

LET'S DISCUSS THE OFFICERS IN THE NEVADA COMMON INTEREST COMMUNITY

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Have you checked the Bylaws or other documents for the community? What did they say? The Bylaws will “normally” state what this specific Nevada Corporation’s Officer duties are. Check the Bylaws first, but if they are kind of vague, what does our industry say about the duties of the Officers? Please keep the term Officers separate from the Board of Directors who are elected by the owners while the Officers are voted in by a majority of the board to fill the spots such as the President, Vice President, Treasurer and Secretary.

NRS 82, which most of the associations in Nevada are incorporated under state the following (Note the items that I have highlighted in red):

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](#))

NRS 82.216 Authority of directors and representatives of corporation.

1. The statement in the articles or bylaws of the objects, purposes, powers and authorized business of the corporation constitutes, as between the corporation and its directors, officers or members, an authorization to the directors and a limitation upon the actual authority of the representatives of the corporation. These limitations may be asserted in a proceeding by a director or a member entitled to vote for the election of directors or the Attorney General to enjoin the doing or continuation of unauthorized business by the corporation or its officers, or both, in cases where third parties have not acquired rights thereby, or to dissolve the corporation, or in a proceeding by the corporation, a director or a member entitled to vote for the election of directors suing in a representative suit against the officers or directors of the corporation for violation of their authority.
2. No limitation upon the business, purposes or powers of the corporation or upon the powers of the members, officers or directors, or the manner of exercise of such powers, contained in or implied by the articles or bylaws may be asserted as between the corporation, the directors or members and any third person.
3. Any contract or conveyance, otherwise lawful, made in the name of a corporation, which is authorized or ratified by the directors, or is done within the scope of the authority, actual or apparent, given by the directors, binds the corporation, and the corporation acquires rights thereunder, whether the contract is signed or is wholly or in part executory. (Added to NRS by [1991, 1268](#); A [2003, 3126](#))

NRS 82.221 Directors and officers: Exercise of powers and performance of duties; personal liability.

1. **Directors and officers shall exercise their powers in good faith and with a view to the interests of the corporation.**
2. In performing their respective duties, directors and officers are entitled to rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, that are prepared or presented by:
 - (a) One or more directors, officers or employees of the corporation reasonably believed to be reliable and competent in the matters prepared or presented;
 - (b) Counsel, public accountants or other persons as to matters reasonably believed to be within the preparer or presenter’s professional or expert competence; or

(c) A committee upon which the person relying thereon does not serve, established in accordance with [NRS 82.206](#) as to matters within the committee's designated authority and matters on which the committee is reasonably believed to merit confidence,

↳ but a director or officer is not entitled to rely on such information, opinions, reports, books of account or statements if the director or officer has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted.

3. A director or officer must not be found to have failed to exercise his or her powers in good faith and with a view to the interests of the corporation unless it is proved by clear and convincing evidence that the director or officer has not acted in good faith and in a manner reasonably believed by him or her to be with a view to the interests of the corporation.

4. Except as otherwise provided in the articles of incorporation or [NRS 82.136](#) and [82.536](#) and [chapter 35](#) of NRS, no action may be brought against an officer or director of a corporation based on any act or omission arising from failure in his or her official capacity to exercise due care regarding the management or operation of the corporation unless the act or omission involves intentional misconduct, fraud or knowing violation of the law.

5. The articles of incorporation may impose greater liability on a director or officer of a corporation than that imposed by subsection 4. (Added to NRS by [1991, 1269](#); A [1993, 997](#))

There is more in the NRS 82 Nevada Statute that warrants Directors and Officers reading further if they are having issues. Here is the link: <https://www.leg.state.nv.us/NRS/NRS-082.html>

Many individuals get on the board of directors and since they ran with an "agenda" that was clear that they wanted control and wanted to be President that they immediately will assume that position. The directors as a whole make the decision on who the Officers will be, not the owners when they are voting for directors. This is an important concept that many people are doing wrong particularly if they are self-managed and don't have the help of a properly licensed Community Manager.

When the Directors are making their decision on who the Officers will be, they need to choose very carefully who they want to run their meetings and perform the other duties outlined in the Bylaws. Does the person being considered to be the President appear to be a bully and abrasive? Is this the tone you want for your meetings and want the owners to see when they come to appear before the board? The President carries a huge responsibility in how your meetings will be conducted. A person who is short tempered, arrogant, abrasive and a bully is not someone I would want to lead any meeting in which I had a fiduciary duty as a director to make decisions. I frankly wouldn't even want that person to hold any of the Officer positions.

Let's discuss the Officer positions and duties:

- I. **President** – This individual should be a people person, but understand the critical role they will be assuming. They Will be required to keep the meetings on track and in accordance with Nevada laws by using Roberts Rules of Order. They must learn how to run a meeting using Parliamentary Procedures in accordance with NRS 116.

Owner comments at the beginning for a period of time as determined by the Board on things on the agenda and at the end on anything they wish to talk about, but again following timelines set by the board.

A majority of the Board makes decisions regarding their Nevada Corporation, not just the President. In a For Profit Corporation, the CEO or President may be given more powers than in a nonprofit common interest community corporation. Remember, a majority of the Board and the Bylaws determine the authority given to the President in an HOA.

The President may also be required to be one of the signing parties on the checks. If the documents state that the President and the Treasurer shall sign all checks, there is no room for anyone else to sign checks unless the Vice President fills in as an Officer should the President not be available. This does not leave a spot for the Community Manager to sign checks at all.

- II. **Vice President** – You will notice in the above law that it is not mandatory to have a Vice President, but it is wise AND what do the documents say? If the President can't make a meeting,

who will run the meeting? Your Parliamentary Procedures rule should state in what order Officers fill in should the President not be in attendance. There is a sample on the website of those procedures should the association not have one. Many times this Officer becomes the liaison for one of the tougher committees in the community since their duties are minimal and only filling in when the President is absent.

III. **Treasurer** - This individual carries a huge burden. Normally, they are one of the signors on the checks cut by the association to pay vendors, etc. This Officer cannot just sit back and assume that the Community Manager is on top of everything and they only need to sign checks. They should be double checking to make sure that the statements are accurate and asking questions for clarification before any meeting so that errors can be addressed or the Community Manager can be prepared to answer questions. Normally, the Community Manager does not do the books themselves, but rather the company has an accounting staff. Do people make mistakes? YES! It is up to all directors to look at the financials at least quarterly to satisfy the law (every 100 days in NRS 116), but the Treasurer can sure catch things quicker and make the job of the rest of the directors easier. Also, again, what do the documents say this Officer SHALL be doing? Check as soon as possible to ensure that you are fulfilling your fiduciary duty to the Nevada Corporation let alone those owners who elected you to represent them on the Board.

IV. **Secretary** – This individual normally is stated in the documents as responsible for all records for the association. Does this person normally take the minutes and have all the boxes of all of the records that are required to be kept for a minimum ten years or for the life of the association (minutes)? Normally, this is delegated to the Community Manager or the management company, but the Secretary normally ensures that it is being done and asks to see how the system is in place to comply with Nevada law. The Secretary is normally as dual signor on all contracts along with the President, but again, you must look at the documents to see what they say about this position. The association in which I live is very specific and state the following: “The Secretary SHALL record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board. The Secretary shall co-sign documents with the President or Vice President when two signatures of the Association are required and may co-sign checks in the absence of the Treasurer. “

As you can see, the Secretary should be making sure that the records are in good shape and that all notices to the owners and other members of the board are done correctly. Most of these are delegated to the Manager to do, but the Secretary as stated above will still be responsible to make sure it happens.

As you can see, there are many responsibilities that the Officers have when assuming their positions. If you decide to fill one of these roles, I recommend reading your documents and the laws regarding your new position as the property values of every single home in your development sways on the decisions made by the Board of Directors and their Officers.