
Developer Reserve Study

VS.

Board of Director Controlled RS

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NEVADA RESERVES FOR RECOVERY TASK FORCE

Declarant Reserve Contributions at Transition

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RESERVE FUNDING IN OTHER JURISDICTIONS

It is a **breach of fiduciary duty** for the developer to underfund an association's reserve account during the developer control period. Maercker Point Villas Condominium Association v. Szymiski, 275 Ill.App.3d 481, 655 N.E.2d 1192 (1995). The declarant's obligation to fund reserve begins when the declaration is recorded.

Board of Managers of Weathersfield Condominium Association v. Schaumburg Ltd.Partnership, 307 Ill.App.3d 614, 717 N.E. 2d, 429 (1999)

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DECLARANT RESERVE FUNDING IN NEVADA

Is a Declarant required to “adequately fund” an association’s reserve account during the declarant control period?

What is the declarant’s funding requirement at transition?

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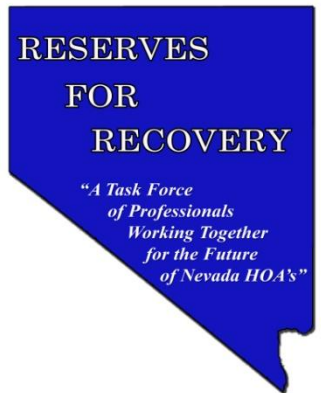
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DECLARANT RESERVE FUNDING IN NEVADA

NRS 116.31038

Delivery to association of property held or controlled by declarant. In addition to any applicable requirement set forth in [NRS 116.310395](#), within 30 days after units' owners other than the declarant may elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the units' owners and of the association held by or controlled by the declarant, including:

...



3. A complete study of the reserves of the association, conducted by a person who is registered as a reserve study specialist pursuant to chapter 116A of NRS. At the time the control of the declarant ends, the declarant shall:

(a) Except as otherwise provided in this paragraph, deliver to the association a reserve account **that contains the declarant's share of the amounts then due**, and control of the account. If the declaration was recorded before October 1, 1999, and, at the time the control of the declarant ends, the declarant has failed to pay his or her share of the amounts due, the executive board shall authorize the declarant to pay the deficiency in installments for a period of 3 years, unless the declarant and the executive board agree to a shorter period.

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Declarant Reserve Funding in Nevada

Where does the statute that governs a declarant's obligation at transition reference "adequate funding"?

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Where does the adequate funding requirement come from?

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STATUTORY ADEQUATE FUNDING REQUIREMENT

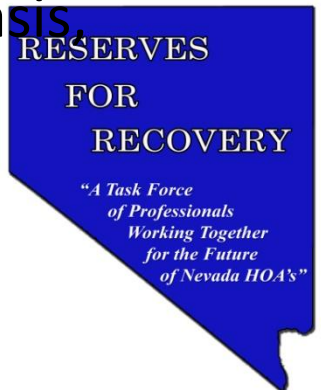
NRS 116.3115 Assessments for common expenses; funding of adequate reserves; collection of interest on past due assessments; calculation of assessments for particular types of common expenses; notice of meetings regarding assessments for capital improvements.

...

2. Except for assessments under subsections 4 to 7, inclusive, or as otherwise provided in this chapter:

...

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore. ...



CODE REFERENCE TO ADEQUATE FUNDING

NAC 116.425 Reserve study: Contents. (NRS 116.31152, 116.615)

1. A reserve study must, in addition to the requirements set forth in NRS 116.31152, include:

(a) A 30-year schedule which shows:

...

(2) The projected increase in reserve contributions to the reserve fund, adjusted for inflation, that will be required in any given year to provide **adequately funded** reserves;

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CODE DEFINITION TO ADEQUATE FUNDING

NAC 116.425 Reserve study: Contents. (NRS 116.31152, 116.615)

2. As used in this section, “adequately funded reserves” means the funds sufficient to maintain the common elements:

(a) At the level described **in the governing documents and in a reserve study**; and

(b) Without using the funds from the operating accounts or without special or reserve assessments, except for occurrences that are a result of unforeseen catastrophic events.

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NEVADA EIGHTH JUDICIAL DISTRICT COURT DECISION ON DECLARANT RESERVE FUNDING REQUIREMENT

Estates at Stallion Homeowners' Association v. PN II, Inc. et al., Case No. A-10-620500-C.

Conclusions of Law

13. Pursuant to N.R.S. 116.31038, at the expiration of the declarant control period a declarant is required to fund an association's reserve account in declarant's "share of the amounts then due."

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NEVADA EIGHTH JUDICIAL DISTRICT COURT
DECISION ON DECLARANT RESERVE FUNDING REQUIREMENT

Estates at Stallion Homeowners' Association v. PN II, Inc. et al.,
Case No. A-10-620500-C.

Conclusions of Law

14. The “share of the amounts then due” **must be calculated pursuant to the fully funded balance set forth in the reserve study** turned over to an association at the expiration of the declarant control period and in the manner set forth in paragraph 12(a)-(e) above.

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**NEVADA EIGHTH JUDICIAL DISTRICT COURT
DECISION ON DECLARANT RESERVE FUNDING REQUIREMENT**

Estates at Stallion Homeowners' Association v. PN II, Inc. et al.,
Case No. A-10-620500-C.

Conclusions of Law

**15. Defendant underfunded the Association's reserve account
in the amount of \$141,151.28.**

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FACTS AND DATA NEEDED TO CALCULATE DECLARANT'S RESERVE FUNDING OBLIGATION

Date of recordation of CC&Rs May 13, 2005

Date of Transition(Election) February 20, 2008

Note: The Association has been in existence for 33 months at the time of transition.

Balance in Reserve Account at Transition \$80,192.00

Copy of current reserve study

Fully Funded Reserve at end of the transition year

Balance as of December 31, 2008 \$288,417.00

Note: The Association has been in existence for 43 months at the end of the transition year.

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CALCULATING THE AMOUNT “THEN DUE” BY DECLARANT AT TRANSITION

Number of Months the association has been in existence at the time of transition: 33 months

Number of Months the association has been in existence as of the end of the transition year: 43 months

How much should have been in the reserve account at transition?

\$221,343.28 (76.7% x \$288,417.00)

Note: 33 divided by 43 equals 76.7%

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CALCULATING DECLARANT'S RESERVE DEFICIENCY AT TRANSITION

Proper Funding at Transition: \$ 221,343.28

Balance in Account at Transition: \$ 80,192.00
\$141,151.28

Post Transition Contributions: \$0.00

Balance Due at Transition: \$141,151.28

District Court awards association summary judgment in the amount of \$141,151.28

Note: Declarant appealed and the case was settled before the Nevada Supreme Court heard the case.

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SUMMARY: DECLARANT'S RESERVE FUNDING OBLIGATION AT TRANSITION

Until the Nevada Supreme Court rules otherwise, at transition:

1. The declarant must deliver to the association a reserve study (current);
2. The declarant must deliver to the association a reserve account that “contains the declarant’s share of **the amounts then due . . .**”
3. The calculation of **the amounts then due** should be based on the fully funded reserve balance.

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The End

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