring associations under declarant control from contracting with declarant-affiliated vendors, absent waiver from the Division.

I. Director Disqualification Under NRS 116.31034(10)

Subsection 10(a)(2) of NRS 116.31034 prohibits a person from serving on the board if they "stand to gain any personal profit or compensation of any kind from a matter before the executive board." However, multiple key terms—"stand to gain," "personal profit," and "compensation"—are undefined in the Chapter leading to arbitrary, often selective, enforcement. Disqualification from elected office is a severe restriction on political participation, implicating First and Fourteenth Amendment protections as well as owner contract rights. As currently written and applied subsection 10 lacks the necessary safeguard and is unconstitutionally vague unless clarified. Clarification is needed on:

- Whether "stand to gain" requires a direct, enforceable interest or if mere litigation involvement or potential gain trigger disqualification;
- Defining "compensation" requiring "some sort of contract"* or other enforceable obligation;
- Whether court-awarded attorney's fees to a prevailing homeowner – whether potential or actual-constitute disqualification.

Recommendation:

Rulemaking should define key terms narrowly and require any disqualification to follow clearly defined due process, including proper notice, opportunity to respond, and association-wide decision-making (not board-imposed removal). The legislative history of SB 174 (2015) supports this interpretation. * Quote from the legislative record

II. Voting and Recusal Obligations Under NRS 116.31084

NRS 116.31084(1)–(2) requires directors to disclose and recuse when they have a conflict of interest. However, subsection 3(a) can be read to allow declarant-appointed directors to vote on matters affecting the declarant, leading to confusion and abuse.

While intended to prevent automatic disqualification based solely on affiliation, subsection 3(s) can and has been misused to justify participation in substantively conflicted votes—including approval of contracts or legal strategies where the declarant owns the vendor or stands to benefit directly. This undermines the fiduciary duties outlined in NRS 116.3103 and has created a functional immunity for declarant insiders.

This distinction is essential: status-based affiliation is not a conflict, but participation in a vote with direct benefit to the declarant is. Once a material conflict exists, recusal should be required by NRS 116.31084(2), and disclosure alone is insufficient.

Recommended Rulemaking:

Amend NAC 116.405 to clarify the Commission's authority to evaluate these situations and establish that failure to recuse under such conditions is a relevant consideration when assessing fiduciary breach:

Proposed New Subsection – NAC 116.405(2)(x)

In determining whether a member of the executive board has failed to act in accordance with the fiduciary duty to the association pursuant to NRS 116.3103, the Commission may consider:

(x) Whether a member who is affiliated with the declarant participated in a vote on a transaction, contract, legal matter, or other board action in which the declarant or its affiliates stood to derive a direct benefit, after failing to recuse themselves as required by NRS 116.31084(2). A rebuttable presumption of a material conflict of interest arises in such circumstances.

This language preserves operational governance by the declarant but restores fiduciary clarity and reinforces that recusal obligations apply to all directors, including appointees.

III. Ambiguity in NRS 116.31034(13): Who Determines Ineligibility and How?

Subsection 13 of NRS 116.31034 provides that “the association” must prohibit an ineligible person from serving as a member of the executive board. However, the statute fails to specify:

- What if any authority within the “association” exists to make the underlying “not qualified” determination;
- Lacking association authority to determine subsection 10 board eligibility, who and how is eligibility to be determined.
- What process must be followed to ensure fairness, accuracy, and legal compliance.

This ambiguity has allowed boards—often advised by their legal counsel—to unilaterally declare challengers ineligible or remove sitting directors, citing subsection 10, without a vote of the membership, without a hearing, and without oversight. In some cases, the board has simply claimed that disqualification occurred “by operation of law.”

Such actions raise serious due process concerns and undermine the integrity of association elections and governance. They also conflict with other statutory provisions:

- NRS 116.31036, assigns authority to unit owners to remove directors;
- NRS 116.3103, prohibits directors from self-dealing and “[D]etermine the qualifications...of the executive board.”
- General principles of procedural fairness, especially where eligibility or removal may turn on disputed facts or interpretations of “compensation” or “personal profit”.

Regulatory clarification is needed to resolve this ambiguity or ongoing abuse. Rulemaking should affirm or otherwise address:

- “The association” does not mean the board acting unilaterally, but rather a formal process or vote involving either the owners or a neutral third party is necessary;
- Procedural safeguards—including notice, an opportunity to respond, and impartial review—are required before any disqualification under subsection 10 can be enforced;
- Any director or candidate who is alleged to be ineligible under subsection 10 must have the opportunity to respond through a defined process administered either by vote of unit owners or an independent third party. The board—and particularly its conflicted

members—has no authority under NRS 116.3103 or 116.31036 to declare a candidate ineligible or enforce removal. Boards may not act as the arbiter of their own composition.

- Unilaterally board action asserting a seat vacant “by operation of law” oversteps its legal authority and violates due process.

Without these safeguards, subsection 13 becomes a tool of exclusion and factional control, rather than a mechanism to ensure ethical leadership.

VI. Prohibiting Declarant-Affiliated Contracting During Declarant Control

One of the most damaging abuses can occur when declarant-controlled boards enter into contracts with affiliated vendors—including management companies, legal counsel, insurers, engineers, or maintenance firms. Current statute provision providing for the review and termination of contracts at control termination are illusory, as turnover may not occur for decades, and the post-transition board may lack both leverage and evidence to unwind undesirable contracts.

Recommendation:

The only structurally sound remedy is a categorical ban on contracting with declarant-affiliated entities during the declarant control period, subject only to waiver by the Division.

Proposed Rule: Ban on Related-Party Contracting During Declarant Control

An association under declarant control shall not enter into any contract or agreement with an entity owned, operated, controlled, or affiliated with the declarant or its principals. This prohibition shall apply regardless of contract duration, renewal terms, or development stage.

A declarant board may petition the Division for a waiver, which may be granted only if:

- No unaffiliated alternative vendor is reasonably available;
- The contract is time-limited (not to exceed 12 months);
- Full written disclosure is made to the membership;

This structure:

- Preserves operational continuity,
- Eliminates structural conflicts,
- Aligns with fiduciary standards used in public boards, government procurement, and nonprofit governance.

V. Anticipated Objections

While the rulemaking proposals set forth above are limited in scope and grounded in established fiduciary principles, it is expected that certain stakeholders may raise objections. These include concerns about interference with board autonomy, disruption of declarant operations, or the practicality of enforcement.

Attachment A to this petition, responds to each of these concerns and explains how the proposed rules preserve flexibility while reinforcing core governance safeguards.

Conclusion

This petition asks the Division and Commission to address long-standing weaknesses in NRS 116's treatment of director eligibility, conflict-of-interest voting, and declarant contracting. The current legal framework is vulnerable to abuse, erodes owner trust, and disproportionately benefits insiders with no transparent remedy. The proposals in this petition are not radical—they are modest, structural guardrails that protect homeowner rights, promote transparent governance, and align Nevada's common-interest community regulation with modern fiduciary norms.

Rulemaking and regulatory clarification are necessary and appropriate to fulfill the Division's obligations under NRS 116.623 and the Nevada Administrative Procedure Act.

Thank you for your consideration.


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Atch: Appendix A, Subject- Policy Clarifications and Anticipated Objections