

## WHAT IS THE DIFFERENCE BETWEEN A DIRECTOR AND AN OFFICER IN AN HOA???

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It continues to surprise me that many individuals don't know the difference between an officer and a director in our common interest community industry (CIC's). Many times they are one and the same, but not always.

In Nevada, the statutes call the board of directors the "Executive Board" and to further complicate things, the Commissioner's have been told to use that same term since it is in the statute. In most of our lives in this industry, the Executive Board was used only when the board was in executive session or the closed sessions where they are allowed to discuss very specific things. Please try not to confuse the two.

Having said that, the Executive Board and the Board of Directors, in our industry, are one and the same when you see it in the statutes, regulations or rules and regulations. The homeowner members elect their representatives, *the board of directors*, and after that election a majority of the board elects who their officers will be to act in specific positions stated in most documents. NRS 82, which most association's corporations were formed under states:

### **NRS 82.211 Officers of corporation: Selection; terms; duties.**

1. Every corporation *must have a president or a chair of the board, a secretary and a treasurer.*
2. Every corporation **may** also have one or more vice presidents, assistant secretaries and assistant treasurers, and such other officers and agents as may be deemed necessary.
3. All officers must be natural persons and must be chosen in such manner, hold their offices for such terms and have such powers and duties as may be prescribed by the bylaws or determined by the board of directors.
4. An officer holds office after the expiration of his or her term until a successor is chosen or until the officer's resignation or removal before the expiration of his or her term. A failure to elect officers does not require the corporation to be dissolved. Any vacancy occurring in an office of the corporation by death, resignation, removal or otherwise, must be filled as the bylaws provide, or in the absence of such a provision, by the board of directors.
5. Any natural person may hold two or more offices. (Added to NRS by 1991, 1268; A 1993, 997)

We can't ignore NRS 116, however, which states,

### **"NRS 116.3103 Power of executive board to act on behalf of association; members and officers are fiduciaries; duty of care; application of business-judgment rule and conflict of interest rules; limitations on power.**

1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board acts on behalf of the association. In the performance of their duties, the **officers and members of the executive board** are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. Officers and members of the executive board:
  - (a) Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule; and
  - (b) Are subject to conflict of interest rules governing the officers and directors of a nonprofit corporation organized under the law of this State.
2. The executive board may not act to:
  - (a) Amend the declaration.
  - (b) Terminate the common-interest community.

(c) Elect members of the executive board, but unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association, the executive board may fill vacancies in its membership for the unexpired portion of any term or until the next regularly scheduled election of executive board members, whichever is earlier. Any executive board member elected to a previously vacant position which was temporarily filled by board appointment may only be elected to fulfill the remainder of the unexpired portion of the term.

(d) Determine the qualifications, powers, duties or terms of office of members of the executive board.

3. The executive board shall adopt budgets as provided in [NRS 116.31151](#).(Added to NRS by [1991, 557](#); A [1993, 2364](#); [2001, 3193](#); [2003, 225](#); [2005, 2592](#); [2009, 1734, 2797](#); [2011, 2430](#))”

What confuses everyone is that in the above section, it almost sounds like the Officers are not members of the board or directors. They are, but have only been elected by their fellow board members to fulfill the corporate requirement to have certain officers as a makeup on that board.

In Nevada, board members **MUST** be members of the association while officers don't need to be **unless the documents require it**. Why would any association want officers who were not elected by the owners to be members of the board? As an example, some associations are so large and have such complex issues in the financial area that they may know someone who has a financial back ground and agrees to serve as an officer. This does not put them as a sitting member on the Board and they cannot vote as a director. Being an officer and not a sitting member of that board does not give them any voting rights. Remember that many documents don't allow this, but some may because of the complexity of the particular association.

The bottom line is that all unit owners/members elect the board as required by NRS 116.31034 and the board elects their officers normally on their first organizational meeting after the elections to enable checks to be cut and other actions that take action.

I hope I have not further confused you, but rather helped to shine some light on these two complex areas. Serving as an officer has certain responsibilities that should not be taken lightly. Check your Bylaws (or it may be buried in some other document) to see what your officer duties may be. Many times the President **MUST** sign all checks and the Treasurer **MUST** sign all checks. Double check immediately after being elected by the rest of the board to be an officer to see what your extra duties may be.