

CAN AN HOA HAND OVER RESIDENTS' EMAIL ADDRESSES?

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A recent article in the Community Associations Institute publication "HOA Resources" answered the question for a national audience as to whether an HOA could provide owner and resident email addresses upon request. In the article, the author concluded that HOAs could not provide email addresses based on the application of the nonprofit statutes or codes for most states.

In Nevada, the answer is also "no," but for different reasons. NRS 116.11085 provides that if a matter governed by NRS 116 is also governed by chapter 78, 81, 82, 86, 87, 87A, 88 or 88A of NRS (which are Nevada's non-profit and for-profit business entity statutes) and there is a conflict between the provisions of NRS 116 and the provisions of those other chapters, the provisions of NRS 116 prevail.

NRS 116.31175 provides that most records of an association are available for owners to examine and copy with certain limited exceptions. These exceptions include the records of the association relating to another unit's owner. See NRS 116.31175(4)(b).

Contrast this virtually unfettered access under NRS 116 with the restrictive nature of records access under NRS 82, the nonprofit corporation statute under which many HOAs are organized:

A director or any person who has been a member of record of a corporation for at least 6 months, or at least 5 percent of the members of the corporation, upon at least 5 days' written demand, is entitled to inspect in person or by agent or attorney, during usual business hours, the members' ledger or duplicate ledger and to make copies therefrom.

See NRS 82.181(3).

Further, pursuant to NRS 82.181(1), the only records which members are entitled to inspect, and copy are the articles of incorporation, the bylaws, and "a member's ledger containing only the names, alphabetically arranged, of all persons who are members of the corporation, showing their places of residence, if known, and the class of membership held by each."

Members are not supposed to use these records for commercial purposes or solicitations, to sell, or for purposes not related to the member's interest as a member. See NRS 82.181(6). Of course, once the nonprofit has provided the requested information, it is very difficult to control how it is used.

Since NRS 116 allows much more access to books and records, it is controlling. The question then becomes whether an owner's or resident's email address is available for inspection and copying or whether it falls within an exception, such as a record related to another unit's owner.

NRS 116 does not give a clear statement on that question, but it does give a hint. The only mention in NRS 116 providing addresses to unit owners appears in NRS 116.31034(17)(b) which states that upon request, the association must provide a candidate for election to the Board with a list of the mailing address of each unit, which must not include the names of the

units' owners or the name of any tenant. In short, the candidate can obtain a list of mailing addresses but no names, even though owner names are publicly available information on the county assessor's website. NRS 116 does not give any other categories of persons access to such a mailing list. Further NAC 116.405 prohibits a Board member from disclosing confidential information relating to a unit's owner unless the disclosure is consented to by the person to whom the information relates. This strongly suggests that owner and resident email addresses (and telephone numbers for that matter) are confidential information related to another unit's owner and cannot be provided to anyone, other than the limited information available to a candidate for campaign purposes. And in fact, the Nevada Real Estate Division reached the same conclusion in Advisory Opinion 10-03 where it stated:

Although property ownership information may be publicly available by search of individual properties on county assessor web sites, the association's compiled data list of unit's owners is not a public record and should not be made available to either another unit owner or another entity upon request. The provisions concerning books, records and other papers of the association which must be made available for review by another unit owner upon request does not apply to the associations compiled data list of unit's owners.

In summary, Nevada, like most states, prohibits an HOA from giving out the names, email addresses, telephone numbers and other contact information of fellow owners and residents, but not because it is contrary to the nonprofit corporate statutes, but because NRS 116 prohibits it.