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

RE: Petition for Rulemaking Under NRS 233B to Define "Meeting" Under NRS 116.31083

Dear Administrator Chandra;

Pursuant to NRS 233B.100 and NRS 116.623, I hereby petition the Administrator of the Nevada Real Estate Division (NRED) in coordination with the Commission for Common-Interest Communities and Condominium Hotel (CICCH Commission) initiate interpretative rulemaking to clarify ambiguities and the application of NRS 116.31083. The absence of a statutory definition of "meeting" has led to widespread confusion, inconsistent governance practices, and a growing sense among homeowners that association decisions are being made out of public view.

I. The Statutory Gap

Unlike Nevada's Open Meeting Law (NRS Chapter 241), NRS Chapter 116 fails to define the term "meeting." This absence has allowed boards to exploit the ambiguity—holding "workshops," informal briefings, and even engaging in serial email discussions among a quorum of directors to deliberate association business—all without notice or owner observation.

NRS 116.31083 clearly expresses the Legislature's intent that HOA boards conduct deliberations openly and with proper notice to owners. But the current lack of a definition allows boards to delay or evade transparency.

II. Problem Statement

Some legal counsel advising HOAs have advanced arguments justifying non-noticed board quorum gatherings and restricting owner attendance of the board gatherings on several bases:

1. No action is taken – They argue a gathering of board members does not constitute a "meeting" unless a vote occurs.
2. Free speech concerns – They assert that restricting informal communication among directors chills free expression.
3. Corporate form argument – They contend that because HOAs are private nonprofit corporations, they cannot be subject to limitations on deliberation akin to public bodies.

These arguments are flawed and miss the nature of common-interest communities under Nevada law:

- **Deliberation is the core concern**: The Legislature's interest in transparency is not limited to votes—it includes how those votes are shaped. When a quorum discusses policy, finances, or operations in a setting not open to members, the board has already functionally acted.
- **First Amendment concerns are inapplicable**: Restrictions on informal *private* speech are distinct from guardrails on *fiduciary* deliberation. Board members agree to transparency obligations when serving, just as public officials and corporate trustees do. Nothing in the proposed rule limits private, individual expression—only collective board deliberation in service of the association.
- **The corporate status of HOAs is not dispositive**: While most HOAs are nonprofit corporations the governance of HOA board meetings is expressly and specifically governed by NRS 116.31083. HOAs have also been found quasi-governments entrusted with powers that affect property rights and quality of life. Unlike traditional nonprofits, HOAs impose mandatory assessments, enforce rules with financial penalties, and govern people by virtue of property ownership—not consent. For this reason, the Legislature has singled them out for unique treatment under NRS Chapter 116. Their incorporation status does not insulate them from additional transparency requirements, nor does it bar rulemaking to ensure open governance.

III. Proposed Regulatory Definition

To address the statutory gap and restore clarity, the following definition is proposed:

"Meeting" means any assembly, gathering, or series of communications among a quorum of board members, whether in person, electronically, or by other means, during which the association's operations, finances, enforcement matters, or policies are deliberated or discussed." Such gatherings are subject to the notice and participation requirements of NRS 116.31083, regardless of whether formal action is taken.

This language is carefully tailored to:

- Focus on substance, not form;
- Encompass serial or email-based deliberations, not just real-time gatherings;
- Preserve owner access without burdening boards unduly;
- Close a known transparency loophole that has undermined confidence in association governance.

IV. Need for Rulemaking

Without a definition, boards are empowered to operate in a grey area that permits private decision-making under the guise of procedural formality. Transparency is not just a value—it is a necessary check on power in private governments. Homeowners should not be forced to accept decisions from boards that meet in name only, with substantive deliberation already completed offstage.

This proposed rule would give teeth to the open meeting provisions already in NRS 116.31083, fulfill the Legislature's intent, and reassure owners that the business of their community is conducted in the open.

Respectfully submitted,

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Appendix A- Policy Clarifications and Anticipated Objections

In Support of Petition for Rulemaking and Regulatory Clarification under NRS 116.31034 and NRS 116.31084

Submitted by: Mike Kosor

Date: July 28, 2025

Objection 1: "Clarifying director disqualification rules will interfere with internal board authority."

Response: Clarification ensures objective and due process-driven procedures. The current ambiguity has allowed boards to exclude challengers arbitrarily. Rulemaking ensures fairness and transparency.

Objection 2: "Strengthening fiduciary enforcement under NAC 116.405 will paralyze declarant-appointed boards."

Response: The proposed amendment clarifies—not expands—existing recusal obligations. It respects NRS 116.31084(3)(a) while affirming that status is not immunity from fiduciary duties.

Objection 3: "Barring contracts with declarant-affiliated vendors will reduce operational flexibility."

Response" There is no operational necessity for related-party contracts. Independent vendors are available. Declarants can request waivers for true exceptions, with safeguards similar to those in nonprofit and government sectors.

Objection 4: "The Commission lacks the statutory authority to impose a categorical ban on related-party contracting."

Response: This concern arises from the principle that administrative rulemaking must be grounded in statutory authority. However, the proposed regulatory action is not a categorical prohibition on related-party contracting as a matter of law. Rather, it establishes a rebuttable presumption that such contracts, entered into during the declarant

control period, present a material conflict of interest and may violate fiduciary duties under NRS 116.3103.

The Commission and the Division have authority under NRS 116.623 to adopt regulations necessary to carry out the provisions of NRS Chapter 116, including those ensuring that association boards act in good faith, avoid self-dealing, and uphold the long-term interests of the community. By implementing a presumption—subject to waiver—this approach reinforces existing duties without creating new statutory rights or penalties.

The petition's proposal allows a declarant-controlled board to contract with an affiliated vendor only if it seeks and obtains a waiver from the Division, supported by a showing of necessity, transparency, and limited duration. This is consistent with established governance norms in public procurement, nonprofit management, and fiduciary oversight where related-party transactions are tightly constrained.

Framing the rule as a structural safeguard—rather than a hard prohibition—places it squarely within the Division's enforcement role and ensures that associations are protected during their most vulnerable governance phase.

Objection 5: "These reforms impose unreasonable burdens on declarants and undermine development-phase governance."

Response: The proposed clarifications do not prevent declarants from fulfilling legitimate development responsibilities. They only limit undisclosed or conflicted participation in board decisions where a direct benefit to the declarant is at stake.
Declarant-appointed directors retain full voting authority on matters related solely to unit development and sale. What is prohibited is leveraging association control to award affiliated contracts, restructure assessments, or delay turnover milestones in a way that primarily benefits the declarant.

If a declarant believes an affiliated vendor is essential, the rule allows for a petition-based waiver—providing transparency and a clear burden of justification. This is not a novel concept: many public-sector and nonprofit fiduciary frameworks limit related-party transactions and require advance disclosure and independent review.

Objection 6: "This petition asks regulators to interpret statutes that should be clarified by the Legislature."

Response: The petition does not seek to rewrite statutes but rather to clarify how NRED and the CICCH Commission will interpret and apply existing statutory provisions—a function explicitly authorized under NRS 116.623 and NRS 233B.100. In fact, regulatory interpretation is essential when statutory ambiguity creates procedural or enforcement confusion, particularly where due process rights and governance legitimacy are at stake. Where courts have remained silent and the Legislature has not acted, rulemaking

provides needed clarity and consistency. These rules do not extend or contradict the law—they implement it in accordance with longstanding principles of fiduciary duty, fair process, and structural conflict prevention.

Should the Legislature later wish to refine these rules, it retains full authority to do so. Until then, regulatory guidance is necessary to prevent arbitrary enforcement, litigation risk, and erosion of owner confidence.