



Tenant Rights in CICs

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Nevada Real Estate Division

Presented by the Training Officer; Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels Program

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- Should confusion arise requiring the interpretation and application of the law to your association's specific circumstances, a legal opinion from a qualified attorney may be necessary.
- Please review the course calendar, training request form, and presentations published on the training webpage to gain an understanding of additional opportunities for education and training. See our training webpage at http://red.nv.gov/Content/CIC/Program_Training/.

Introduction

- NRS 116 applies to common-interest communities (CICs) created within the state of Nevada (NRS 116.1201).
- CICs are defined by the obligation of unit owners [defined in NRS 116.095] to pay for common expenses [maintenance of common elements, insurance, etc.] (NRS 116.021).
- Overall, NRS 116 identifies the rights of unit owners, not tenants. As residents of the community, however, tenants are affected by the actions of the association; whether regarding the maintenance and upkeep of common elements or the impact of rules and regulations.

Renting in a CIC

NRS 116.335

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- The association should be aware of all the rental units within the community, especially if there is a rental cap in place.
- If the governing documents require a tenant to register with the association, the association:
 - a) Must conduct such activities in accordance with the governing documents;
 - b) May not require the tenant to submit information that is not required from a unit owner who occupies a unit, but may require the unit owner to provide a copy of the lease or rental agreement; and
 - c) May *not* charge a fee for the submission of this information.
- NRS 116 does not prohibit an association from enforcing any provisions which govern the renting or leasing of units contained in any other applicable federal, state or local laws or regulations.

Rental Cap - Waiver

NRS 116.335(6)

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- Notwithstanding any other provision of law or the declaration to the contrary:
 - a) If a unit's owner cannot rent their unit because the maximum number or percentage of units (based on the declaration) have already been rented or leased, the unit's owner may seek a waiver from the executive board based upon a showing of economic hardship, and the executive board may grant such a waiver and approve the renting or leasing of the unit.
 - b) If the declaration contains a provision establishing a maximum number or percentage of units in the CIC which may be rented or leased, in determining the maximum number, the units owned by the declarant must not be counted or considered.



Rental Agreement

NRS 118A.200

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- Any written rental agreement *must be signed by the landlord and the tenant*.
 - The landlord shall provide one copy to the tenant free of charge at the time the agreement is executed.

The agreement **MUST** contain the following:

- Duration of the agreement.
- Amount of rent and the manner and time of its payment.
- Occupancy by children or pets (CC&Rs).
- Services included.
- Required fees and their purpose.
- Deposits which are required and the conditions for their refund.

(cont'd on next slide)



Rental Agreement, Cont'd

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The agreement **MUST** contain the following:

- Charges which may be required for late or partial payment of rent or for returned checks.
- Inspection rights of the landlord.
- A listing of persons or numbers of persons who are to occupy the dwelling.
- Respective responsibilities of the landlord and the tenant as to the payment of utility charges.
- A signed record of the inventory and condition of the premises.
- A summary of the provisions regarding "public nuisance" (CC&Rs).
- How the tenant may report nuisances or violations of building, safety or health code.
- Information regarding the right of the tenant to display the U.S. flag.

Disclosure to Tenant

NRS 118A.260

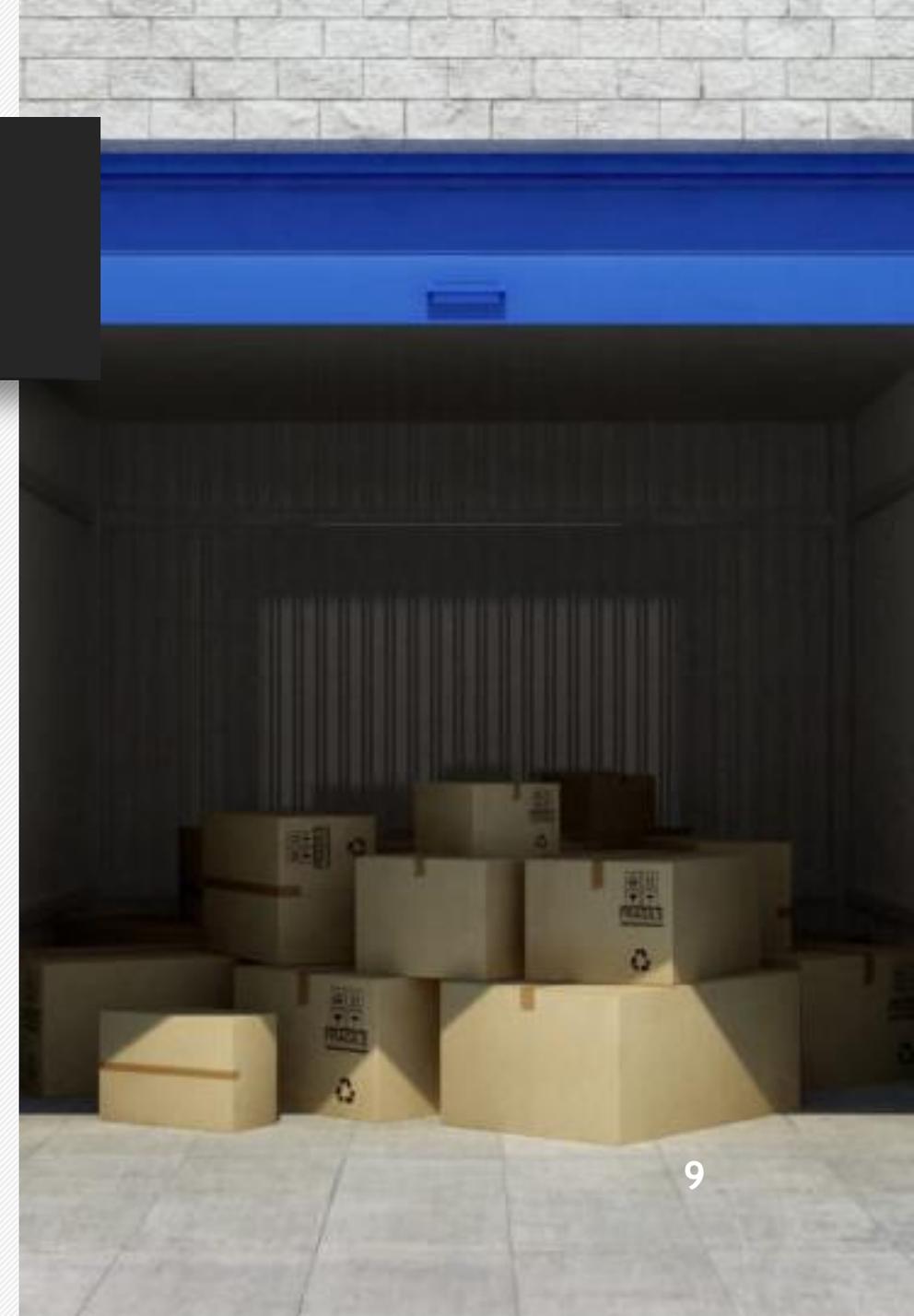
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- A landlord **SHALL** disclose to a tenant, ***in writing***, at or before the commencement of the tenancy:
 - a) The name and address of:
 - 1) The persons authorized to manage the premises;
 - 2) A person in Nevada authorized to act on behalf of the unit owner for the purpose of service of process and receiving notices and demands; and
 - 3) The principal or corporate owner.
 - b) A phone number at which a responsible person who resides in the county or within 60 miles of the premises may be called in case of emergency.
 - c) If the unit is subject to any foreclosure proceedings (NRS 118A.275).
 - d) The governing documents of the association (NRS 116.31031).
 - e) Criteria for which the property will be deemed abandoned and the rental agreement terminated.
 - f) An address for payment of the rent.

Abandonment

NRS 118A.450 & 118A.460

- **NRS 118.195** - A landlord may serve a tenant with written notice of the belief that the property has been abandoned if the tenant has been *absent 1/2 the payment period* and has *not paid rent after being notified of such*.
- For disposal of personal property abandoned by a tenant:
 - The landlord shall provide for the safe storage of the property for **30 days** and may collect reasonable and actual costs of moving and storage before releasing the property to the tenant.
 - After expiration of the 30-day period, the landlord may dispose of the property and recover reasonable costs out of the property value if he or she:
 - has made reasonable efforts to locate the tenant,
 - has notified the tenant in writing of his or her intention to dispose of the property, and
 - **14 days** have elapsed since this notice was given.
- **NRS 118.175** - If a landlord is unable to rent the property after abandonment, the former tenant is liable for any actual damages which may result.



Knowledge Check

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1. Can the association request a tenant to submit their driver's license when the association does not require unit owners to submit theirs?
2. Are declarant owned units allowed to be counted against the maximum specified in a rental cap?
3. How long does the landlord need to store a tenant's property after a tenant has abandoned the unit?
4. Can the association's governing documents require a unit owner to submit the lease agreement?
5. The lease agreement must be _____ by both the landlord and tenant.

Maintenance of the Unit

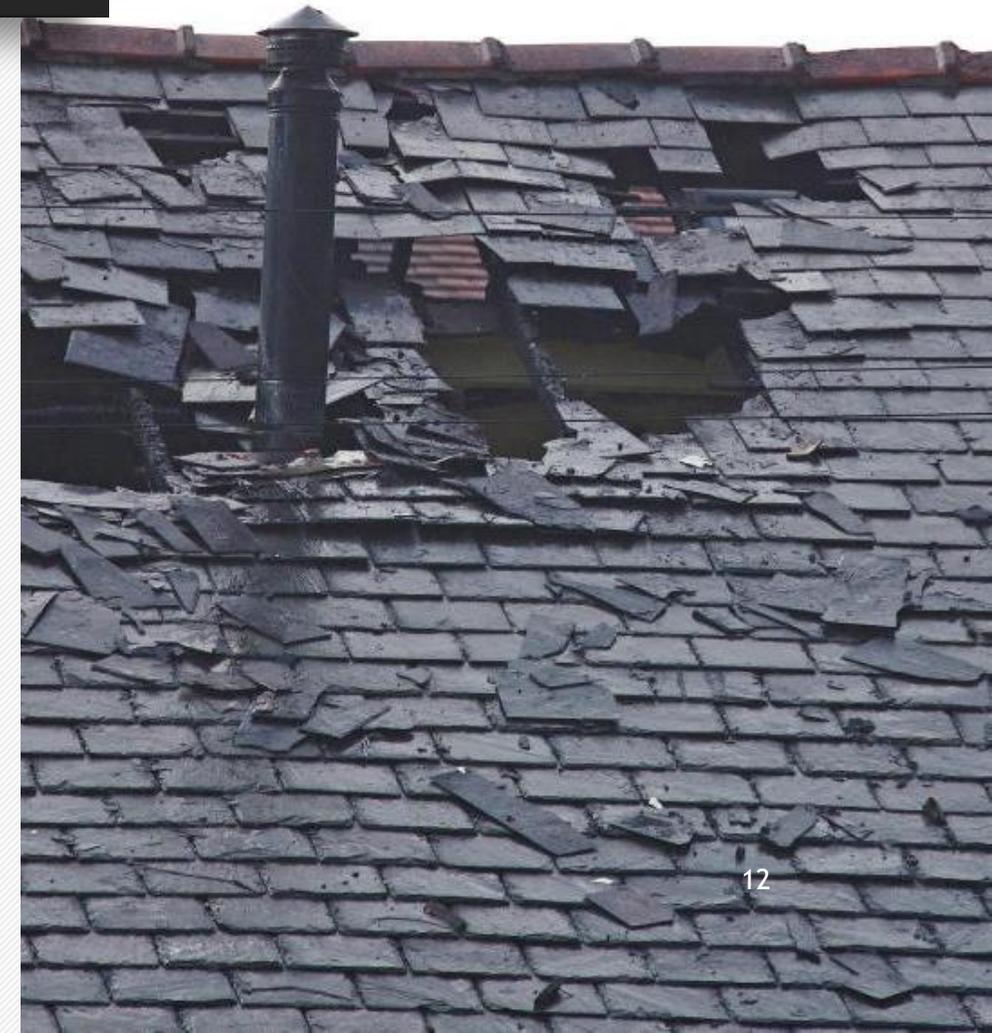
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*The landlord has responsibilities to maintain the unit in a habitable condition.
The tenant has certain responsibilities as well.*

Condition of the Unit

NRS 118A.290

- The landlord **SHALL** at all times during the tenancy maintain the unit in a habitable condition.
- A unit is not habitable if it violates any provision of housing or health codes or if it **substantially lacks**:
 - a) Effective **waterproofing and weather protection** (roof, exterior walls, windows and doors).
 - b) Plumbing facilities maintained in **good working order**.
 - c) A water supply capable of producing **hot and cold** running water and connected to a sewage disposal system.
 - d) Adequate heating, ventilating and air-conditioning.
 - e) Electrical lighting, outlets and wiring maintained in good working order.
 - f) An adequate number of appropriate receptacles for garbage and rubbish.
 - g) Clean and sanitary conditions.
 - h) Floors, walls, ceilings, elevators, stairways and railings maintained in good repair.



Uninhabitable

NRS 118A.355

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- If a landlord fails to maintain a unit in a habitable condition, the tenant may:
 - a) Terminate the rental agreement *immediately*.
 - b) Apply to the court for relief.
 - c) ***Withhold rent*** without incurring late fees or any other charge authorized by the rental agreement until the landlord has remedied or has attempted in good faith to remedy the failure.
 - d) Cause necessary work to be done and deduct from his or her rent the cost of the work, not exceeding \$100 or an amount equal to one ***month's periodic rent***, whichever amount is greater (NRS 118A.360).

Uninhabitable, Cont'd

NRS 118A.355

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- The tenant may ***NOT*** proceed under this section:
 - a) Unless the tenant has given proper notice and at least ***14 days*** for the unit owner to remedy the situation;
 - b) For a condition caused by the ***tenant's own deliberate or negligent act***; or
 - c) If the unit owner's inability to adequately remedy the failure within 14 days is due to the ***tenant's refusal to allow lawful access to the dwelling***.

Tenant Obligations

NRS 118A.310

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➤ A tenant *shall*:

- Comply with the terms of the rental agreement;
- Keep the premises as clean and safe as possible and dispose of all waste in a clean and safe manner;
- Keep all plumbing fixtures clean and clear;
- Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators;
- Not deliberately or negligently render the premises uninhabitable or destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so; and
- Conduct himself or herself and require other persons invited to the unit to conduct themselves in a manner that will not disturb a neighbor's peaceful enjoyment.

Tenant's Rights

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While living in a CIC.

Sale of a Rented Unit

NRS 118A.244

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- If a unit owner sells his or her home, or the deed is transferred due to death, assignment or otherwise, the unit owner or his or her agent **SHALL**, within a reasonable time, notify the tenant in writing of the name, address and telephone number of the unit's successor in interest.
- The unit owner **SHALL**, before he or she records the new deed, transfer to the successor in writing any portion of a tenant's security deposit or other money held or returned.
- If there is a rental cap in the community, it is important that the association be made aware of the fact that there is a new unit owner, but not a new tenant.

Voting by Proxy

NRS 116.311

- Unless prohibited or limited by the declaration or bylaws, EXCEPT for election or removal of a board member, votes allocated to a unit (including those needed for meeting a quorum) may be cast pursuant to a proxy, executed by a unit's owner.
- A unit owner **MAY give a proxy to a tenant who resides in the unit.**
- In this case, the tenant must attend a meeting of the association and disclose at the beginning of the meeting the number of proxies to which he or she will be casting votes. The tenant cannot cast a vote that is **contrary to the proxy.**
- The proxy MUST:
 - be dated,
 - designate the meeting for which it is to be executed,
 - designate each specific item on the agenda for which it will be executed, and
 - designate the vote on behalf of the unit's owner.
- A proxy terminates immediately after the conclusion of the meeting.

DBPR Form CO 6000-7
Rule 61B-23.002, F.A.C.
Effective:

SAMPLE LIMITED PROXY FORM

The undersigned, owner(s) or designated voter of unit No. _____ in _____ (name) _____
Condominium, appoints

(PRINT NAME OF PROXYHOLDER)

or _____ (Instructions to associations: Fill in the name or position of an officer or director who will serve as proxy holder.) as my proxyholder to attend the meeting of the members of _____ (name) _____ Condominium Association, Inc., to be held _____ (date) _____, 20____, at _____ (time) _____, in _____ (place) _____, Florida. The proxyholder named above has the authority to vote and act for me to the same extent that I would if personally present, with power of substitution, except that my proxyholder's authority is limited as indicated below:

GENERAL POWERS (You may choose to grant general powers, limited powers or both. Check "General Powers" if you want your proxyholder to vote on other issues which might come up at the meeting and for which a limited proxy is not required).

_____ I authorize and instruct my proxy to use his or her best judgment on all other matters which properly come before the meeting and for which a general power may be used.

LIMITED POWERS (FOR YOUR VOTE TO BE COUNTED ON THE FOLLOWING ISSUES, YOU MUST INDICATE YOUR PREFERENCE IN THE BLANK(S) PROVIDED BELOW).

I SPECIFICALLY AUTHORIZE AND INSTRUCT MY PROXYHOLDER TO CAST MY VOTE IN REFERENCE TO THE FOLLOWING MATTERS AS INDICATED BELOW:
(Instructions to associations: List below the specific questions or issues to be voted on. The following are only examples.)

Financial Reporting Waiver

A. Do you want to provide for a lower level of year-end financial reporting than is required by § 718.111(13), Florida Statutes, for the next fiscal/calendar year? Currently, the Association is required to prepare a (list the level).

_____ YES _____ NO

If yes, vote for one of the board proposed options below: (The option with the most votes will be the one implemented.)

LIST OPTIONS HERE

1

U.S. Flag

NRS 118A.325

- A tenant *shall not be prohibited from displaying the flag* of the United States on the premises that the tenant has a right to occupy, except:
 - the display cannot be used for commercial advertising purposes; and
 - the placement and manner of the display can be restricted.
 - E.g.: Restricting a depiction or emblem of the flag that is made of balloons, flora, lights, paint, paving materials, roofing, siding, or any other similar building, decorative or landscaping component.



Trash

NRS 116.332

- An association of a planned community ***MAY adopt rules*** that reasonably restrict the manner in which containers for the collection of solid waste or recyclable materials are stored during the time the containers are ***not within the collection area***.
- The rules adopted by the association:
 - ***MUST*** allow the unit owner or tenant to store containers ***outside any building or garage***; and
 - ***May require that containers be screened from view***, including rules prescribing the size, location, color and material of any device, structure or item used to screen the containers.



Knowledge Check

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1. If a tenant occupied unit is sold, what must the seller provide to the tenant?
2. Could a tenant be provided a proxy form if the declaration or bylaws does not prohibit such?
3. What does a unit owner need from a tenant if the unit owner wants to place political signs in the front yard?
4. Can a unit's owner prohibit a tenant from displaying the U.S. Flag?
5. The landlord shall always maintain the tenant occupied unit in a _____ condition.

Enforcement of the Governing Documents

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Must be conducted in accordance with the law.

Receiving Services

NRS 116.2111

- An association **may not** charge a fee or impose a fine for a person entering the community to provide services to:
 - a unit;
 - a unit's owner;
 - a tenant; or
 - any visitor or guest.
- The executive board may not impose a fine for a violation committed by an invitee unless the unit owner or tenant:
 - a) Participated in or authorized the violation;
 - b) Had prior notice of the violation; or
 - c) Had an opportunity to stop the violation and failed to do so.



Interruption of Utilities

NRS 116.345

- An association *may not interrupt* any utility service *except for the nonpayment* of utility charges when due.
- An association shall in every case send a *written notice* of its intent to interrupt any utility service to the tenant *at least 10 days prior*.



Parking

NRS 116.350

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- The governing documents of an association ***CAN set forth rules*** that reasonably restrict the parking or storage of ***recreational vehicles, watercraft, trailers or commercial vehicles in the community.***
- The governing documents of an association must not prohibit a person (unit owner or tenant) from parking a utility service, law enforcement, or emergency vehicle if the person is bringing the vehicle home pursuant to his or her employment and for the purpose of responding to emergency requests for service.
 - An association may require that the person provide ***written confirmation from his or her employer.***
- "Utility service vehicle" means any vehicle used to repair, maintain or operate any structure necessary for the delivery of public utility services, including the furnishing of electricity, gas, water, sanitary sewer, telephone, cable or community antenna service.

Towing

NRS 116.3102(1)(s)

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- The association *MAY direct the removal of vehicles improperly parked on any road, street, alley or other thoroughfare in violation of the governing documents.*
- In addition to complying with the requirement of NRS 487.038, if a vehicle is improperly parked, the association must:
 - Post written notice in a conspicuous place on the vehicle, or
 - Provide oral or written notice to the owner or operator of the vehicle at least **48 hours** before the association may direct the removal,
 - Unless the vehicle:
 - 1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or
 - 2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the residents of the community.



Assessments

NRS 116.3115

- Unit owners are responsible for assessments.
- If damage to a part of the community or any other common expense is caused by the willful misconduct or gross negligence of a tenant, the association may assess that expense exclusively against the unit, even if the association maintains insurance with respect to that damage.
 - The cost may then be passed on to the tenant pursuant to the rental agreement.
- A landlord may not increase the rent of a tenant unless the tenant is served with a written notice **45 days** in advance of the first rental payment to be increased, advising the tenant of the increase (NRS 118A.300).



Violating the Governing Documents NRS 116.31031

- The association is obligated to mail the fine schedule to the designated mailing address of each unit annually.
- If a tenant violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide, prohibit them, just like a unit owner, from using the common elements.
 - The association may not prohibit ingress or egress to or from the unit, including any area used for parking.
- The association **MAY impose a fine**, whether against the unit directly, or against the individual who committed the violation.
- How do you hold a tenant accountable?
 - The amount of fines accumulated (especially for health and safety violations) may be worth taking to court.

Schedule of Fines	
This fine schedule has been provided to all unit owners pursuant to NRS 116.31031(3).	
Construction/Architectural Control Violations	
All other exterior modifications without ARC approval	\$50.00
Unapproved landscaping modifications	\$75.00
Unapproved alteration of exterior paint color	\$50.00
Addition of unapproved structure to property	\$100.00
Exterior Maintenance Violations	
Driveway discoloration	\$50.00
Dirty/dingy or stained exterior	\$60.00
Paint chipping off exterior or becoming discolored due to weathering	\$75.00
Dilapidated (discolored, cracked, or chipped) rooflines	\$80.00
Landscaping Violations	
Weed(s) growing on property	\$25.00
Unmaintained landscaping/vegetation overgrowth	\$25.00
Trash and/or debris accumulation on property	\$60.00
Vehicle and Parking Violations	
Vehicle repairs conducted on property	\$50.00
Unconcealed trailers, ATVs, boats, RVs on property visible from the street	\$75.00
More than one (1) vehicle parked in driveway	\$80.00
Violations of Other Home Restraints	
Exterior clotheslines for hanging or airing clothes	\$75.00
Running a business on property	\$100.00
Health & Safety Violations, amount to be determined by the executive board	
If a violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of owners or residents of the common-interest community, the amount of the fine must be commensurate with the violation and must be determined by the executive board in accordance with the governing documents. NRS 116.31031	
Property liens due to health, safety or welfare violations are foreclosable by sale of the property. NRS 116.31162(6)	
Continuing Violations, \$100 per week	
Violations are deemed continuing violations if not cured within 14 days after the initial fine is imposed (NRS 116.31031)	

DISCLAIMER:
This example is intended for educational purposes **ONLY**. Associations should consult with all appropriate professionals in carrying out their responsibilities.

Imposition of a Fine

NRS 116.31031

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- The executive board may not impose a fine unless the person against whom the fine is imposed:
 - was provided with the governing documents containing provisions that were violated at least 30 days beforehand; and
 - has been provided with written notice sent to the address of the unit, and if different, mailing address specified by the unit's owner.
 - The written notice must specify in detail the alleged violation, providing a clear and detailed photograph, a proposed action to cure, the amount of the fine, and the date, time and location for a hearing.
- The executive board **MUST** hold a hearing before it may impose the fine, unless the person:
 - pays the fine before the hearing;
 - executes a written waiver of the right to the hearing; or
 - fails to appear at the hearing.
- If a fine is imposed and the violation is not cured within 14 days, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for each 7-day period or portion thereof that the violation is not cured without providing an opportunity to cure or be heard at a hearing.
- Any past due fine must not bear interest.

General Violation Record

NRS 116.31175(5)

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- The executive board of an association SHALL maintain a general record concerning each violation of the governing documents for which the executive board has imposed a fine.
 - The general record:
 - a) Must contain a general description of the nature of the violation, the type of sanction imposed, and the amount of the fine or construction penalty.
 - b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or location of the unit.

Jurisdiction of the Division

NRS 116.760 & 116.750

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- Any person who is aggrieved by an alleged violation of NRS 116 (Intervention Affidavit) or the interpretation of the association's governing documents (Alternative Dispute Resolution) may file a complaint with the Office of the Ombudsman.
- Action can be taken by the CICCH Commission against any person who commits a violation of NRS 116 (Intervention Affidavit), including the tenant, if the tenant has entered into an agreement with the unit owner to abide by the governing documents of the association and NRS 116.
- Any complaint against a Property Manager should be filed with the Division on form 514 (filed with Real Estate Division).

Retaliation

NRS 118A.510

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- If a tenant complains in good faith to a government agency, attorney, fair housing agency, etc., the landlord may not in retaliation:
 - terminate a tenancy,
 - refuse to renew a tenancy,
 - increase rent,
 - or decrease essential items or services.

Landlord-Tenant Disputes

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- If a dispute has nothing to do with NRS 116 or the association's governing documents, and
 - a tenant fails to comply with the rental agreement or their obligations (NRS 118A.420); or
 - a landlord fails to disclose necessary information or comply with their obligations (NRS 118A.410)...
- The complaint must be filed *with the court*.
- Upon application of either party, the court, after notice and opportunity for a hearing, shall settle all disputes (NRS 118A.490)

Knowledge Check

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1. Can the board restrict a tenant from being able to access the unit they are renting?
2. True or false, the landlord may terminate a tenancy if the tenant complains about them to a government agency.
3. Who's responsible for the payment of assessments?
4. True or false, the general violation record must contain the address of each unit to which a fine was imposed.
5. Where do complaints over breach of the lease agreement get submitted?

Summary

- Tenants have limited rights under NRS 116.
- If a tenant wishes to complain to the association about a perceived violation of the governing documents (noise, pets, etc.), the tenant can file a complaint with the association through the owner of the unit.
- If the tenant is the aggrieved party, (i.e. the association fined them for violations, towed their vehicle, etc.) and he or she believes NRS 116 or the governing documents were not properly followed, the tenant can file a complaint with the Office of the Ombudsman.
- If the complaint is against the landlord, or vice versa, and has nothing to do with the association, the complaint should be settled in court, without involvement from the Ombudsman's Office.

Questions?

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- <http://red.nv.gov> - Main Page
- CICOmbudsman@red.nv.gov - Email Questions
- http://red.nv.gov/Content/CIC/Program_Training