

WHAT MAILINGS MUST BE SENT VIA HARD COPY AND WHICH CAN BE SENT VIA E-MAIL. AS USUAL, THERE IS NO SIMPLE ANSWER.

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For many associations, Fall is both budget and election season: a time when associations utilize reams of paper and hundreds of dollars in postage. Recently, I was asked to look at the question of when an association mailing could be sent “electronically” and when it had to be sent “hard copy” by mail. To begin with the statute, NRS 116.31068 provides in pertinent part:

1. Except as otherwise provided in subsection 3, an association shall deliver any notice required to be given by the association under this chapter to any mailing or electronic mail address a unit’s owner designates. ...
3. The provisions of this section do not apply:
 - (a) To a notice required to be given pursuant to NRS 116.3116 to 116.31168, inclusive; or
 - (b) If any other provision of this chapter specifies the manner in which a notice must be given by an association.

So, the first requirement before sending mailings via e-mail is that the Owner must have designated an e-mail address to which s/he wants eligible mailings sent. Assuming management has that designation in writing, then the next task is to review the statute to determine if a particular mailing is eligible for e-mail delivery.

Some statutes state that the association will “*cause notice to be given*” or simply prescribe “*written notice*,” of which e-mail is a type. However, other statutes are more specific, using words such as “*mail*,” “*mailing address*,” or “*United States Postal Service*.” In brief, if the statute specifies “*mail*,” then a hard copy is required. Notice how NRS 116.31068 distinguishes between “*mail*” and “*electronic mail*.”

However, the Association’s governing documents may have different requirements. The effect of an association’s governing documents in a given situation would probably require an individual analysis. For example, NRS 116.31073(3) (a) simply provides that the association must give “*written notice*” before entering the grounds of a unit to repair a security wall. If the declaration conditioned the association’s non-emergency right of entry on notice that was mailed or hand delivered, then a court could find that the declaration controlled in that case because it provided better notice to the owner. So before sending out mailings, take a few minutes to review the applicable statute and the governing documents. If you have any doubts, consult the association’s corporate counsel.

Below is a chart. It is not all inclusive (*i.e.* there are many other provisions of NRS 116 which require notice to be given), but it does provide some useful examples:

Types of Mailings (Not All Inclusive)	Hard Copy Required	E-mail OK with Designation
NRS 116.12065 – Copy of changes made to governing documents (See NRS 116.049 for the definition of “governing document”)	X	
NRS 116.2117(8)(b) – Notices to security interest holders, guarantors and insurers of proposed amendments to the declaration	X	
NRS 116.310305(2)(c) – Right to hearing notice prior to imposing construction penalty; but owner must “receive” the notice		X
NRS 116.31031 – Hearing notices for covenant violations mailed to unit address and mailing address if different	X	
NRS 116.31031(3) – Fine schedule	X	
NRS 116.31034(4) – Elections – Association shall “cause notice to be given” of eligibility to serve on Board (self –nomination)		X
NRS 116.31034(11)(a) and (13)(a) – Ballot mailing including candidates’ statements	X	
NRS 116.31035 – Official publications containing mention of candidate or ballot question – opposing views must be disseminated under same terms and conditions as official publication, so if the official publication was mailed, the opposing statements must be mailed. If the official publication was e-mailed, the opposing statements may be e-mailed.	Depends	Depends
NRS 116.31073(3)(a) – Entering unit grounds to maintain security walls		X
NRS 116.3108 – Meetings of unit owners notices (Annual Meetings)		X
NRS 116.31083 – Board meeting notices, except for emergencies which require USPS mail to mailing address, hand delivery or posting in prominent location.		X
NRS 116.311(9) – Votes without a meeting (not including votes pursuant to NRS 116.31034 and NRS 116.31036) – specifically references electronic ballots		X
NRS 116.3113(3) – Notice to condominium owners that certain insurance is not reasonably available		X
NRS 116.31151 – Requirement to distribute copy of budget or summary of budget and written notice of where budget is available for review		X
NRS 116.3116-.31168 - Collection and Foreclosure Related Communications	X	