

# Fines, Sanctions, & Towing in CICs

Rev. 03/22/2022

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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/](http://red.nv.gov/Content/CIC/Program_Training/).

# Agenda



- Board's Authority
- Due Process
- Imposition of Fines
- Records
- Towing

# Board's Authority

NRS 116.3102(1)(l)&(m)

- Subject to the provisions of the declaration, the association
  - MAY impose reasonable fines for violations of the associations governing documents,
    - Only if the association complies with the procedures set forth in NRS 116.31031.
  - May direct the removal of vehicles improperly parked on property owned/leased by the association, or in violation of governing documents,
    - Only if the association complies with NRS 487.038 and NRS 706.4477.
  - MAY impose construction penalties (when authorized by NRS 116.310305).
    - A construction penalty is **NOT** a fine. NRS 116.310305(3)



# Board's Authority continued

NRS 116.31031(1)

- If a unit's owner/tenant or invitee of a unit's owner/tenant violates any provision of the governing documents, the board may, if the governing documents so provide:
  - For a reasonable time, prohibit the owner or tenant or invitee from
    - Voting on matters related to the CIC, and/or
    - Using common elements
      - Cannot bar anyone from using any vehicular or pedestrian ingress or egress to or from the unit, including parking areas.
  - Impose a fine
    - Unless the violation involved a vehicle and was committed by a person delivering goods to, or performing services for, the unit's owner or tenant.
      - \* Subject to fine limits contained in schedule of fines, NRS 116.31031(1)(b), and NAC 116.
  - Send written notice without further action.



# Board's Authority: Association's Fining Policy

NRS 116.31031(3)

- If the association adopts a policy imposing fines for any violations of the governing documents, the association **must** prepare a schedule of fines that may be imposed for those violations and distribute it to each unit owner.
  - **MUST** be hand-delivered or sent prepaid U.S. mail to the mailing address of each unit or the unit owner's designated mailing address.



# Board's Authority: Association's Fining Policy continued

NRS 116.31151(4)

- The executive board **SHALL** make the policy available to all unit's owners at the same time and manner as the budget.
- The policy **MUST** include:
  - The responsibility of the unit's owner to pay any fees, fines, assessments or costs in a timely manner, and
  - The association's rights to collect if the violator fails to pay in a timely manner, and
  - A complete description of each violation and associated fine.

RED CIC Program Training FAQs



# Board's Authority: Schedule of Fines

RED CIC Program Training FAQs

**Question:** “Must an association’s schedule of fines list out each potential violation and a corresponding fine amount?”

- **Yes:** The schedule **MUST** list out categories of fines for each potential type of violation and prescribe a corresponding fine amount.
  - \* This includes Health and Safety violations.
- It is not sufficient for the association to list generally “all violations” as a sole and single category and then prescribe one fine amount for all possible violations.





# Board's Authority: Who May Be Fined

NRS 116.31031(1)&(2) & SB72

- A unit's owner or the tenant or the invitee of the unit's owner.
- **Effective immediately:** Unless the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the CIC as provided by NAC, a fine **MAY NOT** be imposed against a unit's owner for a violation committed by an invitee unless the unit's owner:
  - Participated in or authorized the violation;
  - Had prior notice of the violation; or
  - Had an opportunity to stop the violation and failed to do so.
- A fine **MAY NOT** be imposed against a unit's owner, tenant, or invitee for violations which involve a vehicle used for delivering goods to, or performing services for, the unit's owner, tenant, or invitee.



# Board's Authority: Discretion to Enforce

NRS 116.31065(5)

- The rules adopted by an association **MUST** be uniformly enforced under the same or similar circumstances.
  - Any rule that is not uniformly enforced **MAY NOT** be enforced against any unit's owner.

NRS 116.3102(4)

- A decision not to pursue enforcement of the governing documents under one set of circumstances does not prevent the taking of enforcement action under another set of circumstances.
  - The executive board may **NOT** be arbitrary or capricious in taking enforcement action.



# Board's Authority: Discretion to Enforce continued

NRS 116.3102(3)

- The executive board **DOES NOT** have a duty to take enforcement action if it determines that, under the facts and circumstances:
  - The association's legal position does not justify taking action;
  - The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent the current law;
  - The violation is not so material as to be objectionable to a reasonable person;
  - The violation is not so material as to justify expending the association's resources; or
  - It is not in the association's best interests to pursue an enforcement action.



# Knowledge Check



1. True/False: NRS 116 gives the board the authority to fine, regardless of the governing documents.
2. Before imposing fines, the association must prepare and distribute a \_\_\_\_\_ that may be imposed for governing documents violations.
3. True/False: The association's schedule of fines may generally list "all violations" and assign a universal fine.
4. Does the board have an automatic obligation to take enforcement action for every rule violation?
5. Rules of the association must be enforced \_\_\_\_\_.

# DUE PROCESS: Rules of the Association

- Subject to the provisions of the declaration, the association may impose **reasonable** fines for violations of the governing documents **ONLY** if the association complies with the requirements set forth in NRS 116.31031. NRS 116.3102(1)(m)
  
- Within 30 days after a change is made to the governing documents: NRS 116.12065 & NRS 116.31068
  - The secretary or designated officer SHALL prepare and cause a copy of the change(s) to be delivered to the unit owners' designated mail OR email address.



# Due Process: Curing the Violation

NRS 116.31031(1)(c)

- The association may send a written notice to cure the violation, without imposing a fine. The written notice **MUST**:
  - Be sent to the violator's designated mail or email address;
  - Include an explanation of the applicable provisions of governing documents that form the basis of the violation;
  - Specify in detail the alleged violation and the proposed action to cure it;
  - Include, when possible, a clear and detailed photograph of the alleged violation; and
  - Provide the violator a reasonable opportunity to cure the alleged violation before taking additional actions.



# Due Process: Curing the Violation continued

NRS 116.31031(4)(b)(2)

- The executive board **may not** impose a fine unless, within a reasonable time after discovery of the alleged violation, the person against whom the fine will be imposed **has been provided** with a reasonable opportunity to cure the alleged violation or contest the alleged violation at a hearing.



# Due Process: Written Notice

NRS 116.31031(4)

- The executive board **MAY NOT** impose a fine unless:
  - The person against whom the fine will be imposed had been provided written notice of the applicable provisions of the governing documents, not less than 30 days before the violation; and
  - Within a reasonable time after the discovery of the alleged violation, the unit's owner **AND** the person against whom the fine will be imposed had been provided with:
    - Written notice and
    - A reasonable opportunity to cure or contest the violation.





# Due Process: Written Notice continued

NRS 116.31031(4)(b)(1)

- Written notice **must** be mailed to the address of the unit AND, if different, to the mailing address specified by the unit's owner.
  - Written notice:
    - specifies in detail the alleged violation,
    - includes proposed action to cure the alleged violation,
    - includes the amount of the potential fine and/or nature and terms of potential sanction(s),
    - includes, when possible, a clear and detailed photograph of the alleged violation; and
    - identifies the date, time, and location for a hearing on the alleged violation.
- \* Hearing date/time is often the deadline to cure the violation without further action.

# Due Process: Hearing

- These are MINIMUM protections that the executive board MUST provide before imposing a fine or sanction. This does not preempt any provisions of the governing documents that provide GREATER protections.

NRS 116.31031(10) & 116.31085(5)

- An executive board SHALL meet in executive session to hold a hearing on an alleged violation UNLESS the violator requests an open hearing in writing.

NRS 116.31085(4)

# Due Process: Hearing continued

NRS 116.31031(5)&(6)

- The hearing date, time and location must be scheduled so that the violator is provided with a reasonable opportunity to
  - prepare for the hearing and
  - be present at the hearing.
- \* Meeting must comply with meeting notices; ie. Not less than 10 days
- The executive board **MUST** hold a hearing before it may impose a fine, unless
  - the fine is paid before the hearing or
  - the alleged violator
    - waives, in writing, their right to a hearing, or
    - fails to appear at the hearing after being provided with proper notice.



# Due Process: Hearing continued

SB72 & NRS 116.31085(4)

- Any person who may be sanctioned for an alleged violation:
  - Is entitled to attend all portions of the hearing related to the alleged violation, including
    - Presentation of evidence and
    - Testimony of witnesses;
  - Is entitled to due process including
    - The right to counsel at their own expense,
      - Cannot be charged association's attorneys fees if the board engages their attorney. AO 12-01
    - The right to present witnesses, and
    - The right to present information relating to any conflict of interest of board members;



# Due Process: Hearing continued

SB72 & NRS 116.31085(4)

- Any person who may be sanctioned for an alleged violation:
  - Is not entitled to attend deliberations of the board; and
  - Is entitled to receive written notice of the board's decision regarding the violation.
    - Continuing violations don't start until this notice is given.



# Due Process: Executive Board Member Participation

NRS 116.31031(9)

- A member of the executive board **SHALL NOT** participate in any hearing or cast any vote relating to a fine/sanction if the member has not paid all assessments which are due to the association.
- If a member of the executive board, in violation of this provision:
  - Participates in a hearing, any action taken at the hearing is void.
  - Cast a vote, the vote is void.



# Due Process: Violation Committee

NRS 116.31031(8)

- If the governing documents so provide, the executive board may appoint a committee to conduct hearings on alleged violations and impose fines.
  - The committee must have at least three members.
  - While acting on behalf of the executive board for this limited purpose, the committee and its members
    - are entitled to all privileges and immunities and
    - are subject to all duties and requirements of the executive board and its members.



# Knowledge Check



1. How many days before a violation may be enforced must a unit owner be made aware of the rule/regulation?
2. True/False: Before any fine may be imposed, a violator must be given the opportunity to cure the violation.
3. True/False: No violation may be enforced unless the violator is provided with a detailed picture of the violation.
4. True/False: A violator only has the right to an attorney or to present evidence if they request an open hearing.
5. True/False: The notification and due process requirements apply to standard and health/safety violations.



# Imposition of Fines: Non-Health/Safety/Welfare

NRS 116.31031(1)(b)(2)

- If the violation **does not** pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the community
  - the fine **MUST** be commensurate with the severity of the violation,
  - **MUST** be determined by the executive board in accordance with the governing documents, and
  - **MUST** not exceed \$100 per violation or
    - a cumulative total of \$1,000 per hearing if multiple violations are heard.
- \* Limits do not apply to charges or costs for past due collections or continuing violations.



# Imposition of Fines: Health/Safety/Welfare

NRS 116.31031(1)(b)(2)

- If the violation **does** pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the community:
  - The amount of the fine **MUST** be commensurate with the severity of the violation, and
  - **MUST** be determined by the executive board in accordance with the governing documents.

SB72 authorized Commission to establish criteria for determining a health and safety violation and a limitation for that violation.

Pending NAC update.



# Commission Schedule

Meeting Calendar:

[https://red.nv.gov/Content/Meetings/CIC\\_Calendar/](https://red.nv.gov/Content/Meetings/CIC_Calendar/)

Workshops and Adoptions:

[https://red.nv.gov/Content/Workshops\\_and\\_Adoptions/Main/](https://red.nv.gov/Content/Workshops_and_Adoptions/Main/)

# Imposition of Fines: Health/Safety/Welfare continued

- IF a board wrongfully or excessively uses this clause to impose large fines, it MIGHT expose itself to claims of harassment or retaliation!
  - COULD result in criminal charges and/or
  - Civil penalties.
- Screaming, cursing, disrupting meetings, disputes between neighbors, etc. does not necessarily pose an imminent threat of harm.
  - It might violate procedure and/or etiquette.



# Imposition of Fines: Continuing Violations

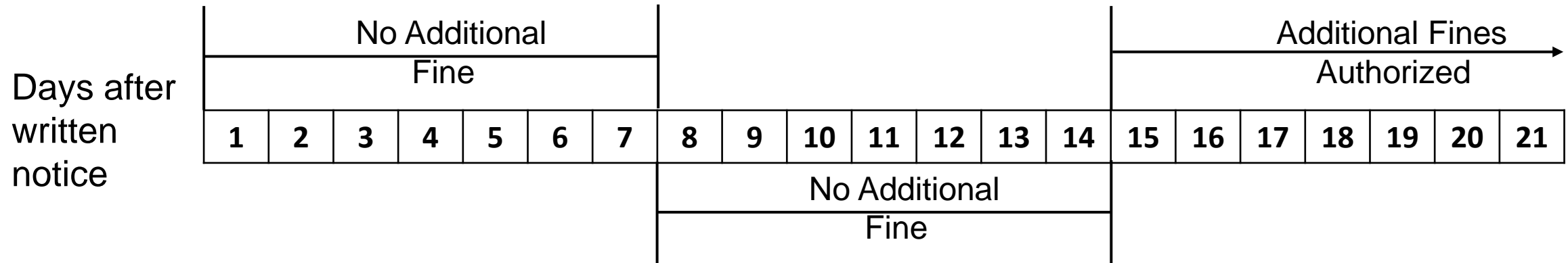
NRS 116.31031(7)

- If a fine or sanction is imposed and the violation is not cured within 14 days or any longer period established by the executive board, it is deemed a continuing violation.
  - This period begins the date the notice of the decision is provided to the sanctioned person.
- An additional fine, equal to the original, may be imposed for each 7-day period the violation is not cured.
  - Additional fines do not apply to the “per hearing” cap.
  - Additional fines may be imposed without providing
    - additional notice,
    - an opportunity to cure the violation, and
    - without additional hearings.



# Imposition of Fines: Continuing Violations Calendar

NRS 116.31031(7)



Original fine  $\div 7 =$  Additional fine per day beginning day 15

# Imposition of Fine: Past Due

NRS 116.31031(11)&(12)

- Any past due fine **MUST NOT** bear interest.
  - May include any costs incurred by the association during a civil action to enforce the payment of past due fine.
- Upon request, no later than 60 days after receiving **ANY** payment of a fine, the association **SHALL** provide the person subject to the fine with a statement of the remaining balance owed.



# Records: Accounting for Fines

NRS 116.310315

- If an association has imposed a fine against a unit's owner or a tenant or an invitee, the association **SHALL** establish a compliance account to account for the fine.
  - **MUST** be separate from any account established for assessments.





# Records: Hearing Minutes

NRS 116.31085(6)

- If the board holds an Executive Session **exclusively** for a violation hearing, at the next regularly scheduled board meeting, the board **SHALL**:
  - Acknowledge the Executive Session occurred in accordance with NRS 116.31085(3)(c) or (d), and
  - Include that acknowledgment in the minutes of the open meeting.
- The board **SHALL** maintain minutes of any decision made concerning an alleged violation and, upon completion of the hearing, provide a copy of the decision to the person who was subject to being fined/sanctioned.



# Records: General Record of Violations

NRS 116.31175(5)

- The executive board **SHALL** maintain a general record concerning each violation of the governing documents for which the executive board imposed a fine or sanction.
- The general record:
  - **MUST** contain a general description of the nature of the violation and the type of fine or sanction imposed.
    - For sanctions, general record should specify the length of the sanction,
    - For fines, the general record **MUST** specify the amount of the original fine, excluding continuing violations.
  - **MUST NOT** contain the name or address or any other personally identifiable information of the person sanctioned.
  - **MUST** be maintained in an organized and convenient filing or data system that allows a unit's owner to search and review the general record.

GENERAL RECORD OF POST-HEARING VIOLATIONS			
Association Name:			
Date Range Reported:			
This record is reported in accordance with NRS 116.31175(5) and will be made available for a unit owner's search and review upon an 80% request.			
Year	Nature of Violation (see Part 4 of the Governing Documents)	Amount of Financial Penalty	Sanction Type(s)
			<input type="checkbox"/> Appeal and/or Grievance Process <input type="checkbox"/> Suspension <input type="checkbox"/> Fine <input type="checkbox"/> Sanction (see Part 4 of the Governing Documents) <input type="checkbox"/> Appeal and/or Grievance Process <input type="checkbox"/> Suspension <input type="checkbox"/> Fine <input type="checkbox"/> Sanction (see Part 4 of the Governing Documents)
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# Knowledge Check



1. What is the maximum fine amount authorized for non-health/safety violations?
2. Do those limits apply to late charges and continuing violations?
3. True/False: If a board wrongfully imposes a health/safety violation, it automatically constitutes retaliation and harassment.
4. True/False: A continuing violation fine may not exceed the original fine imposed.
5. May past due fines bear interest?
6. True/False: The association shall maintain a general record of violations which is organized, convenient and searchable.

# Towing: Authority

NRS 116.3102(1)(t) & AB301

- Subject to the provisions of the declaration, the association may direct the removal of vehicles improperly parked on:
  - property owned or leased by the association, or
  - any road, street, alley or other throughfare within the CIC in violation of the governing documents.
    - If the CIC is not gated or enclosed with access restricted or controlled by a person or device, the board shall not, and the governing documents must not regulate any road, street, alley or other thoroughfare the right-of-way which is accepted by the State or local government for public use as a road, street, alley or other thoroughfare.
 

NRS 116.350(1)
- **Effective October 1, 2021:** an association may not direct the removal of a vehicle parked on property owned or leased by the association solely because the registration is expired



# Towing: Authority Restrictions

NRS 116.350(3)&(4)

- The executive board **shall not**, and the governing documents **must not** prohibit a person from:
  - Parking a utility service vehicle with a gross vehicle weight rating of 20,000lbs or less, or a law enforcement or emergency service vehicle:
    - In an area designated for visitor parking, a designated parking area, a common parking area, or on the driveway of a unit
      - while the person is engaged in any activity relating to the delivery of public utility, law enforcement, or emergency service; or
      - if the person is an owner or tenant, and
        - is bringing the vehicle to their unit pursuant to their employment.
          - Association may require the owner to provide proof from their employer.



# Towing: Authority Restrictions continued

NRS 116.350(5)

- “Emergency service vehicle” & “Law enforcement vehicle” means any vehicle:
  - Owned by any government agency or political subdivision of NV; and
  - Identified by that entity as a vehicle used to provide emergency services or law enforcement services.
- “Utility service vehicle” means a vehicle:
  - Used for repairing, maintaining or operating any structure or any other physical facility necessary for the delivery of public utility services, including,
    - the furnishing of electricity, gas, water, sanitary sewer, telephone, cable or community antenna service; and
  - Except for any emergency use, operated primarily within the service area of a utility’s subscribers or consumers, without regard to whether the motor vehicle is owned, leased or rented by the utility.



# Towing: Prior to Tow

NRS 116.3102(1)(t)

- To order the removal of an improperly parked vehicle, the association **must**
  - comply with any requirements contained in the governing documents and
  - comply with the requirements of NRS 487.038, which now includes NRS 706.4477, by
    - Having a sign displayed in plain view declaring public parking to be prohibited or restricted in a certain manner; and
      - the sign shows the telephone number of the police department or sheriff's office; and
    - Providing oral notice to the police office or sheriff's office, indicating:
      - The time and location of the vehicle's removal and
      - The location to which the vehicle was taken.



# Towing: Prior to Tow

NRS 116.3102(1)(t)

- To order the removal of a vehicle, the association must
  - comply with the requirements of NRS 487.038, which now includes NRS 706.4477, by
    - posting written notice, 48 hours prior to removal, in a conspicuous place on the vehicle or provide oral or written notice to the owner/operator.
      - Per NRS 706.4477, such notice must state the date and time after which the vehicle will be towed.
      - 48-hour notice is not required to remove vehicles
        - blocking a fire hydrant, fire lane or handicapped parking space, or
        - which pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the CIC.





# Towing: Residential Complexes

AB 301 & NRS 706.4477

Effective October 1<sup>st</sup>, 2021:

- Towing from a residential complex must meet all previously described procedures except 48 hours notice is not required and the vehicle may be immediately towed if notice was previously affixed:
  - For the same or similar reason within the same residential complex.
  - Three or more times during the immediately preceding 6 months within the same residential complex for any reason, regardless of whether the vehicle was subsequently towed.
- “Residential Complex” means a group of apartments, condominiums or townhomes
  - intended for use as residential units and
  - for which a common parking area is provided,
    - regardless of whether each resident or unit has been assigned a specific parking space.



# Towing: Costs

AB 301 & NRS 706.4477

Effective October 1<sup>st</sup>, 2021:

- A [tow] operator shall not charge any fee or cost for the storage of the motor vehicle until at least 48 hours after the vehicle arrives and is registered at the place of storage.
  - If the vehicle arrives after the regular business hours, the 48-hour period begins when the regular business hours next begin.



# Towing: Costs continued

AB 301 & NRS 706.4477

Effective October 1<sup>st</sup>, 2021:

- The owner of the vehicle shall pay a hardship tariff for the cost of removal and storage of the vehicle if:
  - A vehicle has been towed because it was NOT registered;
  - The owner of the vehicle does not provide proof that the vehicle was registered; and
  - The owner, for reasons outside of their control as determined by the regulations adopted pursuant to NRS 706, is incapable of paying the normal rate charged for the removal and storage of the motor vehicle.
- The NV Transportation Authority (NTA) shall adopt regulations regarding hardship tariffs and qualifications for “reasons outside of the control of the owner.”



Nevada Transpiration Authority has jurisdiction over NRS 487 and NRS 706.

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# Towing: Enforcement without towing

NRS 116.350(2)

- NRS restrictions on towing do not preclude an association from adopting, and do not preclude the governing documents from setting forth, rules reasonably restricting the parking or storage of
  - Recreational vehicles,
  - Watercraft,
  - Trailers, or
  - Commercial vehicles.
- The governing documents may authorize the board to impose a fine for any violation of these rule,
  - In compliance with NRS 116.31031.



# Knowledge Check



1. True/False: NRS 116 guarantees the board the right to tow vehicles.
2. May a vehicle be towed solely because the registration has expired?
3. Can the association prohibit a law enforcement officer or emergency services provider from parking their duty vehicle within the community?
4. True/False: Prior to towing any vehicle, a sign declaring public parking to be prohibited or restricted must be displayed in plain view.
5. True/False: An association may immediately tow a vehicle if it has previously been tagged for the same violation or has committed 3 violations in the past 6 months.
6. If a vehicle owner believes they are being charged excessive fees/charges by a tow agency, which NV agency should they contact?

# Conclusion!



- Board's Authority
- Due Process
- Imposition of Fines
- Records
- Towing

# Questions?

- <http://red.nv.gov/> - Main Page
- [CICOmbudsman@red.nv.gov](mailto:CICOmbudsman@red.nv.gov) – Email Questions
- [http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/)