

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

July 28, 2025

Dear Administrator Chandra;

RE: Petition for Rulemaking Under NRS 233B – Clarification of Bid Solicitation Requirements Under NRS 116.31086

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 116.31086 and NAC 116.405(8)(d) regarding executive boards of homeowners' associations (HOAs) soliciting bids prior to awarding contracts.

As discussed below, ambiguity in the statute's text, inconsistency with NAC 116.405(8)(d), and widespread board practices—such as the use of evergreen clauses and voting via email—undermine the transparency and accountability this provision was meant to ensure.

I. Background and Ambiguity in Law

NRS 116.31086 establishes bidding requirements for association contracts that exceed a percentage of the community's annual budget. However, ambiguity arises from the statute's phrasing: "if an association solicits bids, the association must... solicit at least three bids whenever reasonably possible." This phrasing has been interpreted by the Division in a way that suggests bid solicitation is optional, regardless of contract size.

This interpretation is flawed. While the statute uses the phrase "*if*" an association solicits bids, this language should not be read to imply that solicitation is optional in qualifying cases. Rather than suggesting discretion, the term "*if*" establishes a conditional mandate: once a board decides to proceed with a contract subject to the threshold, it is obligated to seek at least three bids *if* doing so is reasonably practicable—an expectation that reflects common governance standards and legislative intent. The legislative context, regulatory history, and fiduciary expectations all support an understanding that competitive bidding is the default practice in association governance.

However, in the Winter 2022 edition of *Community Insights*, the Division took the opposite view, asserting:

"The word 'if' cannot be ignored, therefore if no bids are solicited, the Division cannot state that a violation of law took place."

This position severely undermines enforcement. The Division's admission that it cannot find a violation when a board avoids bidding altogether effectively renders NRS 116.31086 unenforceable. It invites boards to bypass competitive bidding by simply choosing not to initiate any solicitation, regardless of contract size or owner expectations.

This regulatory interpretation is further complicated by NAC 116.405(8)(d), which defines failure to solicit at least three bids (when practical) as a potential regulatory violation. The regulation implies a duty to bid unless clearly impractical, but this obligation is neutralized by the Division's permissive reading of the statute. The resulting contradiction has left boards uncertain of their legal obligations and has deprived homeowners of any reliable enforcement mechanism.

The ambiguity is compounded by the Division's guidance that complaints must "set forth documented facts" showing a violation. But if the Division interprets the absence of bidding as exempt from scrutiny, no amount of documentation from owners will result in compliance action. Moreover, the Commission—not the Division—is the proper body to determine whether a violation exists under NRS 116.623. Yet under current practice, many complaints are closed by Division staff without ever reaching the Commission, effectively bypassing its oversight.

This breakdown in statutory interpretation and enforcement has created a regulatory blind spot. Boards can enter into high-value, long-term, or evergreen contracts without transparency or competition, shielded by the Division's narrow reading of the law. Rulemaking is urgently needed to correct this interpretation, restore consistency between statute and regulation, and protect the rights of owners.

II. Evergreen Clauses Undermine Transparency

A growing number of HOA contracts—particularly with management companies, landscapers, and legal counsel—contain evergreen (automatic renewal) provisions. These clauses allow contracts to renew indefinitely without a new vote, often without further disclosure to the membership.

Boards can and do use these clauses to perpetuate vendor relationships without ever soliciting new bids, undermining both competition and owner oversight. In effect, a single contract approval becomes a perpetual delegation of spending authority, insulated from owner challenge.

III. Fiduciary Considerations and Best Practices

Soliciting bids is a widely recognized best practice in corporate governance and nonprofit management. In the HOA context, it ensures that boards act in the best interests of owners, obtain competitive pricing, and avoid self-dealing or vendor capture. Even where bidding is not strictly required, failing to solicit bids can raise questions of breach of fiduciary duty, particularly when boards fail to document the rationale for their decisions.

IV. Recommendations

Petitioner respectfully requests that the Nevada Real Estate Division, in coordination with the CICCH Commission, undertake rulemaking to:

1. Clarify that the "if" in NRS 116.31086 is not permissive, and that bid solicitation is a default obligation for qualifying contracts;
2. Resolve the inconsistency between NRS 116.31086 and NAC 116.405(8)(d);
3. Clarify that associations must solicit multiple bids for contracts above statutory thresholds unless a specific, documented justification is provided in a duly noticed open meeting;
4. Prevent evergreen clauses from being used to evade competitive bidding and disclosure;
5. Direct boards to agendize and discuss all contract renewals exceeding threshold amounts in an open meeting under NRS 116.31083, documenting the reasoning behind such decisions;
6. Direct the Ombudsman to establish and maintain an online vendor repository, along with sample RFP templates, training materials, and compliance assistance tools.

Thank you for your consideration.



Mike Kosor

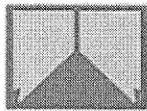
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