

1 116.3116(2).<sup>1</sup> Unlike Nevada, the Connecticut Supreme Court has had an opportunity to  
 2 interpret this provision. In Hudson House Condominium Association, Inc. v. Brooks, 223 Conn.  
 3 610, 611 A.2d 862 (1992), the Connecticut Supreme Court held that the superpriority portion of  
 4 an association's lien for assessments should include attorneys' fees (collection costs) and other  
 5 expenses incurred.

6 On January 8, 1991, the plaintiff association began an action to foreclose a statutory lien  
 7 for delinquent common expense assessments due on a condominium unit owned by the  
 8 defendant Brooks. Hudson House, *supra*, 223 Conn. at 613, 611 A.2d at 864. The Connecticut  
 9 Housing Finance Authority ("CHFA") was named as an additional defendant as a result of its  
 10 interest as the assignee of the first mortgage on the unit. *Id.* The trial court agreed with the  
 11 plaintiff association's calculation of the amounts due, but concluded that only six months of  
 12 common expense assessments, i.e. \$570, together with interest, were entitled to the statutory  
 13 priority over CFHA's the first mortgage. *Id.* The trial court refused to include attorneys' fees  
 14 (collection costs) and other costs in the amount entitled to priority. *Id.* Thereafter, the trial court  
 15 rendered a judgment of strict foreclosure unless the first mortgage holder paid the plaintiff  
 16 association the \$570, plus interest, in order to redeem the premises. *Id.* The plaintiff association  
 17 appealed to the appellate court and the matter was ultimately transferred to the Connecticut  
 18 Supreme Court. *Id.*

19 The Connecticut Supreme Court noted that the statute in question was contrary to the

20 Connecticut General Statutes (Rev. to 1989) § 47-258 provides: "(a) The association has a statutory lien on a unit  
 21 for any assessment levied against that unit of fines imposed against its unit owner from the time the assessment or  
 22 fine becomes delinquent. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest  
 23 charged pursuant to subdivisions (10), (11) and (12) of subsection (a) of the section 47-244 are enforceable as  
 24 assessments under this section. If an assessment is payable in instalments, the full amount of the assessment is a lien  
 25 from the time the first instalment thereof becomes due. (b) A lien under this section is prior to all other liens and  
 26 encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the declaration and, in  
 27 a cooperative, liens and encumbrances which the association creates, assumes or takes subject to, (2) a first or  
 28 second security interest on the unit recorded before the date on which the assessment sought to be enforced became  
 delinquent, and (3) liens for real property taxes and other governmental assessments or charges against the unit or  
 cooperative. The lien is also prior to all security interests described in subdivision (2) of this subsection to the extent  
 of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection  
 (a) of section 47-257 which would have become due in the absence of acceleration during the six months  
 immediately preceding institution of an action to enforce either the association's lien or a security interest described  
 in subdivision (2) of this subsection. This subsection does not affect the priority of mechanics' or materialmen's  
 liens, or the priority of liens for other assessments made by the association."

-- 6 --

02638-08/126425

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1 tenet that the priority of liens is governed by the common law rule that first in time is first in  
2 right. Id. at 614, 611 A.2d at 865. The Connecticut Supreme court further noted that the statute  
3 "carves out an exception and grants a priority to the lien for common expense assessments. The  
4 priority, however, is temporally limited by Section 47-258(b) to the amount 'of the common  
5 expense assessments . . . which would have become due in the absence of acceleration during the  
6 six months immediately preceding institution of an action to enforce . . . the association's  
7 lien . . .'" Id. The Connecticut Supreme Court held:

8 In construing this statute, we assume that 'the legislature intended  
9 to accomplish a reasonable and rational result.' . . . Section 47-  
10 258(a) creates a statutory lien for delinquent common expense  
11 assessments . . . Section 47-258(j) authorizes the foreclosure of the  
12 lien thus created. Section 47-258(b) provides for a limited priority  
13 over other secured interests for a portion of the assessment  
14 accruing during the six month period preceding the institution of  
15 the action. Section 47-258(g) specifically authorizes the inclusion  
16 of the costs of collection as part of the lien. Since the amount of  
17 monthly assessments are, in most instances, small, and since the  
18 statute limits the priority status to only a six month period, and  
19 since in most instances, it is going to be only the priority debt that  
20 in fact is collectible, it seems highly unlikely that the legislature  
21 would have authorized such foreclosure proceedings without  
22 including the costs of collection and the sum entitled to a  
23 priority. To conclude that the legislature intended otherwise  
24 would have that body fashioning a bow without a string or  
25 arrows. We conclude that [Section] 47-258 authorizes the  
26 inclusion of attorneys' fees and costs and the sums entitled to a  
27 priority.

28 Id. at 616-17, 611 A.2d 866 (citations omitted and emphasis  
added).

Applying the Hudson House decision to the case at hand, Nevada law creates a statutory  
lien for delinquent common expense assessments. See NRS 116.3116(1). Furthermore,  
NRS 116.3116(2) authorizes the foreclosure of the common expense assessment lien. NRS  
116.3116(2) provides for a limited priority over other secured interests for the superpriority  
portion of the association's assessment accruing during the six (6) month period preceding the  
institution of the action. NRS 116.3116(1) also specifically authorizes the inclusion of costs of  
collection, late fees and interest as part of the lien.

If this court adopts the holding and rationale of the Hudson House court, then, in the case  
at hand, the Association's superpriority claim would be in the amount of One Thousand Nine

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Hundred Sixty-Three Dollars (\$1,963.00), plus interest. This figure is calculated as follows:

Item	Total due	Superpriority Portion	Other Portion
Assessments	\$926.30	\$ 219.00	\$ 707.30
Late Fees	\$210.00	60.00	150.00
Interest	\$433.97	- 0 -	433.97
Demand Letter	\$95.00	95.00	- 0 -
Lien	\$295.00	295.00	- 0 -
Pre NOD Letter	\$75.00	75.00	- 0 -
Release Lien	\$30.00	30.00	- 0 -
Trustee's Fees	\$400.00	400.00	- 0 -
Trustee's Sale	\$360.00	360.00	- 0 -
Guaranty			- 0 -
Recording Fee	\$57.00	57.00	- 0 -
Postage	\$72.00	72.00	- 0 -
Escrow Demand	\$150.00	- 0 -	150.00
Management Company Fee Costs	\$45.00	45.00	- 0 -
Management Company	\$100.00	- 0 -	100.00
Transfer Fee	\$300.00	300.00	- 0 -
Violations	\$4,025.00	- 0 -	4,025.00
TOTALS		\$ 1,963.00	\$ 5,611.27

The Nevada Supreme Court has established the rule of statutory interpretation that the words in a statute "should be given their plain meaning unless this violates the spirit of the act." State, Dep't of Ins. v. Humana Health Ins., 112 Nev. 356, 360 (1999) (quoting McKay v. Bd. Of Supervisors, 102 Nev. 644, 648 (1986)).

In the case at hand, the Association contends that the Nevada Legislature, while attempting to balance the interests of the respective parties, intended to provide a modest protection to the interests of associations by granting the right to recover the fees, costs, interest,

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late fees and assessments that accrued as a result of the association exercising its enforcement remedy. To interpret the statute otherwise would create an impediment to association enforcement of unpaid assessments. It would truly create the bow, without strings or arrows, as referenced in Hudson House case. If these costs are not recoverable as part of the superpriority portion of an association's claim, then they must be borne by the individual owners in the community. This is particularly punitive since the same owners are already required to share the burden of the uncollected assessments.

Based on the foregoing, the Association contends that the superpriority portion of its claim is in the amount of \$1,963, plus interest and that payment of this amount must be made by the Plaintiff in order to have clear title to the Property.

D. The Association is Entitled to Recover the Balance of Its Claim From the Excess Proceeds.

The superpriority portion of the Association's claim is only a part of the balance due and owing to the Association. The remaining balance is Five Thousand Five Hundred Sixty-Five Dollars and Seven Cents (\$5,565.07)<sup>2</sup>. The Association claims it has priority over all other claims to the surplus or excess funds in this foreclosure and that any surplus funds remaining, after payment of legal fees to the stake holder, must first be distributed to the Association. On September 22, 2006, this court awarded the law firm of Miles, Bauer, Bergstrom & Winters, LLP One Thousand Five Hundred Dollars (\$1,500.00) in legal fees and One Hundred Sixty Three Dollars (\$163.00) in costs for interpleading these funds. After payment of this amount, the balance of the excess funds should be Five Thousand Eight Hundred Thirty-Two Dollars and Sixty-Five Cents (\$5,832.65).

<sup>2</sup> A payment in the amount of \$46.20 was applied to the non-priority portion of the past due balance leaving a balance due, prior to the calculation of interest, of \$5,565.07.

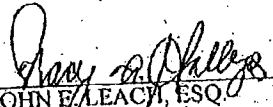


SUMMARY

In conclusion, the Association contends that pursuant to NRS 116.3116(2) and the Hudson House case, the Association's superpriority claim should be established in the amount of One Thousand Nine Hundred Sixty-Three Dollars (\$1,963.00), plus interest. The Plaintiff should be responsible for tendering this payment to the Association. Upon receipt thereof, the Association's superpriority claim would be extinguished against the Property and the Property would be free and clear of any claims from the Association. In addition, the Association contends that the balance of its claim in the amount of Five Thousand Five Hundred Sixty-Five Dollars and Seven Cents (\$5,565.07) has priority over any other mortgage or lien recorded against the Property. See NRS 40.462(c). Thus, any remaining surplus funds should first be applied to the Association's claim.

Dated this 16<sup>th</sup> day of November, 2006.

SANTORO, DRIGGS, WALCH,  
KEARNEY, JOHNSON & THOMPSON

  
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Nevada Bar No. 1225  
TRACY A. GALLEGOS, ESQ.  
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Attorneys for Defendant Spring Mountain  
Ranch Master Association.

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RECEIPT OF COPY

RECEIPT OF COPY of the foregoing DEFENDANT SPRING MOUNTAIN RANCH  
ASSOCIATION'S BRIEF is hereby acknowledged:

DATED this 16<sup>th</sup> day of November, 2006.

THE COOPER CHRISTENSEN LAW FIRM,  
LLP



Anita K.H. McFarland, Esq.  
Marty G. Baker, Esq.  
820 S. Valley View Blvd.  
Las Vegas, NV 89107

*Attorneys for Korbel Family Trust*

## **EXHIBIT “J”**

Logout My Account Search Menu New District Civil/Criminal Search Refine Search Back

Location : District Court Civil/Criminal Help

## REGISTER OF ACTIONS

CASE NO. 06A523959

Korbel Family Living Trust Vs Spring Mountain Ranch Master  
Assn, Bay Capital Corp

§  
§  
§  
§  
§  
§

Case Type: Title to Property  
Subtype: Liens  
Date Filed: 06/27/2006  
Location: Department 16  
Conversion Case Number: A523959

### PARTY INFORMATION

#### Lead Attorneys

Conversion No Convert Value @ 06A523959  
Extended Removed: 04/24/2009  
Connection Converted From Blackstone  
Type

Defendant Bay Capital Corp

Defendant Spring Mountain Ranch Master Assn

John Eric Leach

Retained

\*\* Confidential Phone  
Number \*\*

Intervenor Recontrust Company

Jeremy T. Bergstrom

Retained

\*\* Confidential Phone  
Number \*\*

Plaintiff Korbel Family Living Trust

Anita K. Holden-  
McFartland

Retained

\*\* Confidential Phone  
Number \*\*

### EVENTS & ORDERS OF THE COURT

11/20/2008 Hearing: (9:00 AM) (Judicial Officer Glass, Jackie)  
ARGUMENT/PLT'S MTN FOR PRELIMINARY INJUNCTION /6 Court Clerk: Sandra Jeter Reporter/Recorder: Francesca  
Heck Heard By: Jackie Glass

#### Minutes

11/20/2008 9:00 AM

- Arguments by counsel regarding who is going to pay what and what are common expenses as outlined in NRS.110.  
COURT ORDERED, the Association can collect the superpriority lien including up to six months of late fees, collection  
fees and attorney's fees; however anything after foreclosure is not included - only what was before - and counsel is to  
make sure everyone has notice. COURT FURTHER ORDERED, the previously interpled funds are to be RELEASED.  
Mr. Leach to prepare the Order and submit to Mr. Baker for approval as to form and content.

Parties Present :

Return to Register of Actions

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6633265&Hearing...> 9/8/2010

## **EXHIBIT “K”**

1 ORD  
2 JOHN B. LEACH, ESQ.  
3 Nevada Bar No. 1225  
4 TRACY A. GALLAGOS, ESQ.  
5 Nevada Bar No. 9023  
6 SANTORO, DRIGGS, WALCH,  
7 KEARNEY, JOHNSON & THOMPSON  
8 400 South Fourth Street, Third Floor  
9 Las Vegas, Nevada 89101  
10 Telephone: 702/791-0308  
11 Facsimile: 702/791-1912

12 Attorneys for Spring Mountain Ranch Master Association

9  
FILED

Dec 22 8 59 AM '08

*Lindsey St. Augustine*  
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

KORBEL FAMILY TRUST

Plaintiff,

v.

SPRING MOUNTAIN RANCH MASTER  
ASSOCIATION; BAY CAPITAL CORP.,

Defendants.

Case No. 06-A-323959-C  
Dept. No. Y

ORDER

Hearing Date: November 20, 2006  
Time: 9:00 A.M.

ORDER

The above-referenced matter having come before this Court, the Plaintiff being represented by Marty G. Baker, Esq. of The Cooper Castle Law Firm, and Defendant Spring Mountain Ranch Master Association (the "Association") being represented by John B. Leach, Esq. of the law firm of Santoro, Driggs, Walch, Kearney, Johnson & Thompson, each party having briefed the issues, good cause appearing therefore and thereby no just reason for delay;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Nevada Revised Statutes 116.3116(2), a portion of the Association's assessment lien has priority over the first deed of trust. This portion of the Association's assessment lien comprises the super-priority portion of the lien. The Association's assessment lien, with the exception of the super-priority portion of the lien, is extinguished by a foreclosure of the first deed of trust.

02628-JB/12/23-LZ

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FILED  
DEC 22 2008  
CLERK

Specimen: WILSON, REUBEN, JAMES & THOMAS  
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400 South Main Street, Reno, Nevada, 89501  
702-781-0000 - FAX 702-781-0001

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of the  
2 Association's super-priority claim shall include the following amounts:

- 3 (a) Six (6) months of the assessments for common expenses;  
4 (b) Six (6) months of late fees imposed for non-payment of the assessments  
5 for common expenses;  
6 (c) Interest on the principal amount of six (6) months of the unpaid  
7 assessments for common expenses, as set forth in the Association's  
8 governing documents;  
9 (d) The Association's costs of collection, which may include legal fees and  
10 costs, that accrue prior to the date of foreclosure of the first deed of trust;  
11 and  
12 (e) The transfer fee for conveyance and change of ownership of the property  
13 foreclosed pursuant to the first deed of trust.

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant  
15 Association's assessment lien has priority over the second deed of trust and any claims  
16 originating from the second deed of trust. See NRS 116.3116(2).

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association's  
18 super-priority claim, in the case at hand, to be paid by the plaintiff to the Defendant Association  
19 is \$1,963.00.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the remaining balance  
21 of the Association's claim is \$5,565.07, and that said claim has priority over all other claimants  
22 in this action.  
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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the Court

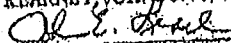
2 shall take the necessary steps to cause the same to be entered in the records of  
3 the Court and to cause the same to be filed in the Court's files. The Court on  
4 January 4, 2006, by the Honorable Judge, Bergstrom & Winters, LLP, on behalf of the Intervenor,  
5 Reconstruct Company, N.A.

6 Dated this 20 day of December, 2006

7  
8   
9 DISTRICT COURT JUDGE

10 Submitted by:

11 SANTORO, DRIGGS, WALCH,  
12 KEARNEY, JOHNSON & THOMPSON

13   
14 JOANNE LEACH, ESQ.

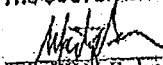
15 Nevada Bar No. 1223  
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17 Nevada Bar No. 9023  
18 400 South Fourth Street, Third Floor  
19 Las Vegas, Nevada 89101

20 Attorneys for Defendant Spring Mountain Ranch Master Association

21 Approved as to Form and Content:

22 THE COOPER CASTLE LAW FIRM

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26 820 S. Valley View Blvd.  
27 Las Vegas, NV 89107

28 Attorneys for Korb Family Trust

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CLERK OF THE COURT

SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
400 South Fourth Street, Third Floor, Las Vegas, Nevada 89101  
702.731.0001 - 702.731.0002



## EXHIBIT "L"

The Cooper Castle Law Firm, LLP  
2821 W. Horizon Ridge Parkway, Suite 201  
Henderson, NV 89052  
Phone (702)435-4175 \* Fax (702)877-7425

FACSIMILE COVER SHEET

If there is a problem with transmission or if all pages are not received,  
Please call (702)435-4175 for retransmission

TO: Sun City Anthem

FAX NO.: (702)614-5813

FROM: Linda Logue

July 15, 2010

RE: UNIT OWNER'S REQUEST FOR NRS 116.4109 COMPLETE RESALE PACKAGE AND ACCOUNT  
LEDGER

HOA: Sun City Anthem  
Property: 2982 Strathspey Court, Henderson, NV 89044  
Our File No.: 11892NVREO

Number of Pages Including the cover page: \_\_\_\_\_

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is PRIVILEGED, CONFIDENTIAL and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original to us by mail without making a copy. Thank you.

**YOU ARE REQUIRED BY LAW TO FURNISH ALL OF THE FOLLOWING WITHIN 10 CALENDAR DAYS OF RECEIPT OF THIS REQUEST:**

- ☐ Declaration (Other Than Any Plats and Plans)
- ☐ Bylaws
- ☐ Rules and Regulations of the Association
- ☐ NRS § 116.41095 Required Information Statement
- ☐ A copy of the Current Operating Budget
- ☐ Year to Date Financial Statement
- ☐ A Certificate Good Through August 6, 2010 Which Sets Forth a Statement of:
  - ☐ Amount of Monthly Assessment
  - ☐ Any Unpaid Assessment of any kind Due & Owning by Unit Owner
  - ☐ Any Unsatisfied Judgments
- ☐ A Statement of any Transfer Fees, Transaction Fees, or any Other Fees associated with the resale of the unit
- ☐ Account Ledger Supporting Said Certificate (FDCPA Requirement)
- ☐ Completed W-9 Form (IRS Requirement)

HOA Resale Package

11092NVREO

7/15/2010 11:03 Remote ID Imprint ID

July 15, 2010

Sun City Anthem  
2450 Hampton Rd  
Henderson, NV 89052  
Via Facsimile to (702)614-5813

RE: REQUEST FOR COMPLETE RESALE PACKAGE PURSUANT TO NRS 116.4109  
Name of Master HOA:  
Name of HOA: SUN CITY ANTHEM  
Property Address: 2982 Strathspey Court, Henderson, NV 89044  
File No.: 11892NVREO

Please be advised that the Cooper Castle Law Firm, LLP represents the current owner of the above referenced property, Federal Home Loan Mortgage Corporation (FreddieMac). FreddieMac has contracted to sell this property, and via this letter is requesting that you provide them a COMPLETE resale package as required by NRS § 116.4109, as listed on our cover page attached hereto.

As the Community Manager, you should be aware that pursuant to NRS § 116.4109(4), "Within 10 days after receipt of a written request by a owner or his authorized agent, the association shall furnish all of the following to the owner or his authorized agent for inclusion in the resale package:

- a. Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and
- b. A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b) and (d) of subsection 1.

In preparing the certificate, you should also be aware that the current owner of the property acquired it via a foreclosure of the first deed of trust. Consequently, we will only accept a certificate which is prepared in accordance with NRS § 116.3116(2), also known as a "super-priority demand." Pursuant to County District Court ruling in *Pursuant to the Clark County District Court's Interpretation of the statute (Korbel vs. Spring Mountain Ranch Master Association)*, the amount may include 9 months of pre-foreclosure common area expenses, interest, late fees, and reasonable costs of collection. Please note that pre-foreclosure violations are not common area expenses and will not be paid. If there are any post-foreclosure violations claimed on this account, please provide proof of compliance with Notice and Hearing as required by NRS § 116.31031. Pursuant to the Fair Debt Collection Practices Act, please provide us with proof of the underlying obligation via a complete account ledger which breaks out the dates and amounts to be paid.

Resale Package for 2982 Strathspey Court, Henderson, NV 89044

Our transaction is scheduled to close escrow on August 6, 2010. Consequently, we are requesting that the Certificate provided be GOOD THROUGH August 6, 2010. Pursuant to NRS § 4109(b)-(d), the association may charge the owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The association may charge the owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3. Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

11892NVREO

HOA Resale Package

Upon confirmation that the COMPLETE resale package is ready, we will submit payment in full by either credit card or check. We will NOT accept piecemeal, incomplete packages or multiple charges for the resale package. Please note that pursuant to NRS § 116.4109(5), if you fail to furnish all of the items required within ten (10) days of the date of this letter, the seller is not liable for the delinquent assessment, and we will close the transaction without paying any assessments.

Please contact me via telephone, email, or fax as designated below to notify me when the complete resale package is available so that I can arrange to pay for and receive the items. Please contact me immediately if you have any questions regarding the foregoing, or if you do not represent this Association.

Sincerely,

Linda Logue  
Email: llogue@ccfirm.com  
Phone: (702)435-4175, Ext. 4163

Fax: (303)285-5743

Restatement of Required Items for Complete NRS § 116.4109 Resale Package:

- ☐ Declaration (Other Than Any Plats and Plans)
- ☐ Bylaws
- ☐ Rules and Regulations of the Association
- ☐ NRS § 116.41095 Required Information Statement
- ☐ A copy of the Current Operating Budget
- ☐ Year to Date Financial Statement
- ☐ A Certificate Good Through August 6, 2010 Which Sets Forth a Statement of:
  - ☐ Amount of Monthly Assessment
  - ☐ Any Unpaid Assessment of any kind Due & Owning by Unit Owner
  - ☐ Any Unsatisfied Judgments
- ☐ A Statement of any Transfer Fees, Transaction Fees, or any Other Fees associated with the resale of the unit
- ☐ Account Ledger Supporting Said Certificate (FDOPA Requirement)
- ☐ Completed W-9 Form (IRS Requirement)

## **EXHIBIT “M”**

Holland & Hart LLP  
9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134  
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

1 **AFF**

2 Patrick J. Reilly, Esq.  
3 Nevada Bar No. 6103  
4 Nicole E. Lovelock, Esq.  
5 Nevada Bar No. 11187  
6 HOLLAND & HART LLP  
7 9555 Hillwood Drive, Second Floor  
8 Las Vegas, Nevada 89134  
9 Tel: (702) 669-4600  
10 Fax: (702) 669-4650  
11 Email: [preilly@hollandhart.com](mailto:preilly@hollandhart.com)  
12 [nelovelock@hollandhart.com](mailto:nelovelock@hollandhart.com)

13 *Attorneys for Plaintiffs Nevada Association*  
14 *Services, Inc., RMI Management, LLC,*  
15 *and Angius & Terry Collections, LLC*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 IKON HOLDINGS, LLC, a Nevada limited  
19 liability company,

20 Plaintiff,

21 vs.

22 HORIZONS AT SEVEN HILLS  
23 HOMEOWNERS ASSOCIATION; and  
24 DOES 1 through 10; and ROE ENTITIES 1  
25 through 10 inclusive,

26 Defendants.

Case No. : A-11-647850-B  
Dept. No.: XIII

**AFFIDAVIT OF PATRICK REILLY,  
ESQ.**

27 STATE OF NEVADA )  
28 ) ss.  
COUNTY OF CLARK )

I, PATRICK J. REILLY, being first duly sworn, depose and say:

1. I am over eighteen years old and make this declaration of my own personal knowledge. If called upon to testify, I am competent to testify as to the matters set forth herein.

2. I make this Affidavit on my own behalf and in support of the Motion for Clarification or, in the Alternative, For Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief (the "Motion").

///

1           3.     I am a partner at the law firm of Holland & Hart LLP, counsel for Plaintiffs in the  
2 above-referenced matter.

3           4.     I have represented HOA collection agencies in a multitude of suits related to the  
4 super-priority lien issue.

5           5.     I currently represent three HOA collection agencies in the arbitration entitled  
6 *Higher Ground, LLC, et al. v. Nevada Association Services, Inc. et al.*, Nevada Real Estate  
7 Division Arbitration Case No. 10-87 (the "*Higher Ground Arbitration*"), which was  
8 commenced on or about May 5, 2010 and I represented certain defendants in said arbitration.

9           6.     In the *Higher Ground Arbitration*, claimants asserted many claims, including an  
10 assortment of tort claims and class action allegations. On October 28, 2010, the Arbitrator  
11 dismissed all allegations related to a proposed "class arbitration." Also on October 28, 2010, the  
12 Arbitrator dismissed the following claims for relief: (a) deceptive trade practices; (b)  
13 negligence; (c) negligence per se; (d) negligent misrepresentation; (e) intentional  
14 misrepresentation; (f) conversion; and (g) injunctive relief. The same day, the Arbitrator issued  
15 an Order Granting in Part and Denying in Part Claimants' Motion for Summary Judgment on  
16 Claim for Declaratory Relief, in which the Arbitrator made two rulings regarding Nevada's  
17 super-priority lien under NRS Chapter 116. First, the Arbitrator concluded that collection costs  
18 are enforceable as assessments but that the super-priority lien provides for a so-called "9-month  
19 cap." Second, the Arbitrator concluded HOAs are not required to file a "civil action" before they  
20 can recover on their super-priority lien.

21           7.     Subsequent to the issuance of these rulings, claimants' counsel, Mr. Adams,  
22 expressed deep frustration to me at the length of time it was taking (and was going to take) to  
23 move through the arbitration process. I appreciated his concern. After noting to Mr. Adams that  
24 much of the delay was being caused by his own legal strategy (i.e., asserting numerous tort and  
25 class action claims that were unnecessary to the proceeding), I suggested and offered to file a  
26 motion for the issuance of an interim award as to the two legal issues relating to NRS Chapter  
27 116 that had already decided by the arbitrator.

28     ///

1           8.     Mr. Adams thought this was an excellent idea and indicated he would support  
2 such a motion.

3           9.     Thereafter, on behalf of my clients, I moved for reconsideration and/or  
4 clarification of the Arbitrator's order on the super-priority lien. At the same time, defendants'  
5 moved for the issuance of an interim award as to these issues. While claimants opposed the  
6 request for reconsideration and/or clarification, they did not oppose the issuance of an interim  
7 award. Indeed, they asked to arbitrator to issue an interim award as to additional rulings that had  
8 been made by the arbitrator.

9           10.    On March 21, 2011, the Arbitrator issued an "Interim Award Order Granting in  
10 Part and Denying in Part Motion for Summary Judgment on Claim of Declaratory Relief" (the  
11 "Interim Award").

12           11.    All parties to the *Higher Ground Arbitration* agreed that Arbitrator should issue  
13 an Interim Award to allow the parties to proceed to the district court and the Nevada Supreme  
14 Court for a judicial interpretation of the following two legal issues: (1) the extent collection  
15 costs and fees are recoverable under Nevada's super-priority lien; and (2) whether a  
16 homeowners' association or its collection agent is required to file a "civil action" before it may  
17 recover on its super-priority lien.

18           12.    The Arbitrator issued the Interim Award so that the parties may proceed to the  
19 District Court to litigate these discrete legal issues without incurring substantial time and  
20 expense in conducting the arbitration before completing an appeal of these important legal  
21 issues.

22     / / /




Holland & Hart LLP  
9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134  
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

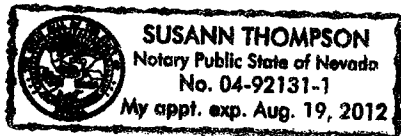
1 13. Once the different defendants were in district courts, claimants had a sudden  
2 change of heart and fought to have the different district court judges deny jurisdiction. The  
3 timing of this coincided with this Court's minute order on this issue and was presented to the  
4 different Court's as evidence.

5 DATED 6th day of February, 2012.

6  
7   
PATRICK J. REILLY, ESQ.

8 SIGNED and SWORN to before me  
9 on this 6th day of February, 2012,  
by

10   
11 Notary Public  
12 My Commission Expires: 8-19-12



- 5 -

164 Section 34 of this bill revises provisions governing the mediation and  
165 arbitration of certain claims relating to the governing documents by: (1) prohibiting  
166 the findings of a mediator or arbitrator from being admitted in a civil action; (2)  
167 limiting the fees of a mediator or an arbitrator to \$750; (3) requiring each party to a  
168 mediation or arbitration to pay an equal percentage of the fees of a mediator or  
169 arbitrator; (4) providing that a party to a mediation or arbitration is not liable for the  
170 costs and attorney's fees incurred by another party during the mediation or  
171 arbitration; and (5) providing for the removal of a mediator or arbitrator under  
172 certain circumstances.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Chapter 116 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3 1. *If the Administrator has reasonable cause to believe that*  
4 *any person or executive board has engaged in any activity in*  
5 *violation of any provision of this chapter, any regulation adopted*  
6 *pursuant thereto or any order, decision, demand or requirement of*  
7 *the Commission or Division or a hearing panel, or is about to*  
8 *commit such a violation, and that the violation or potential*  
9 *violation has caused or is likely to cause irreversible harm, the*  
10 *Administrator may issue an order directing the person or*  
11 *executive board to desist and refrain from continuing to commit*  
12 *the violation or from doing any act in furtherance of the violation.*

13 2. *Within 30 days after the receipt of such an order, the*  
14 *person may file a verified petition with the Administrator for a*  
15 *hearing before the Commission.*

16 3. *The Commission shall hold a hearing at the next regularly*  
17 *scheduled meeting of the Commission. If the Commission fails to*  
18 *hold such a hearing, or does not render a written decision within*  
19 *30 days after the hearing, the cease and desist order is rescinded.*

20 4. *The decision of the Commission at a hearing held*  
21 *pursuant to subsection 3 is a final decision for the purposes of*  
22 *judicial review.*

23 Sec. 2. NRS 116.2111 is hereby amended to read as follows:

24 116.2111 1. Except as otherwise provided in this section and  
25 subject to the provisions of the declaration and other provisions of  
26 law, a unit's owner:

27 (a) May make any improvements or alterations to his or her unit  
28 that do not impair the structural integrity or mechanical systems or  
29 lessen the support of any portion of the common-interest  
30 community;

31 (b) May not change the appearance of the common elements, or  
32 the exterior appearance of a unit or any other portion of the



- 6 -

1 common-interest community, without permission of the association;  
2 and

3 (c) After acquiring an adjoining unit or an adjoining part of an  
4 adjoining unit, may remove or alter any intervening partition or  
5 create apertures therein, even if the partition in whole or in part is a  
6 common element, if those acts do not impair the structural integrity  
7 or mechanical systems or lessen the support of any portion of the  
8 common-interest community. Removal of partitions or creation of  
9 apertures under this paragraph is not an alteration of boundaries.

10 2. An association may not:

11 (a) ~~Unreasonably restrict,~~ *Restrict*, prohibit or otherwise  
12 impede the lawful rights of a unit's owner, *and the children or*  
13 *parents of a unit's owner*, to have reasonable access to his or her  
14 unit ~~+~~, *unless directed otherwise by the unit's owner.*

15 (b) Charge any fee for a person to enter the common-interest  
16 community to provide services to a unit, a unit's owner or a tenant  
17 of a unit's owner or for any visitor to the common-interest  
18 community or invitee of a unit's owner or a tenant of a unit's owner  
19 to enter the common-interest community.

20 (c) Unreasonably restrict, prohibit or withhold approval for a  
21 unit's owner to add to a unit:

22 (1) Improvements such as ramps, railings or elevators that  
23 are necessary to improve access to the unit for any occupant of the  
24 unit who has a disability;

25 (2) Additional locks to improve the security of the unit;

26 (3) Shutters to improve the security of the unit or to reduce  
27 the costs of energy for the unit; or

28 (4) A system that uses wind energy to reduce the costs of  
29 energy for the unit if the boundaries of the unit encompass 2 acres or  
30 more within the common-interest community.

31 (d) With regard to approving or disapproving any improvement  
32 or alteration made to a unit, act in violation of any state or federal  
33 law.

34 (e) *Charge any fee to a unit's owner for obtaining permission*  
35 *to change the exterior appearance of a unit or the landscaping*  
36 *associated with a unit.*

37 (f) *Restrict in a manner which violates the provisions of 47*  
38 *C.F.R. § 1.4000 the installation, maintenance or use of any*  
39 *antenna or other device described in that section.*

40 3. Any improvement or alteration made pursuant to subsection  
41 2 that is visible from any other portion of the common-interest  
42 community must be installed, constructed or added in accordance  
43 with the procedures set forth in the governing documents of the  
44 association and must be selected or designed to the maximum extent



- 7 -

1 practicable to be compatible with the style of the common-interest  
2 community.

3 4. An association may not unreasonably restrict, prohibit or  
4 withhold approval for a unit's owner to add shutters to improve the  
5 security of the unit or to reduce the costs of energy for the unit,  
6 including, without limitation, rolling shutters, that are attached to a  
7 portion of an interior or exterior window, interior or exterior door or  
8 interior or exterior wall which is not part of the unit and which is a  
9 common element or limited common element if:

10 (a) The portion of the window, door or wall to which the  
11 shutters are attached is adjoining the unit; and

12 (b) The shutters must necessarily be attached to that portion of  
13 the window, door or wall during installation to achieve the  
14 maximum benefit in improving the security of the unit or reducing  
15 the costs of energy for the unit.

16 5. If a unit's owner adds shutters pursuant to subsection 4, the  
17 unit's owner is responsible for the maintenance of the shutters.

18 6. For the purposes of subsection 4, a covenant, restriction or  
19 condition which does not unreasonably restrict the addition of  
20 shutters and which is contained in the governing documents of a  
21 common-interest community or a policy established by a common-  
22 interest community is enforceable so long as the covenant,  
23 restriction or condition was:

24 (a) In existence on July 1, 2009; or

25 (b) Contained in the governing documents in effect on the close  
26 of escrow of the first sale of a unit in the common-interest  
27 community.

28 7. A unit's owner may not add to the unit a system that uses  
29 wind energy as described in subparagraph 4 of paragraph (c) of  
30 subsection 2 unless the unit's owner first obtains the written consent  
31 of each owner of property within 300 feet of any boundary of the  
32 unit.

33 Sec. 3. NRS 116.3102 is hereby amended to read as follows:

34 116.3102 1. Except as otherwise provided in this section, and  
35 subject to the provisions of the declaration, the association may do  
36 any or all of the following:

37 (a) Adopt and amend bylaws, rules and regulations.

38 (b) Adopt and amend budgets for revenues, expenditures and  
39 reserves and collect assessments for common expenses from the  
40 units' owners.

41 (c) Hire and discharge managing agents and other employees,  
42 agents and independent contractors.

43 (d) Institute, defend or intervene in litigation or administrative  
44 proceedings in its own name on behalf of itself or two or more units'  
45 owners on matters affecting the common-interest community.



- 8 -

- 1 (e) Make contracts and incur liabilities, Any contract between  
2 the association and a private entity for the furnishing of goods or  
3 services must not include a provision granting the private entity the  
4 right of first refusal with respect to extension or renewal of the  
5 contract.
- 6 (f) Regulate the use, maintenance, repair, replacement and  
7 modification of common elements.
- 8 (g) Cause additional improvements to be made as a part of the  
9 common elements.
- 10 (h) Acquire, hold, encumber and convey in its own name any  
11 right, title or interest to real estate or personal property, but:
- 12 (1) Common elements in a condominium or planned  
13 community may be conveyed or subjected to a security interest only  
14 pursuant to NRS 116.3112; and
- 15 (2) Part of a cooperative may be conveyed, or all or part of a  
16 cooperative may be subjected to a security interest, only pursuant to  
17 NRS 116.3112.
- 18 (i) Grant easements, leases, licenses and concessions through or  
19 over the common elements.
- 20 (j) Impose and receive any payments, fees or charges for the use,  
21 rental or operation of the common elements, other than limited  
22 common elements described in subsections 2 and 4 of NRS  
23 116.2102, and for services provided to the units' owners, including,  
24 without limitation, any services provided pursuant to  
25 NRS 116.310312.
- 26 (k) Impose *collection costs and* charges for late payment of  
27 assessments pursuant to NRS 116.3115.
- 28 (l) Impose construction penalties when authorized pursuant to  
29 NRS 116.310305.
- 30 (m) Impose reasonable fines for violations of the governing  
31 documents of the association only if the association complies with  
32 the requirements set forth in NRS 116.31031.
- 33 (n) Impose reasonable charges for the preparation and  
34 recordation of any amendments to the declaration or any statements  
35 of unpaid assessments, and impose reasonable fees, not to exceed  
36 the amounts authorized by NRS 116.4109, for preparing and  
37 furnishing the documents and certificate required by that section.
- 38 (o) Provide for the indemnification of its officers and executive  
39 board and maintain directors' and officers' liability insurance.
- 40 (p) Assign its right to future income, including the right to  
41 receive assessments for common expenses, but only to the extent the  
42 declaration expressly so provides.
- 43 (q) Exercise any other powers conferred by the declaration or  
44 bylaws.



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1 (r) Exercise all other powers that may be exercised in this State  
2 by legal entities of the same type as the association.

3 (s) Direct the removal of vehicles improperly parked on property  
4 owned or leased by the association, as authorized pursuant to NRS  
5 487.038, or improperly parked on any road, street, alley or other  
6 thoroughfare within the common-interest community in violation of  
7 the governing documents. In addition to complying with the  
8 requirements of NRS 487.038 and any requirements in the  
9 governing documents, if ~~{a}~~ *any vehicle, regardless of the person*  
10 *who owns the vehicle*, is improperly parked as described in this  
11 paragraph, the association must post written notice in a conspicuous  
12 place on the vehicle or provide oral or written notice to the owner or  
13 operator of the vehicle at least 48 hours before the association may  
14 direct the removal of the vehicle, unless the vehicle:

15 (1) Is blocking a fire hydrant ~~{}~~ *or fire lane ; {or parking*  
16 *space designated for the handicapped;}* or

17 (2) Poses an imminent threat of causing a substantial adverse  
18 effect on the health, safety or welfare of the units' owners or  
19 residents of the common-interest community.

20 (t) Exercise any other powers necessary and proper for the  
21 governance and operation of the association.

22 2. The declaration may not impose limitations on the power of  
23 the association to deal with the declarant which are more restrictive  
24 than the limitations imposed on the power of the association to deal  
25 with other persons.

26 3. Notwithstanding any provision of this chapter or the  
27 governing documents to the contrary, an association may not impose  
28 any assessment pursuant to this chapter or the governing documents  
29 on the owner of any property in the common-interest community  
30 that is exempt from taxation pursuant to NRS 361.125. For the  
31 purposes of this subsection, "assessment" does not include any  
32 charge for any utility services, including, without limitation,  
33 telecommunications, broadband communications, cable television,  
34 electricity, natural gas, sewer services, garbage collection, water or  
35 for any other service which is delivered to and used or consumed  
36 directly by the property in the common-interest community that is  
37 exempt from taxation pursuant to NRS 361.125.

38 Sec. 4. NRS 116.3103 is hereby amended to read as follows:

39 116.3103 1. Except as otherwise provided in the declaration,  
40 the bylaws, this section or other provisions of this chapter, the  
41 executive board may act in all instances on behalf of the association.  
42 In the performance of their duties, the officers and members of the  
43 executive board are fiduciaries and shall act on an informed basis, in  
44 good faith and in the honest belief that their actions are in the best  
45 interest of the association. The members of the executive board are



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1 required to exercise the ordinary and reasonable care of directors of  
2 a corporation, subject to the business-judgment rule.

3 2. The executive board may not act on behalf of the association  
4 to amend the declaration, to terminate the common-interest  
5 community, or to elect members of the executive board or determine  
6 their qualifications, powers and duties or terms of office, but the  
7 executive board may fill vacancies in its membership for the  
8 unexpired portion of any term *if the executive board is able to*  
9 *obtain a quorum pursuant to subsection 3 of NRS 116.3109* unless  
10 the governing documents provide that a vacancy on the executive  
11 board must be filled by a vote of the membership of the association.  
12 *If the executive board is authorized to fill vacancies in its*  
13 *membership pursuant to this subsection, the executive board may*  
14 *not appoint to the executive board a person who has been removed*  
15 *from the executive board pursuant to NRS 116.31036 within the*  
16 *immediately preceding 6 years.*

17 3. Notwithstanding the provisions of NRS 116.31175,  
18 116.31177 and 116.3118, upon the request of a member of the  
19 executive board, the association shall make available to the  
20 member of the executive board, at no charge, the books, records  
21 and other papers of the executive board and the association,  
22 including, without limitation, records, invoices, contracts,  
23 agreements, letters of instruction issued by the Division,  
24 correspondence between a unit's owner and the community  
25 manager, notices of violations, financial records, bank statements,  
26 personnel records, employment contracts, reserve studies, notices  
27 of delinquent assessments and notices of default and election to  
28 sell mailed pursuant to NRS 116.31162, architectural plans and  
29 specifications submitted by a unit's owner, minutes of executive  
30 sessions of the executive board, voice recordings and any other  
31 book, record or paper created by the executive board or the  
32 association, its agents or a member of the executive board acting  
33 in the course and scope of his or her duties as a member of the  
34 executive board.

35 4. If the Commission, a mediator or an arbitrator who  
36 conducts a mediation or arbitration pursuant to NRS 38.300 to  
37 38.360, inclusive, or a court finds that the executive board has  
38 committed a violation of any provision of the governing  
39 documents, this chapter, any regulation adopted pursuant thereto  
40 or any order of the Commission or a hearing panel, the executive  
41 board must notify the units' owners of the findings by mailing a  
42 statement of the findings to the mailing address of each unit  
43 within the common-interest community or to any other mailing  
44 address designated in writing by a unit's owner.



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1 5. Notwithstanding any provision of this chapter or the  
2 governing documents, if the executive board is unable to obtain a  
3 quorum pursuant to subsection 3 of NRS 116.3109 because of  
4 vacancies on the executive board, the association must, within 30  
5 days, hold a meeting of the units' owners for the purpose of  
6 conducting an election to fill such vacancies as necessary to  
7 provide a quorum for the executive board. The meeting and  
8 election must be conducted in the following manner:

9 (a) Not later than 10 days in advance of the meeting, the  
10 secretary or other officer specified in the bylaws shall cause notice  
11 of the meeting to be hand-delivered, sent prepaid by United States  
12 mail to the mailing address of each unit or to any other mailing  
13 address designated in writing by the unit's owner or, if the  
14 association offers to send notice by electronic mail, sent by  
15 electronic mail at the request of the unit's owner to an electronic  
16 mail address designated in writing by the unit's owner. The notice  
17 of the meeting must state the time and place of the meeting and  
18 that the meeting is being held for the purpose of filling vacancies  
19 on the executive board. The notice must include notification of the  
20 right of a unit's owner to:

21 (1) Have a copy of the minutes or a summary of the  
22 minutes of the meeting provided to the unit's owner upon request,  
23 in electronic format at no charge to the unit's owner or, if the  
24 association is unable to provide the copy or summary in electronic  
25 format, in paper format at a cost not to exceed 25 cents per page  
26 for the first 10 pages, and 10 cents per page thereafter.

27 (2) Speak to the association regarding the election to fill  
28 vacancies on the executive board.

29 (b) At the meeting:

30 (1) A quorum of the units' owners is not required for the  
31 nomination of any candidate to fill a vacancy on the executive  
32 board or for the election to fill the vacancy.

33 (2) A unit's owner may attend the meeting in person or by  
34 proxy. The provisions of NRS 116.311 apply to the use of proxies  
35 at the meeting.

36 (3) The units' owners present in person or by proxy shall  
37 nominate candidates to fill such vacancies on the executive board  
38 as are necessary to create a quorum for the executive board.

39 (4) After nominations are taken, the election to fill a  
40 vacancy must be conducted by secret written ballot.

41 (5) The secret written ballots must be opened and counted  
42 at the meeting and the candidate receiving a majority of the votes  
43 cast for that seat on the executive board is elected to the executive  
44 board for the period provided in paragraph (d).



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1 (c) The provisions of subsections 8, 9, 11 and 12 of NRS  
2 116.3108 regarding the minutes of the meeting and the recording  
3 of the meeting by a unit's owner are applicable to the meeting.

4 (d) Upon the election of members to the executive board  
5 pursuant to this subsection:

6 (1) A candidate elected to the executive board pursuant to  
7 this subsection is elected for a term of 90 days, except that if the  
8 regular election for that seat on the executive board must be  
9 conducted within 180 days after the candidate's election, the  
10 candidate is elected for the unexpired portion of the term.

11 (2) The executive board may not fill any vacancy remaining  
12 after the election but, within 90 days after the election pursuant to  
13 this subsection, must call for an election to be conducted pursuant  
14 to NRS 116.31034 to fill:

15 (I) Each remaining vacancy for which a regular election  
16 is not required within 180 days; and

17 (II) The seats on the executive board which were filled  
18 pursuant to this subsection, unless an election for such a seat is  
19 required to be conducted within 180 days.

20 6. If, at an election conducted pursuant to subsection 5, the  
21 units' owners do not fill a sufficient number of vacancies on  
22 the executive board to provide a quorum for the executive board,  
23 the Division must apply to a court of competent jurisdiction for the  
24 appointment of a receiver for the association. In the application  
25 for the appointment of the receiver, notice of a temporary  
26 appointment of a receiver may be given to the association alone,  
27 by process as in the case of an application for a temporary  
28 restraining order or injunction. The hearing thereon may be had  
29 after 5 days' notice unless the court directs a longer or different  
30 notice and different parties. The court may appoint one or more  
31 receivers to carry out the business of the association. The  
32 members of the executive board must be preferred in making the  
33 appointment. The powers of any receiver appointed pursuant to  
34 this subsection may be continued as long as the court deems  
35 necessary and proper. At any time, for sufficient cause, the court  
36 may order the receivership terminated. Any receiver appointed  
37 pursuant to this subsection has, among the usual powers, all the  
38 functions, powers, tenure and duties to be exercised under the  
39 direction of the court as are conferred on receivers and as  
40 provided in NRS 78.635, 78.640 and 78.645, whether or not the  
41 association is insolvent. Such powers include, without limitation,  
42 the powers to:

43 (a) Take charge of the estate and effects of the association;

44 (b) Appoint an agent or agents;



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1 (c) Collect any debts and property due and belonging to the  
2 association and prosecute and defend, in the name of the  
3 association, or otherwise, any civil action as may be necessary or  
4 proper for the purposes of collecting debts and property;

5 (d) Perform any other act in accordance with the governing  
6 documents of the association and this chapter that may be  
7 necessary for the association to carry out its obligations; and

8 (e) By injunction, restrain the association from exercising any  
9 of its powers or doing business in any way except by and through  
10 a receiver appointed by the court.

11 Sec. 5. NRS 116.310305 is hereby amended to read as  
12 follows:

13 116.310305 1. A unit's owner shall adhere to a schedule  
14 required by the association for:

15 (a) The completion of the design of a unit or the design of an  
16 improvement to a unit;

17 (b) The commencement of the construction of a unit or the  
18 construction of an improvement to a unit;

19 (c) The completion of the construction of a unit or the  
20 construction of an improvement to the unit; or

21 (d) The issuance of a permit which is necessary for the  
22 occupancy of a unit or for the use of an improvement to a unit.

23 2. ~~{The}~~ Except as otherwise provided by subsection 3, the  
24 association may impose and enforce a construction penalty against a  
25 unit's owner who fails to adhere to a schedule as required pursuant  
26 to subsection 1 if:

27 (a) The maximum amount of the construction penalty and the  
28 schedule are set forth in:

29 (1) The declaration;

30 (2) Another document related to the common-interest  
31 community that is recorded before the date on which the unit's  
32 owner acquired title to the unit; or

33 (3) A contract between the unit's owner and the association;  
34 and

35 (b) The unit's owner receives notice of the alleged violation  
36 which informs the unit's owner that he or she has a right to a  
37 hearing on the alleged violation.

38 3. The association may not impose or enforce a construction  
39 penalty against a unit's owner pursuant to subsection 2 if the  
40 failure to adhere to the schedule as required pursuant to  
41 subsection 1 is caused by circumstances beyond the control of the  
42 unit's owner.

43 4. For the purposes of this chapter, a construction penalty is not  
44 a fine.



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1     Sec. 6. NRS 116.31031 is hereby amended to read as follows:  
2     116.31031 1. Except as otherwise provided in this section, if  
3     a unit's owner or a tenant or an invitee of a unit's owner or a tenant  
4     violates any provision of the governing documents of an association,  
5     the executive board may, if the governing documents so provide:  
6     (a) Prohibit, for a reasonable time, the unit's owner or the tenant  
7     or the invitee of the unit's owner or the tenant from:  
8     (1) Voting on matters related to the common-interest  
9     community.  
10    (2) Using the *specific common elements* ~~element~~ *to which*  
11    *the violation relates, if the violation relates to a common element.*  
12    The provisions of this subparagraph do not prohibit the executive  
13    board from prohibiting a unit's owner from using the common  
14    elements if the unit's owner is delinquent in the payment of any  
15    assessment and do not prohibit the unit's owner or the tenant or the  
16    invitee of the unit's owner or the tenant from using any vehicular or  
17    pedestrian ingress or egress to go to or from the unit, including any  
18    area used for parking.  
19    (b) Impose a fine against the unit's owner or the tenant or the  
20    invitee of the unit's owner or the tenant for each violation, except  
21    that:  
22    (1) A fine may not be imposed for a violation that is the  
23    subject of a construction penalty pursuant to NRS 116.310305; and  
24    (2) A fine may not be imposed against a unit's owner or a  
25    tenant or invitee of a unit's owner or a tenant for a violation of the  
26    governing documents which involves a vehicle and which is  
27    committed by a person who is delivering goods to, or performing  
28    services for, the unit's owner or tenant or invitee of the unit's owner  
29    or the tenant.  
30    ➤ If the violation poses an imminent threat of causing a substantial  
31    adverse effect on the health, safety or welfare of the units' owners or  
32    residents of the common-interest community, the amount of the fine  
33    must be commensurate with the severity of the violation and must  
34    be determined by the executive board in accordance with the  
35    governing documents. If the violation does not pose an imminent  
36    threat of causing a substantial adverse effect on the health, safety or  
37    welfare of the units' owners or residents of the common-interest  
38    community, the amount of the fine must be commensurate with the  
39    severity of the violation and must be determined by the executive  
40    board in accordance with the governing documents, but the amount  
41    of the fine must not exceed \$100 for each violation or a total amount  
42    of \$1,000, whichever is less. *During the lifetime of the unit's*  
43    *owner and any successor in interest who is the spouse of the unit's*  
44    *owner, the total amount of fines imposed against the unit's owner*  
45    *and the successor in interest must not exceed \$2,500. The*



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1 limitations on the amount of the fine do not apply to any charges or  
2 costs that may be collected by the association pursuant to this  
3 section if the fine becomes past due.

4 2. *Notwithstanding any other provision of this chapter, the*  
5 *executive board may not impose a fine pursuant to subsection 1*  
6 *against a unit's owner or a tenant or an invitee of a unit's owner*  
7 *or a tenant if the executive board of another association has*  
8 *imposed a fine against the unit's owner, tenant or invitee for the*  
9 *same action, or failure to act, on the part of the unit's owner,*  
10 *tenant or invitee.*

11 3. The executive board may not impose a fine pursuant to  
12 subsection 1 against a unit's owner for a violation of any provision  
13 of the governing documents of an association committed by an  
14 invitee of the unit's owner or the tenant unless the unit's owner:

15 (a) Participated in or authorized the violation;

16 (b) Had prior notice of the violation; or

17 (c) Had an opportunity to stop the violation and failed to do so.

18 ~~{3-}~~ 4. The executive board may not impose a fine pursuant to  
19 subsection 1 unless:

20 (a) Not less than 30 days before the *alleged* violation, the unit's  
21 owner and, if different, the person against whom the fine will be  
22 imposed had been provided with written notice of the applicable  
23 provisions of the governing documents that form the basis of the  
24 *alleged* violation; and

25 (b) Within a reasonable time after the discovery of the *alleged*  
26 violation, the unit's owner and, if different, the person against whom  
27 the fine will be imposed has been provided with:

28 (1) Written notice specifying the details of the *alleged*  
29 violation, *the location of the alleged violation*, the amount of the  
30 fine, and the date, time and location for a hearing on the violation;  
31 and

32 (2) A reasonable opportunity to contest the *alleged* violation  
33 at the hearing.

34 ↪ For the purposes of this subsection, a unit's owner shall not be  
35 deemed to have received written notice unless written notice is  
36 mailed to the address of the unit and, if different, to a mailing  
37 address specified by the unit's owner.

38 ~~{4-}~~ 5. The executive board must schedule the date, time and  
39 location for the hearing on the *alleged* violation so that the unit's  
40 owner and, if different, the person against whom the fine will be  
41 imposed is provided with a reasonable opportunity to prepare for the  
42 hearing and to be present at the hearing.

43 ~~{5-}~~ A hearing may be postponed if the unit's owner or, if  
44 different, the person against whom the fine will be imposed  
45 presents to the executive board or an officer of the association



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1 *medical documentation indicating that he or she is unable to*  
2 *participate in the hearing for medical reasons. At the hearing on*  
3 *the alleged violation, the unit's owner and, if different, the person*  
4 *against whom the fine will be imposed may be represented by an*  
5 *attorney or any other representative. Notwithstanding any other*  
6 *provision of this chapter, the cost of an attorney representing the*  
7 *association or executive board at a hearing pursuant to this*  
8 *section may not be charged to the unit's owner or other person*  
9 *against whom the fine will be imposed.*

10 6. The executive board must hold a hearing before it may  
11 impose the fine, unless the fine is paid before the hearing or unless  
12 the unit's owner and, if different, the person against whom the fine  
13 will be imposed:

14 (a) Executes a written waiver of the right to the hearing; or  
15 (b) Fails to appear at the hearing after being provided with  
16 proper notice of the hearing.

17 ~~{6. If a fine is imposed pursuant to subsection 1 and the~~  
18 ~~violation is not cured within 14 days, or within any longer period~~  
19 ~~that may be established by the executive board, the violation shall~~  
20 ~~be deemed a continuing violation. Thereafter, the executive board~~  
21 ~~may impose an additional fine for the violation for each 7 day~~  
22 ~~period or portion thereof that the violation is not cured. Any~~  
23 ~~additional fine may be imposed without notice and an opportunity to~~  
24 ~~be heard.}~~

25 7. If the governing documents so provide, the executive board  
26 may appoint a committee, with not less than three members, to  
27 conduct hearings on violations and to impose fines pursuant to this  
28 section. While acting on behalf of the executive board for those  
29 limited purposes, the committee and its members are entitled to all  
30 privileges and immunities and are subject to all duties and  
31 requirements of the executive board and its members.

32 8. A member of the executive board shall not participate in any  
33 hearing or cast any vote relating to a fine imposed pursuant to  
34 subsection 1 if the member has not paid all assessments which are  
35 due to the association by the member. If a member of the executive  
36 board:

37 (a) Participates in a hearing in violation of this subsection, any  
38 action taken at the hearing is void.

39 (b) Casts a vote in violation of this subsection, the vote is void.

40 9. *If a unit's owner or, if different, a person against whom a*  
41 *fine was imposed pursuant subsection 1 files a claim with the*  
42 *Division pursuant to NRS 38.320 which alleges that the executive*  
43 *board violated a provision of the governing documents in*  
44 *connection with the imposition of the fine, the imposition and*  
45 *collection of the fine is stayed until the conclusion of mediation or,*



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1 *if applicable, the issuance of an arbitration decision. If a unit's*  
2 *owner or, if different, a person against whom a fine was imposed*  
3 *pursuant to subsection 1 files an affidavit with the Division*  
4 *pursuant to NRS 116.760 which alleges that the executive board*  
5 *violated a provision of the governing documents in connection*  
6 *with the imposition of the fine, the imposition and collection of the*  
7 *fine is stayed until the resolution of the matter pursuant to*  
8 *subsection 1 of NRS 116.785, the issuance of a decision by the*  
9 *Division to not file a formal complaint pursuant to subsection 5 of*  
10 *NRS 116.765 or the final decision of the Commission, whichever*  
11 *is applicable.*

12 10. The provisions of this section establish the minimum  
13 procedural requirements that the executive board must follow before  
14 it may impose a fine. The provisions of this section do not preempt  
15 any provisions of the governing documents that provide greater  
16 procedural protections.

17 ~~{10.}~~ 11. Any past due fine must not bear interest, but may  
18 include any costs incurred by the association during a civil action to  
19 enforce the payment of the past due fine.

20 ~~{11.}~~ 12. If requested by a person upon whom a fine was  
21 imposed, not later than 60 days after receiving any payment of a  
22 fine, an association shall provide to the person upon whom the fine  
23 was imposed a statement of the remaining balance owed.

24 Sec. 7. NRS 116.310312 is hereby amended to read as  
25 follows:

26 116.310312 1. A person who holds a security interest in a  
27 unit must provide the association with the person's contact  
28 information as soon as reasonably practicable, but not later than 30  
29 days after the person:

30 (a) Files an action for recovery of a debt or enforcement of any  
31 right secured by the unit pursuant to NRS 40.430; or

32 (b) Records or has recorded on his or her behalf a notice of a  
33 breach of obligation secured by the unit and the election to sell or  
34 have the unit sold pursuant to NRS 107.080.

35 2. If an action or notice described in subsection 1 has been  
36 filed or recorded regarding a unit and the association has provided  
37 the unit's owner with notice and an opportunity for a hearing in the  
38 manner provided in NRS 116.31031, the association, including its  
39 employees, agents and community manager, may, but is not  
40 required to, enter the grounds of the unit, whether or not the unit is  
41 vacant, to take any of the following actions if the unit's owner  
42 refuses or fails to take any action or comply with any requirement  
43 imposed on the unit's owner within the time specified by the  
44 association as a result of the hearing:



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1 (a) Maintain the exterior of the unit in accordance with the  
2 standards set forth in the governing documents, including, without  
3 limitation, any provisions governing maintenance, standing water or  
4 snow removal. *The authorization to enter the grounds of the unit*  
5 *for the purposes set forth in this paragraph continues until the*  
6 *unit's owner or an agent of the unit's owner performs the*  
7 *maintenance necessary to maintain the exterior of the unit in*  
8 *accordance with the standards set forth in the governing*  
9 *documents.*

10 (b) Remove or abate a public nuisance on the exterior of the unit  
11 which:

12 (1) Is visible from any common area of the community or  
13 public streets;

14 (2) Threatens the health or safety of the residents of the  
15 common-interest community;

16 (3) Results in blighting or deterioration of the unit or  
17 surrounding area; and

18 (4) Adversely affects the use and enjoyment of nearby units.

19 3. If a unit is vacant and the association has provided the unit's  
20 owner with notice and an opportunity for a hearing in the manner  
21 provided in NRS 116.31031, the association, including its  
22 employees, agents and community manager, may enter the grounds  
23 of the unit to maintain the exterior of the unit or abate a public  
24 nuisance as described in subsection 2 if the unit's owner refuses or  
25 fails to do so.

26 4. The association may order that the costs of any maintenance  
27 or abatement conducted pursuant to subsection 2 or 3, including,  
28 without limitation, reasonable inspection fees, notification and  
29 collection costs and interest, be charged against the unit. The  
30 association shall keep a record of such costs and interest charged  
31 against the unit and has a lien on the unit for any unpaid amount of  
32 the charges. The lien may be foreclosed under NRS 116.31162 to  
33 116.31168, inclusive.

34 5. A lien described in subsection 4 bears interest from the date  
35 that the charges become due at a rate determined pursuant to NRS  
36 17.130 until the charges, including all interest due, are paid.

37 6. Except as otherwise provided in this subsection, a lien  
38 described in subsection 4 is prior and superior to all liens, claims,  
39 encumbrances and titles other than the liens described in paragraphs  
40 (a) and (c) of subsection 2 of NRS 116.3116. If the federal  
41 regulations of the Federal Home Loan Mortgage Corporation or the  
42 Federal National Mortgage Association require a shorter period of  
43 priority for the lien, the period during which the lien is prior and  
44 superior to other security interests shall be determined in accordance  
45 with those federal regulations. Notwithstanding the federal



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1 regulations, the period of priority of the lien must not be less than  
2 the 6 months immediately preceding the institution of an action to  
3 enforce the lien.

4 7. A person who purchases or acquires a unit at a foreclosure  
5 sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS  
6 107.080 is bound by the governing documents of the association and  
7 shall maintain the exterior of the unit in accordance with the  
8 governing documents of the association. Such a unit may only be  
9 removed from a common-interest community in accordance with the  
10 governing documents pursuant to this chapter.

11 8. Notwithstanding any other provision of law, an association,  
12 its directors or members of the executive board, employees, agents  
13 or community manager who enter the grounds of a unit pursuant to  
14 this section are not liable for trespass.

15 9. As used in this section:

16 (a) "Exterior of the unit" includes, without limitation, all  
17 landscaping outside of a unit and the exterior of all property  
18 exclusively owned by the unit owner.

19 (b) "Vacant" means a unit:

20 (1) Which reasonably appears to be unoccupied;

21 (2) On which the owner has failed to maintain the exterior to  
22 the standards set forth in the governing documents the association;  
23 and

24 (3) On which the owner has failed to pay assessments for  
25 more than 60 days.

26 Sec. 8. NRS 116.310313 is hereby amended to read as  
27 follows:

28 116.310313 1. ~~{A-} If the governing documents authorize~~  
29 ~~an association {may} to charge a unit's owner {reasonable fees to~~  
30 ~~cover} for the costs of collecting any past due obligation {The~~  
31 ~~Commission shall adopt regulations establishing the amount of the~~  
32 ~~fees that an association may charge pursuant to this section.}~~ ; the  
33 governing documents may not authorize the association to charge  
34 the unit's owner for any costs of collecting other than costs  
35 relating to filing, recording, title searches, bankruptcy searches  
36 and postage. The rate established by the association for the costs  
37 of collecting the past due obligation:

38 (a) May not exceed \$40, if the outstanding balance is less than  
39 \$200.

40 (b) May not exceed \$75, if the outstanding balance is \$200 or  
41 more but is less than \$500.

42 (c) May not exceed \$125, if the outstanding balance is \$500 or  
43 more but is less than \$1,000.

44 (d) May not exceed \$175, if the outstanding balance is \$1,000  
45 or more but is less than \$5,000.



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1 (e) May not exceed \$200, if the outstanding balance is \$5,000  
2 or more.

3 2. The provisions of this section apply to any costs of  
4 collecting a past due obligation charged to a unit's owner, regardless  
5 of whether the past due obligation is collected by the association  
6 itself or by any person acting on behalf of the association, including,  
7 without limitation, an officer or employee of the association, a  
8 community manager or a collection agency.

9 3. As used in this section:

10 (a) "Costs of collecting" includes any fee, charge or cost, by  
11 whatever name, including, without limitation, any collection fee,  
12 filing fee, recording fee, fee related to the preparation, recording or  
13 delivery of a lien or lien rescission, title search lien fee, bankruptcy  
14 search fee, referral fee, fee for postage or delivery and any other fee  
15 or cost that an association charges a unit's owner for the  
16 investigation, enforcement or collection of a past due obligation.  
17 The term does not include any costs incurred by an association if a  
18 lawsuit is filed to enforce any past due obligation or any costs  
19 awarded by a court.

20 (b) "Obligation" means any assessment, fine, construction  
21 penalty, fee, charge or interest levied or imposed against a unit's  
22 owner pursuant to any provision of this chapter or the governing  
23 documents.

24 Sec. 9. NRS 116.31034 is hereby amended to read as follows:

25 116.31034 1. Except as otherwise provided in subsection 5 of  
26 NRS 116.212, not later than the termination of any period of  
27 declarant's control, the units' owners shall elect an executive board  
28 of at least three members, all of whom must be units' owners. The  
29 executive board shall elect the officers of the association. Unless the  
30 governing documents provide otherwise, the officers of the  
31 association are ~~not~~ required to be units' owners. The members of  
32 the executive board and the officers of the association shall take  
33 office upon election. *If two persons reside together in a unit, are*  
34 *married to each other or are related by blood, adoption or*  
35 *marriage, within the first degree of consanguinity or affinity, and*  
36 *if one of those persons is an officer of the association or a member*  
37 *of the executive board, the other person may not be an officer of*  
38 *the association or a member of the executive board.*

39 2. The term of office of a member of the executive board may  
40 not exceed 3 years, except for members who are appointed by the  
41 declarant. Unless the governing documents provide otherwise, there  
42 is no limitation on the number of terms that a person may serve as a  
43 member of the executive board.

44 3. The governing documents of the association must provide  
45 for terms of office that are staggered in such a manner that, to the



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1 extent possible, an equal number of members of the executive board  
2 are elected at each election. The provisions of this subsection do not  
3 apply to:

4 (a) Members of the executive board who are appointed by the  
5 declarant; and

6 (b) Members of the executive board who serve a term of 1 year  
7 or less.

8 4. Not less than 30 days before the preparation of a ballot for  
9 the election of members of the executive board, the secretary or  
10 other officer specified in the bylaws of the association shall cause  
11 notice to be given to each unit's owner of the unit's owner's  
12 eligibility to serve as a member of the executive board. Each unit's  
13 owner who is qualified to serve as a member of the executive board  
14 may have his or her name placed on the ballot along with the names  
15 of the nominees selected by the members of the executive board or a  
16 nominating committee established by the association.

17 5. Before the secretary or other officer specified in the bylaws  
18 of the association causes notice to be given to each unit's owner of  
19 his or her eligibility to serve as a member of the executive board  
20 pursuant to subsection 4, the executive board may determine that if,  
21 at the closing of the prescribed period for nominations for  
22 membership on the executive board, the number of candidates  
23 nominated for membership on the executive board is equal to or less  
24 than the number of members to be elected to the executive board at  
25 the election, then the secretary or other officer specified in the  
26 bylaws of the association will cause notice to be given to each unit's  
27 owner informing each unit's owner that:

28 (a) The association will not prepare or mail any ballots to units'  
29 owners pursuant to this section and the nominated candidates shall  
30 be deemed to be duly elected to the executive board unless:

31 (1) A unit's owner who is qualified to serve on the executive  
32 board nominates himself or herself for membership on the executive  
33 board by submitting a nomination to the executive board within 30  
34 days after the notice provided by this subsection; and

35 (2) The number of units' owners who submit such a  
36 nomination causes the number of candidates nominated for  
37 membership on the executive board to be greater than the number of  
38 members to be elected to the executive board.

39 (b) Each unit's owner who is qualified to serve as a member of  
40 the executive board may nominate himself or herself for  
41 membership on the executive board by submitting a nomination to  
42 the executive board within 30 days after the notice provided by this  
43 subsection.

44 6. If the notice described in subsection 5 is given and if, at the  
45 closing of the prescribed period for nominations for membership on



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1 the executive board described in subsection 5, the number of  
2 candidates nominated for membership on the executive board is  
3 equal to or less than the number of members to be elected to the  
4 executive board, then:

5 (a) The association will not prepare or mail any ballots to units'  
6 owners pursuant to this section;

7 (b) The nominated candidates shall be deemed to be duly elected  
8 to the executive board not later than 30 days after the date of the  
9 closing of the period for nominations described in subsection 5; and

10 (c) The association shall send to each unit's owner notification  
11 that the candidates nominated have been elected to the executive  
12 board.

13 7. If the notice described in subsection 5 is given and if, at the  
14 closing of the prescribed period for nominations for membership on  
15 the executive board described in subsection 5, the number of  
16 candidates nominated for membership on the executive board is  
17 greater than the number of members to be elected to the executive  
18 board, then the association shall:

19 (a) Prepare and mail ballots to the units' owners pursuant to this  
20 section; and

21 (b) Conduct an election for membership on the executive board  
22 pursuant to this section.

23 8. Each person who is nominated as a candidate for a member  
24 of the executive board pursuant to subsection 4 or 5 must:

25 (a) Make a good faith effort to disclose any financial, business,  
26 professional or personal relationship or interest that would result or  
27 would appear to a reasonable person to result in a potential conflict  
28 of interest for the candidate if the candidate were to be elected to  
29 serve as a member of the executive board; and

30 (b) Disclose whether the candidate is a member in good  
31 standing. For the purposes of this paragraph, a candidate shall not be  
32 deemed to be in "good standing" if the candidate has any unpaid and  
33 past due assessments or construction penalties that are required to be  
34 paid to the association.

35 ➡ The candidate must make all disclosures required pursuant to this  
36 subsection in writing to the association with his or her candidacy  
37 information. Except as otherwise provided in this subsection, the  
38 association shall distribute the disclosures, on behalf of the  
39 candidate, to each member of the association with the ballot or, in  
40 the event ballots are not prepared and mailed pursuant to subsection  
41 6, in the next regular mailing of the association. The association is  
42 not obligated to distribute any disclosure pursuant to this subsection  
43 if the disclosure contains information that is believed to be  
44 defamatory, libelous or profane.

45 9. Unless a person is appointed by the declarant:



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1 (a) A person may not be a member of the executive board or an  
2 officer of the association if the person, the person's spouse or the  
3 person's parent or child, by blood, marriage or adoption, performs  
4 the duties of a community manager for that association.

5 (b) A person may not be a member of the executive board of a  
6 master association or an officer of that master association if the  
7 person, the person's spouse or the person's parent or child, by  
8 blood, marriage or adoption, performs the duties of a community  
9 manager for:

10 (1) That master association; or

11 (2) Any association that is subject to the governing  
12 documents of that master association.

13 10. An officer, employee, agent or director of a corporate  
14 owner of a unit, a trustee or designated beneficiary of a trust that  
15 owns a unit, a partner of a partnership that owns a unit, a member or  
16 manager of a limited-liability company that owns a unit, and a  
17 fiduciary of an estate that owns a unit may be an officer of the  
18 association or a member of the executive board. In all events where  
19 the person serving or offering to serve as an officer of the  
20 association or a member of the executive board is not the record  
21 owner, the person shall file proof in the records of the association  
22 that:

23 (a) The person is associated with the corporate owner, trust,  
24 partnership, limited-liability company or estate as required by this  
25 subsection; and

26 (b) Identifies the unit or units owned by the corporate owner,  
27 trust, partnership, limited-liability company or estate.

28 11. Except as otherwise provided in subsection 6 or NRS  
29 116,311.05, the election of any member of the executive board must  
30 be conducted by secret written ballot in the following manner:

31 (a) The secretary or other officer specified in the bylaws of the  
32 association shall cause a secret ballot and a return envelope to be  
33 sent, prepaid by United States mail, to the mailing address of each  
34 unit within the common-interest community or to any other mailing  
35 address designated in writing by the unit's owner.

36 (b) Each unit's owner must be provided with at least 15 days  
37 after the date the secret written ballot is mailed to the unit's owner  
38 to return the secret written ballot to the association.

39 (c) A quorum is not required for the election of any member of  
40 the executive board.

41 (d) Only the secret written ballots that are returned to the  
42 association may be counted to determine the outcome of the  
43 election.

44 (e) The secret written ballots must be opened and counted at a  
45 meeting of the association. A quorum is not required to be present



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1 when the secret written ballots are opened and counted at the  
2 meeting.

3 (f) The incumbent members of the executive board and each  
4 person whose name is placed on the ballot as a candidate for a  
5 member of the executive board may not possess, be given access to  
6 or participate in the opening or counting of the secret written ballots  
7 that are returned to the association before those secret written ballots  
8 have been opened and counted at a meeting of the association.

9 12. An association shall not adopt any rule or regulation that  
10 has the effect of prohibiting or unreasonably interfering with a  
11 candidate in the candidate's campaign for election as a member of  
12 the executive board, except that the candidate's campaign may be  
13 limited to 90 days before the date that ballots are required to be  
14 returned to the association. A candidate may request that the  
15 secretary or other officer specified in the bylaws of the association  
16 send, 30 days before the date of the election and at the association's  
17 expense, to the mailing address of each unit within the common-  
18 interest community or to any other mailing address designated in  
19 writing by the unit's owner a candidate informational statement. The  
20 candidate informational statement:

21 (a) Must be no longer than a single, typed page;

22 (b) Must not contain any defamatory, libelous or profane  
23 information; and

24 (c) May be sent with the secret ballot mailed pursuant to  
25 subsection 11 or in a separate mailing.

26 ~ The association and its directors, officers, employees and agents  
27 are immune from criminal or civil liability for any act or omission  
28 which arises out of the publication or disclosure of any information  
29 related to any person and which occurs in the course of carrying out  
30 any duties required pursuant to this subsection.

31 13. Each member of the executive board shall, within 90 days  
32 after his or her appointment or election, certify in writing to the  
33 association, on a form prescribed by the Administrator, that  
34 the member has read and understands the governing documents of  
35 the association and the provisions of this chapter to the best of his or  
36 her ability. The Administrator ~~may~~ shall require the association to  
37 submit a copy of the certification of each member of the executive  
38 board of that association at the time the association registers with  
39 the Ombudsman pursuant to NRS 116.31158.

40 14. *Within 3 months after his or her election or appointment*  
41 *to the executive board, a member of the executive board shall*  
42 *successfully complete 2 hours of instruction in a course of*  
43 *education relating to the duties of a member of the executive*  
44 *board. Every year thereafter during which the member of the*  
45 *executive board is a member of the executive board, he or she*



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1 shall complete 2 hours of instruction in such a course of  
2 education.

3 Sec. 10. NRS 116.31038 is hereby amended to read as  
4 follows:

5 116.31038 In addition to any applicable requirement set forth  
6 in NRS 116.310395, within 30 days after units' owners other than  
7 the declarant may elect a majority of the members of the executive  
8 board, the declarant shall deliver to the association all property of  
9 the units' owners and of the association held by or controlled by the  
10 declarant, including:

11 1. The original or a certified copy of the recorded declaration  
12 as amended, the articles of incorporation, articles of association,  
13 articles of organization, certificate of registration, certificate of  
14 limited partnership, certificate of trust or other documents of  
15 organization for the association, the bylaws, minute books and other  
16 books and records of the association and any rules or regulations  
17 which may have been adopted.

18 2. An accounting for money of the association and audited  
19 financial statements for each fiscal year and any ancillary period  
20 from the date of the last audit of the association to the date the  
21 period of the declarant's control ends. The financial statements must  
22 fairly and accurately report the association's financial position. The  
23 declarant shall pay the costs of the ancillary audit. The ancillary  
24 audit must be delivered within 210 days after the date the period of  
25 the declarant's control ends.

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

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

38 (b) Disclose, in writing, to the units' owners the amount by  
39 which the declarant has subsidized the association's dues on a per  
40 unit or per lot basis.

41 4. The association's money or control thereof.

42 5. All of the declarant's tangible personal property that has  
43 been represented by the declarant as property of the association or,  
44 unless the declarant has disclosed in the public offering statement  
45 that all such personal property used in the common-interest



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1 community will remain the declarant's property, all of the  
2 declarant's tangible personal property that is necessary for, and has  
3 been used exclusively in, the operation and enjoyment of the  
4 common elements, and inventories of these properties.

5 6. A copy of any plans and specifications used in the  
6 construction of the improvements in the common-interest  
7 community which were completed within 2 years before the  
8 declaration was recorded.

9 7. All insurance policies then in force, in which the units'  
10 owners, the association, or its directors and officers are named as  
11 insured persons.

12 8. Copies of any certificates of occupancy that may have been  
13 issued with respect to any improvements comprising the common-  
14 interest community other than units in a planned community.

15 9. Any renewable permits and approvals issued by  
16 governmental bodies applicable to the common-interest community  
17 which are in force and any other permits and approvals so issued  
18 and applicable which are required by law to be kept on the premises  
19 of the community.

20 10. Written warranties of the contractor, subcontractors,  
21 suppliers and manufacturers that are still effective.

22 11. A roster of owners and mortgagees of units and their  
23 addresses and telephone numbers, if known, as shown on the  
24 declarant's records.

25 12. Contracts of employment in which the association is a  
26 contracting party.

27 13. Any contract for service in which the association is a  
28 contracting party or in which the association or the units' owners  
29 have any obligation to pay a fee to the persons performing the  
30 services.

31 Sec. 11. NRS 116.3108 is hereby amended to read as follows:

32 116.3108 1. A meeting of the units' owners must be held at  
33 least once each year. If the governing documents do not designate  
34 an annual meeting date of the units' owners, a meeting of the units'  
35 owners must be held 1 year after the date of the last meeting of the  
36 units' owners. If the units' owners have not held a meeting for 1  
37 year, a meeting of the units' owners must be held on the following  
38 March 1.

39 2. Special meetings of the units' owners may be called by the  
40 president, by a majority of the executive board or by units' owners  
41 constituting at least 10 percent, or any lower percentage specified in  
42 the bylaws, of the total number of voting members of the  
43 association. The same number of units' owners may also call a  
44 removal election pursuant to NRS 116.31036. To call a special  
45 meeting or a removal election, the units' owners must submit a



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1 written petition which is signed by the required percentage of the  
2 total number of voting members of the association pursuant to this  
3 subsection and which is mailed, return receipt requested, or served  
4 by a process server to the executive board or the community  
5 manager for the association. If the petition calls for a special  
6 meeting, the executive board shall set the date for the special  
7 meeting so that the special meeting is held not less than 15 days or  
8 more than 60 days after the date on which the petition is received. If  
9 the petition calls for a removal election and:

10 (a) The voting rights of the owners of time shares will be  
11 exercised by delegates or representatives as set forth in NRS  
12 116.31105, the executive board shall set the date for the removal  
13 election so that the removal election is held not less than 15 days or  
14 more than 60 days after the date on which the petition is received; or

15 (b) The voting rights of the units' owners will be exercised  
16 through the use of secret written ballots pursuant to NRS 116.31036,  
17 the secret written ballots for the removal election must be sent in the  
18 manner required by NRS 116.31036 not less than 15 days or more  
19 than 60 days after the date on which the petition is received, and the  
20 executive board shall set the date for the meeting to open and count  
21 the secret written ballots so that the meeting is held not more than  
22 15 days after the deadline for returning the secret written ballots.

23 ↪ The association shall not adopt any rule or regulation which  
24 prevents or unreasonably interferes with the collection of the  
25 required percentage of signatures for a petition pursuant to this  
26 subsection.

27 3. Not less than 15 days or more than 60 days in advance of  
28 any meeting of the units' owners, the secretary or other officer  
29 specified in the bylaws shall cause notice of the meeting to be hand-  
30 delivered, sent prepaid by United States mail to the mailing address  
31 of each unit or to any other mailing address designated in writing by  
32 the unit's owner or, if the association offers to send notice by  
33 electronic mail, sent by electronic mail at the request of the unit's  
34 owner to an electronic mail address designated in writing by the  
35 unit's owner. The notice of the meeting must state the time and  
36 place of the meeting and include a copy of the agenda for the  
37 meeting. The notice must include notification of the right of a unit's  
38 owner to:

39 (a) Have a copy of the minutes or a summary of the minutes of  
40 the meeting provided to the unit's owner upon request, in electronic  
41 format at no charge to the unit's owner or, if the association is  
42 unable to provide the copy or summary in electronic format, in  
43 paper format at a cost not to exceed 25 cents per page for the first 10  
44 pages, and 10 cents per page thereafter.



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1 (b) Speak to the association or executive board, unless the  
2 executive board is meeting in executive session.

3 4. The agenda for a meeting of the units' owners must consist  
4 of:

5 (a) A clear and complete statement of the topics scheduled to be  
6 considered during the meeting, including, without limitation, any  
7 proposed amendment to the declaration or bylaws, any fees or  
8 assessments to be imposed or increased by the association, any  
9 budgetary changes and any proposal to remove an officer of the  
10 association or member of the executive board.

11 (b) A list describing the items on which action may be taken and  
12 clearly denoting that action may be taken on those items. In an  
13 emergency, the units' owners may take action on an item which is  
14 not listed on the agenda as an item on which action may be taken.

15 (c) A period devoted to comments by units' owners and  
16 discussion of those comments. Except in emergencies, no action  
17 may be taken upon a matter raised under this item of the agenda  
18 until the matter itself has been specifically included on an agenda as  
19 an item upon which action may be taken pursuant to paragraph (b).

20 5. *Before the agenda is mailed to the units' owners pursuant*  
21 *to subsection 3, a unit's owner may request items to be placed on*  
22 *the agenda and any requested items must be included on the*  
23 *agenda.*

24 6. If the association adopts a policy imposing fines for any  
25 violations of the governing documents of the association, the  
26 secretary or other officer specified in the bylaws shall prepare and  
27 cause to be hand-delivered or sent prepaid by United States mail to  
28 the mailing address of each unit or to any other mailing address  
29 designated in writing by the unit's owner, a schedule of the fines  
30 that may be imposed for those violations.

31 ~~16.~~ 7. *A guest of a unit's owner must be allowed to attend*  
32 *any meeting of the units' owners.*

33 8. The secretary or other officer specified in the bylaws shall  
34 cause minutes to be recorded or otherwise taken at each meeting of  
35 the units' owners. Not more than 30 days after each such meeting,  
36 the secretary or other officer specified in the bylaws shall cause the  
37 minutes or a summary of the minutes of the meeting to be made  
38 available to the units' owners. Except as otherwise provided in this  
39 subsection, a copy of the minutes or a summary of the minutes must  
40 be provided to any unit's owner upon request, in electronic format at  
41 no charge to the unit's owner or, if the association is unable to  
42 provide the copy or summary in electronic format, in paper format  
43 at a cost not to exceed 25 cents per page for the first 10 pages, and  
44 10 cents per page thereafter.



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1     ~~{7-}~~ 9. Except as otherwise provided in subsection ~~{8-}~~ 10, the  
2 minutes of each meeting of the units' owners must include:

- 3     (a) The date, time and place of the meeting;  
4     (b) The substance of all matters proposed, discussed or decided  
5 at the meeting; and  
6     (c) The substance of remarks made by any unit's owner at the  
7 meeting if the unit's owner requests that the minutes reflect his or  
8 her remarks or, if the unit's owner has prepared written remarks, a  
9 copy of his or her prepared remarks if the unit's owner submits a  
10 copy for inclusion.

11   ~~{8-}~~ 10. The executive board may establish reasonable  
12 limitations on materials, remarks or other information to be included  
13 in the minutes of a meeting of the units' owners.

14   ~~{9-}~~ 11. The association shall maintain the minutes of each  
15 meeting of the units' owners until the common-interest community  
16 is terminated.

17   ~~{10-}~~ 12. A unit's owner may record on audiotape, *videotape*  
18 or any other means of sound or *video* reproduction a meeting of the  
19 units' owners if the unit's owner, before recording the meeting,  
20 provides notice of his or her intent to record the meeting to the other  
21 units' owners who are in attendance at the meeting.

22   ~~{11-}~~ 13. The units' owners may approve, at the annual  
23 meeting of the units' owners, the minutes of the prior annual  
24 meeting of the units' owners and the minutes of any prior special  
25 meetings of the units' owners. A quorum is not required to be  
26 present when the units' owners approve the minutes.

27   ~~{12-}~~ 14. As used in this section, "emergency" means any  
28 occurrence or combination of occurrences that:

- 29     (a) Could not have been reasonably foreseen;  
30     (b) Affects the health, welfare and safety of the units' owners or  
31 residents of the common-interest community;  
32     (c) Requires the immediate attention of, and possible action by,  
33 the executive board; and  
34     (d) Makes it impracticable to comply with the provisions of  
35 subsection 3 or 4.

36   Sec. 12. NRS 116.31083 is hereby amended to read as  
37 follows:

38   116.31083 1. A meeting of the executive board must be held  
39 at least once every quarter, and not less than once every 100 days  
40 and must be held at a time other than during standard business hours  
41 , *but not before 6 p.m.*, at least twice annually.

42   2. Except in an emergency or unless the bylaws of an  
43 association require a longer period of notice, the secretary or other  
44 officer specified in the bylaws of the association shall, not less than  
45 10 days before the date of a meeting of the executive board, cause



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1 notice of the meeting to be given to the units' owners. Such notice  
2 must be:

3 (a) Sent prepaid by United States mail to the mailing address of  
4 each unit within the common-interest community or to any other  
5 mailing address designated in writing by the unit's owner;

6 (b) If the association offers to send notice by electronic mail,  
7 sent by electronic mail at the request of the unit's owner to an  
8 electronic mail address designated in writing by the unit's owner; or

9 (c) Published in a newsletter or other similar publication that is  
10 circulated to each unit's owner.

11 3. In an emergency, the secretary or other officer specified in  
12 the bylaws of the association shall, if practicable, cause notice of the  
13 meeting to be sent prepaid by United States mail to the mailing  
14 address of each unit within the common-interest community. If  
15 delivery of the notice in this manner is impracticable, the notice  
16 must be hand-delivered to each unit within the common-interest  
17 community or posted in a prominent place or places within the  
18 common elements of the association.

19 4. The notice of a meeting of the executive board must state the  
20 time and place of the meeting and include a copy of the agenda for  
21 the meeting or the date, *which must not be later than 5 days before*  
22 *the meeting*, on which and the locations where copies of the agenda  
23 may be conveniently obtained by the units' owners. The notice must  
24 include notification of the right of a unit's owner to:

25 (a) Have a copy of the audio recording, the minutes or a  
26 summary of the minutes of the meeting provided to the unit's owner  
27 upon request, in electronic format at no charge to the unit's owner  
28 or, if the association is unable to provide the copy or summary in  
29 electronic format, in paper format at a cost not to exceed 25 cents  
30 per page for the first 10 pages, and 10 cents per page thereafter.

31 (b) Speak to the association or executive board, unless the  
32 executive board is meeting in executive session.

33 5. The agenda of the meeting of the executive board must  
34 comply with the provisions of subsection 4 of NRS 116.3108. A  
35 period required to be devoted to comments by the units' owners and  
36 discussion of those comments must be scheduled for both the  
37 beginning and the end of each meeting. During the period devoted  
38 to comments by the units' owners and discussion of those comments  
39 at the beginning of each meeting, comments by the units' owners  
40 and discussion of those comments must be limited to items listed on  
41 the agenda. In an emergency, the executive board may take action  
42 on an item which is not listed on the agenda as an item on which  
43 action may be taken.

44 6. At least once every quarter, and not less than once every 100  
45 days, unless the declaration or bylaws of the association impose



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1 more stringent standards, the executive board shall review, at a  
2 minimum, the following financial information at one of its  
3 meetings;

4 (a) A current year-to-date financial statement of the association;

5 (b) A current year-to-date schedule of revenues and expenses for  
6 the operating account and the reserve account, compared to the  
7 budget for those accounts;

8 (c) A current reconciliation of the operating account of the  
9 association;

10 (d) A current reconciliation of the reserve account of the  
11 association;

12 (e) The latest account statements prepared by the financial  
13 institutions in which the accounts of the association are maintained;  
14 and

15 (f) The current status of any civil action or claim submitted to  
16 arbitration or mediation in which the association is a party.

17 *A copy of the information described in paragraphs (a) to (f),  
18 inclusive, must be made available at no charge to each person  
19 present at the meeting. If a unit's owner requests a copy of such  
20 information, the association must provide a copy of the  
21 information in electronic format at no charge to the unit's owner.*

22 7. The secretary or other officer specified in the bylaws shall  
23 cause each meeting of the executive board to be audio recorded and  
24 the minutes to be recorded or otherwise taken at each meeting of the  
25 executive board, but if the executive board is meeting in executive  
26 session, the meeting must not be audio recorded. Not more than 30  
27 days after each such meeting, the secretary or other officer specified  
28 in the bylaws shall cause the audio recording of the meeting, the  
29 minutes of the meeting and a summary of the minutes of the  
30 meeting to be made available to the units' owners. Except as  
31 otherwise provided in this subsection, a copy of the audio recording,  
32 the minutes or a summary of the minutes must be provided to any  
33 unit's owner upon request, in electronic format at no charge to the  
34 unit's owner or, if the association is unable to provide the copy or  
35 summary in electronic format, in paper format at a cost not to  
36 exceed 25 cents per page for the first 10 pages, and 10 cents per  
37 page thereafter.

38 8. Except as otherwise provided in subsection 9 and NRS  
39 116.31085, the minutes of each meeting of the executive board must  
40 include:

41 (a) The date, time and place of the meeting;

42 (b) Those members of the executive board who were present and  
43 those members who were absent at the meeting;

44 (c) The ~~substance~~ details of all matters proposed, discussed or  
45 decided at the meeting;



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1 (d) A record of each member's vote on any matter decided by  
2 vote at the meeting; and

3 (e) The substance of remarks made by any unit's owner who  
4 addresses the executive board at the meeting if the unit's owner  
5 requests that the minutes reflect his or her remarks or, if the unit's  
6 owner has prepared written remarks, a copy of his or her prepared  
7 remarks if the unit's owner submits a copy for inclusion.

8 9. The executive board may establish reasonable limitations on  
9 materials, remarks or other information to be included in the  
10 minutes of its meetings ~~{-}~~, *but any limitation on the page number*  
11 *of such materials, remarks or information must not be less than*  
12 *two double-sided pages.*

13 10. The association shall maintain the minutes of each meeting  
14 of the executive board until the common-interest community is  
15 terminated.

16 11. A unit's owner may record on audiotape or any other  
17 means of sound reproduction a meeting of the executive board,  
18 unless the executive board is meeting in executive session, if the  
19 unit's owner, before recording the meeting, provides notice of his or  
20 her intent to record the meeting to the members of the executive  
21 board and the other units' owners who are in attendance at the  
22 meeting.

23 12. As used in this section, "emergency" means any occurrence  
24 or combination of occurrences that:

25 (a) Could not have been reasonably foreseen;

26 (b) Affects the health, welfare and safety of the units' owners or  
27 residents of the common-interest community;

28 (c) Requires the immediate attention of, and possible action by,  
29 the executive board; and

30 (d) Makes it impracticable to comply with the provisions of  
31 subsection 2 or 5.

32 Sec. 13. NRS 116.31085 is hereby amended to read as  
33 follows:

34 116.31085 1. Except as otherwise provided in this section, a  
35 unit's owner may attend any meeting of the units' owners or of the  
36 executive board and speak at any such meeting. The executive board  
37 may establish ~~{reasonable limitations}~~ *a limitation of not less than 3*  
38 *minutes on the time in which a unit's owner may speak at such a*  
39 *meeting. With respect to each meeting of the units' owners and of*  
40 *the executive board, the association shall comply with the*  
41 *requirements of the Americans with Disabilities Act of 1990, 42*  
42 *U.S.C. §§ 12101 et seq., and the regulations adopted pursuant*  
43 *thereto.*

44 2. *At a meeting of the executive board, after a discussion by*  
45 *the members of the executive board concerning an item for which*



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1 *a vote will be taken by the executive board and before such a vote,*  
2 *the executive board must provide a period devoted to comments by*  
3 *the units' owners on that item, but may establish a limitation of*  
4 *not less than 3 minutes on the time a unit's owner may speak on*  
5 *that item.*

6 3. An executive board may not meet in executive session to  
7 open or consider bids for an association project as defined in NRS  
8 116.31086, or to enter into, renew, modify, terminate or take any  
9 other action regarding a contract.

10 {3-} 4. An executive board may meet in executive session only  
11 to:

12 (a) Consult with the attorney for the association on matters  
13 relating to proposed or pending litigation if the contents of the  
14 discussion would otherwise be governed by the privilege set forth in  
15 NRS 49.035 to 49.115, inclusive.

16 (b) Discuss the character, alleged misconduct, professional  
17 competence, or physical or mental health of a community manager  
18 or an employee of the association.

19 (c) Except as otherwise provided in subsection {4-} 5, discuss a  
20 violation of the governing documents, including, without limitation,  
21 the failure to pay an assessment.

22 (d) Discuss the alleged failure of a unit's owner to adhere to a  
23 schedule required pursuant to NRS 116.310305 if the alleged failure  
24 may subject the unit's owner to a construction penalty.

25 {4-} 5. An executive board shall meet in executive session to  
26 hold a hearing on an alleged violation of the governing documents  
27 unless the person who may be sanctioned for the alleged violation  
28 requests in writing that an open hearing be conducted by the  
29 executive board. If the person who may be sanctioned for the  
30 alleged violation requests in writing that an open hearing be  
31 conducted, the person:

32 (a) Is entitled to attend all portions of the hearing related to the  
33 alleged violation, including, without limitation, the presentation of  
34 evidence and the testimony of witnesses;

35 (b) Is entitled to due process, as set forth in the standards  
36 adopted by regulation by the Commission, which must include,  
37 without limitation, the right to counsel { } or any other  
38 representative chosen by the person, the right to present witnesses  
39 and the right to present information relating to any conflict of  
40 interest of any member of the hearing panel; and

41 (c) Is not entitled to attend the deliberations of the executive  
42 board.

43 {5-} 6. The provisions of subsection {4} 5 establish the  
44 minimum protections that the executive board must provide before it  
45 may make a decision. The provisions of subsection {4} 5 do not



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1 preempt any provisions of the governing documents that provide  
2 greater protections.  
3 {6-} 7. Except as otherwise provided in this subsection, any  
4 matter discussed by the executive board when it meets in executive  
5 session must be generally noted in the minutes of the meeting of the  
6 executive board. The executive board shall maintain minutes of any  
7 decision made pursuant to subsection {4} 5 concerning an alleged  
8 violation and, upon request, provide a copy of the decision to the  
9 person who was subject to being sanctioned at the hearing or to the  
10 person's designated representative.

11 {7-} 8. Except as otherwise provided in subsection {4-} 5, a  
12 unit's owner is not entitled to attend or speak at a meeting of the  
13 executive board held in executive session.

14 Sec. 14. NRS 116.31086 is hereby amended to read as  
15 follows:

16 116.31086 1. If an association solicits bids for an association  
17 project, the bids must be opened during a meeting of the executive  
18 board.

19 2. As used in this section, "association project" includes,  
20 without limitation, a project that involves the maintenance, repair,  
21 replacement or restoration of any part of the common elements or  
22 which involves the provision of *durable goods or services* to the  
23 association.

24 Sec. 15. NRS 116.31087 is hereby amended to read as  
25 follows:

26 116.31087 1. If an executive board receives a written  
27 complaint from a unit's owner alleging that the executive board has  
28 violated any provision of this chapter or any provision of the  
29 governing documents of the association, the executive board shall,  
30 upon the written request of the unit's owner, place the subject of the  
31 complaint on the agenda of the next regularly scheduled meeting of  
32 the executive board.

33 2. Not later than 10 business days after the date that the  
34 association receives such a complaint, the executive board or an  
35 authorized representative of the association shall acknowledge the  
36 receipt of the complaint and notify the unit's owner that, if the unit's  
37 owner submits a written request that the subject of the complaint be  
38 placed on the agenda of the next regularly scheduled meeting of the  
39 executive board, the subject of the complaint will be placed on the  
40 agenda of the next regularly scheduled meeting of the executive  
41 board.

42 3. *At the meeting, the executive board shall discuss fully and*  
43 *attempt to resolve any complaint placed on the agenda of the*  
44 *meeting pursuant to this section. Any decision of the executive*



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1 *board with respect to the complaint must be included in detail in*  
2 *the minutes of the meeting.*

3 Sec. 16. NRS 116.31107 is hereby amended to read as  
4 follows:

5 116.31107 1. A person shall not knowingly, willfully and  
6 with the intent to fraudulently alter the true outcome of an election  
7 of a member of the executive board or any other vote of the units'  
8 owners engage in, attempt to engage in, or conspire with another  
9 person to engage in, any of the following acts:

10 (a) Changing or falsifying a voter's ballot so that the ballot does  
11 not reflect the voter's true ballot.

12 (b) Forging or falsely signing a voter's ballot.

13 (c) Fraudulently casting a vote for himself or herself or for  
14 another person that the person is not authorized to cast.

15 (d) Rejecting, failing to count, destroying, defacing or otherwise  
16 invalidating the valid ballot of another voter.

17 (e) Submitting a counterfeit ballot.

18 2. A person who violates ~~{this section}~~ subsection 1 is guilty of  
19 a category D felony and shall be punished as provided in  
20 NRS 193.130.

21 3. *Each ballot provided to the units' owners pursuant to this*  
22 *chapter must contain in clear and prominent text a copy of the*  
23 *provisions of this section.*

24 Sec. 17. NRS 116.3114 is hereby amended to read as follows:

25 116.3114 1. Unless otherwise provided in the declaration,  
26 any surplus funds of the association remaining after payment of or  
27 provision for common expenses and any prepayment of reserves  
28 must be paid to the units' owners in proportion to their liabilities for  
29 common expenses or credited to them to reduce their future  
30 assessments for common expenses.

31 2. *For the purpose of this section:*

32 (a) *An association of a common-interest community with 200*  
33 *or less units has "surplus funds" if the amount remaining after*  
34 *payment of or provision for the common expenses and any*  
35 *prepayment of reserves is greater than three times the monthly*  
36 *operating expenses of the association based on the periodic budget*  
37 *adopted by the association pursuant to NRS 116.3115.*

38 (b) *An association of a common-interest community with more*  
39 *than 200 units has "surplus funds" if the amount remaining after*  
40 *payment of or provision for the common expenses and any*  
41 *prepayment of reserves is greater than two times the monthly*  
42 *operating expenses of the association based on the periodic budget*  
43 *adopted by the association pursuant to NRS 116.3115.*





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1     **Sec. 18.** NRS 116.31144 is hereby amended to read as  
2 follows:

3     116.31144 1. Except as otherwise provided in subsection 2,  
4 the executive board shall:

5     (a) If the annual budget of the association is less than \$75,000,  
6 cause the financial statement of the association to be reviewed by an  
7 independent certified public accountant during the year immediately  
8 preceding the year in which a study of the reserves of the  
9 association is to be conducted pursuant to NRS 116.31152.

10    (b) If the annual budget of the association is \$75,000 or more  
11 but less than \$150,000, cause the financial statement of the  
12 association to be reviewed by an independent certified public  
13 accountant every fiscal year.

14    (c) If the annual budget of the association is \$150,000 or more,  
15 cause the financial statement of the association to be audited by an  
16 independent certified public accountant every fiscal year.

17    2. For any fiscal year, the executive board of an association to  
18 which paragraph (a) or (b) of subsection 1 applies shall cause the  
19 financial statement for that fiscal year to be audited by an  
20 independent certified public accountant if, within 180 days before  
21 the end of the fiscal year, 15 percent of the total number of voting  
22 members of the association submit a written request for such an  
23 audit.

24    3. The Commission shall adopt regulations prescribing the  
25 requirements for the auditing or reviewing of financial statements of  
26 an association pursuant to this section. Such regulations must  
27 include, without limitation:

28    (a) The qualifications necessary for a person to audit or review  
29 financial statements of an association; and

30    (b) The standards and format to be followed in auditing or  
31 reviewing financial statements of an association.

32    4. *If a unit's owner requests a copy of a review or audit*  
33 *performed pursuant to this section, the association must provide a*  
34 *copy of the review or audit to the unit's owner in paper format or*  
35 *electronic format, whichever is requested by the unit's owner, at*  
36 *no charge.*

37     **Sec. 19.** NRS 116.3115 is hereby amended to read as follows:

38     116.3115 1. Until the association makes an assessment for  
39 common expenses, the declarant shall pay all common expenses.  
40 After an assessment has been made by the association, assessments  
41 must be made at least annually, based on a budget adopted ~~at least~~  
42 ~~annually~~ by the association *and ratified by the units' owners at*  
43 *least annually* in accordance with the requirements set forth in NRS  
44 116.31151. Unless the declaration imposes more stringent standards,  
45 the budget must include a budget for the daily operation of the



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1 association and a budget for the reserves required by paragraph (b)  
2 of subsection 2.

3 2. Except for assessments under subsections 4 to 7, inclusive:

4 (a) All common expenses, including the reserves, must be  
5 assessed against all the units in accordance with the allocations set  
6 forth in the declaration pursuant to subsections 1 and 2 of  
7 NRS 116.2107.

8 (b) The association shall establish adequate reserves, funded on  
9 a reasonable basis, for the repair, replacement and restoration of the  
10 major components of the common elements and any other portion of  
11 the common-interest community that the association is obligated to  
12 maintain, repair, replace or restore. The reserves may be used only  
13 for those purposes, including, without limitation, repairing,  
14 replacing and restoring roofs, roads and sidewalks, and must not be  
15 used for daily maintenance ~~{ }~~ or capital improvements. The  
16 association may comply with the provisions of this paragraph  
17 through a funding plan that is designed to allocate the costs for the  
18 repair, replacement and restoration of the major components of the  
19 common elements and any other portion of the common-interest  
20 community that the association is obligated to maintain, repair,  
21 replace or restore over a period of years if the funding plan is  
22 designed in an actuarially sound manner which will ensure that  
23 sufficient money is available when the repair, replacement and  
24 restoration of the major components of the common elements or any  
25 other portion of the common-interest community that the association  
26 is obligated to maintain, repair, replace or restore are necessary.  
27 Notwithstanding any provision of *this chapter* or the governing  
28 documents to the contrary, *a special assessment* to establish  
29 adequate reserves pursuant to this paragraph, including, without  
30 limitation, to establish or carry out a funding plan ~~{ }~~ the executive  
31 board may, without seeking or obtaining the approval of the units'  
32 owners, impose any necessary and reasonable assessments against  
33 the units in the common-interest community. Any such assessments  
34 imposed by the executive board must be based on the study of the  
35 reserves of the association conducted pursuant to NRS 116.31152.  
36 *may not exceed \$35 per unit per month.*

37 3. Any assessment for common expenses or installment thereof  
38 that is 60 days or more past due bears interest at a rate equal to the  
39 prime rate at the largest bank in Nevada as ascertained by the  
40 Commissioner of Financial Institutions on January 1 or July 1, as  
41 the case may be, immediately preceding the date the assessment  
42 becomes past due, plus 2 percent. The rate must be adjusted  
43 accordingly on each January 1 and July 1 thereafter until the balance  
44 is satisfied.

45 4. Except as otherwise provided in the governing documents:



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1 (a) Any common expense associated with the maintenance,  
2 repair, restoration or replacement of a limited common element  
3 must be assessed against the units to which that limited common  
4 element is assigned, equally, or in any other proportion the  
5 declaration provides;

6 (b) Any common expense or portion thereof benefiting fewer  
7 than all of the units must be assessed exclusively against the units  
8 benefited; and

9 (c) The costs of insurance must be assessed in proportion to risk  
10 and the costs of utilities must be assessed in proportion to usage.

11 5. Assessments to pay a judgment against the association may  
12 be made only against the units in the common-interest community at  
13 the time the judgment was entered, in proportion to their liabilities  
14 for common expenses.

15 6. If any common expense is caused by the misconduct of any  
16 unit's owner, the association may assess that expense exclusively  
17 against his or her unit.

18 7. The association of a common-interest community created  
19 before January 1, 1992, is not required to make an assessment  
20 against a vacant lot located within the community that is owned by  
21 the declarant.

22 8. If liabilities for common expenses are reallocated,  
23 assessments for common expenses and any installment thereof not  
24 yet due must be recalculated in accordance with the reallocated  
25 liabilities.

26 9. The association shall provide written notice to each unit's  
27 owner of a meeting at which an assessment or expenditure for a  
28 capital improvement in an amount of \$500 or more is to be  
29 considered or action is to be taken on such an assessment or  
30 expenditure at least 21 calendar days before the date of the meeting.  
31 An assessment for a capital improvement may not exceed \$35 per  
32 unit per month.

33 10. In a common-interest community with less than 500  
34 units, the association shall not make or cause to be made any visible  
35 changes to the interior or exterior of the common elements,  
36 including, without limitation, landscaping, unless:

37 (a) At least 21 calendar days before a meeting of the units'  
38 owners to consider and take action on the changes, the association  
39 provides written notice to each unit's owner of the meeting; and

40 (b) At the meeting, a majority of the units' owners approve the  
41 changes by secret written ballot.

42 11. In a common-interest community:

43 (a) With less than 150 units, the association shall not make an  
44 expenditure for a capital improvement of \$7,500 or more unless a



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1 majority of the units' owners who vote on such an expenditure  
2 approve the expenditure.

3 (b) With at least 150 but less than 250 units, the association  
4 shall not make an expenditure for a capital improvement of  
5 \$15,000 or more unless a majority of the units' owners who vote  
6 on such an expenditure approve the expenditure.

7 (c) With at least 250 but less than 500 units, the association  
8 shall not make an expenditure for a capital improvement of  
9 \$25,000 or more unless a majority of the units' owners who vote  
10 on such an expenditure approve the expenditure.

11 (d) With 500 or more units, the association shall not make an  
12 expenditure for a capital improvement of \$35,000 or more unless a  
13 majority of the units' owners who vote on such an expenditure  
14 approve the expenditure.

15 12. As used in this section, "capital improvement" means an  
16 expenditure by the association for the construction of a new  
17 common element, an addition or improvement to an existing  
18 common element or the installation of landscaping where no  
19 landscaping previously existed.

20 Sec. 20. NRS 116.31151 is hereby amended to read as  
21 follows:

22 116.31151 1. Except as otherwise provided in subsection 2  
23 and unless the declaration of a common-interest community imposes  
24 more stringent standards, the executive board shall, not less than 30  
25 days or more than 60 days before the beginning of the fiscal year of  
26 the association, prepare and distribute to each unit's owner a copy  
27 of:

28 (a) The budget for the daily operation of the association. The  
29 budget must include, without limitation, the estimated annual  
30 revenue and expenditures of the association and any contributions to  
31 be made to the reserve account of the association.

32 (b) The budget to provide adequate funding for the reserves  
33 required by paragraph (b) of subsection 2 of NRS 116.3115. The  
34 budget must include, without limitation:

35 (1) The current estimated replacement cost, estimated  
36 remaining life and estimated useful life of each major component of  
37 the common elements and any other portion of the common-interest  
38 community that the association is obligated to maintain, repair,  
39 replace or restore;

40 (2) As of the end of the fiscal year for which the budget is  
41 prepared, the current estimate of the amount of cash reserves that  
42 are necessary, and the current amount of accumulated cash reserves  
43 that are set aside, to repair, replace or restore the major components  
44 of the common elements and any other portion of the common-



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1 interest community that the association is obligated to maintain,  
2 repair, replace or restore;

3 (3) A statement as to whether the executive board has  
4 determined or anticipates that the levy of one or more special  
5 assessments will be necessary to repair, replace or restore any major  
6 component of the common elements or any other portion of the  
7 common-interest community that the association is obligated to  
8 maintain, repair, replace or restore or to provide adequate funding  
9 for the reserves designated for that purpose; and

10 (4) A general statement describing the procedures used for  
11 the estimation and accumulation of cash reserves pursuant to  
12 subparagraph (2), including, without limitation, the qualifications of  
13 the person responsible for the preparation of the study of the  
14 reserves required by NRS 116.31152.

15 2. In lieu of distributing copies of the budgets of the  
16 association required by subsection 1, the executive board may  
17 distribute to each unit's owner a summary of those budgets,  
18 accompanied by a written notice that:

19 (a) The budgets are available for review at the business office of  
20 the association or some other suitable location within the county  
21 where the common-interest community is situated or, if it is situated  
22 in more than one county, within one of those counties but not to  
23 exceed 60 miles from the physical location of the common-interest  
24 community; and

25 (b) Copies of the budgets will be provided upon request.

26 3. Within 60 days after adoption of any proposed budget for  
27 the common-interest community, the executive board shall ~~provide~~  
28 :

29 (a) *Cause a summary of the proposed budget ~~to each~~, a secret*  
30 *ballot and a return envelope to be sent, prepaid by United States*  
31 *mail, to the mailing address of each unit within the common-*  
32 *interest community or to any other mailing address designated in*  
33 *writing by the unit's owner. ~~and shall set~~*

34 (b) *Set a date for a meeting of the units' owners to ~~consider~~*  
35 *~~ratification of the proposed budget~~ open and count the secret*  
36 *written ballots. The meeting must be not less than 14 days or more*  
37 *than 30 days after the mailing of the ~~summaries. Unless~~ ballots. At*  
38 *the meeting, the president of the association shall preside, a*  
39 *committee of the units' owners shall open and count only the*  
40 *secret written ballots that are returned to the association. A*  
41 *quorum is not required to be present when the secret written*  
42 *ballots are opened and counted. If, at that meeting, a majority of*  
43 *~~all units' owners, or any larger vote specified in the declaration,~~*  
44 *~~reject~~ the votes cast are cast in favor of ratifying the proposed*  
45 *budget, the proposed budget is ratified. ~~If, whether or not a quorum~~*



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1 ~~is present.~~ If the proposed budget is ~~rejected,~~ *not ratified*, the  
2 periodic budget last ratified by the units' owners must be continued  
3 until such time as the units' owners ratify a subsequent budget  
4 proposed by the executive board.

5 4. The executive board shall, at the same time and in the same  
6 manner that the executive board makes the budget available to a  
7 unit's owner pursuant to this section, make available to each unit's  
8 owner the policy established for the association concerning the  
9 collection of any fees, fines, assessments or costs imposed against a  
10 unit's owner pursuant to this chapter. The policy must include,  
11 without limitation:

12 (a) ~~The responsibility of~~ *A provision that a fee, fine,*  
13 *assessment or cost may not be referred for collection unless the*  
14 *unit's owner* ~~to pay any such fees, fines, assessments or costs in a~~  
15 ~~timely manner;~~ *has not paid the fee, fine, assessment or cost*  
16 *within 60 days after the first day of the month following the month*  
17 *in which notice of the fee, fine, assessment or cost is sent or*  
18 *otherwise communicated to the unit's owner or, if the amount of*  
19 *the fee, fine, assessment or cost is \$1,000 or more, within 90 days*  
20 *after the period set forth in this paragraph; and*

21 (b) The association's rights concerning the collection of such  
22 fees, fines, assessments or costs if the unit's owner fails to pay the  
23 fees, fines, assessments or costs ~~in a timely manner;~~ *within the*  
24 *period set forth in paragraph (a).*

25 Sec. 21. NRS 116.31152 is hereby amended to read as  
26 follows:

27 116.31152 1. The executive board shall:

28 (a) At least once every 5 years, cause to be conducted a study of  
29 the reserves required to repair, replace and restore the major  
30 components of the common elements and any other portion of the  
31 common-interest community that the association is obligated to  
32 maintain, repair, replace or restore;

33 (b) At least annually, review the results of that study to  
34 determine whether those reserves are sufficient; and

35 (c) At least annually, make any adjustments to the association's  
36 funding plan which the executive board deems necessary to provide  
37 adequate funding for the required reserves.

38 2. Except as otherwise provided in this subsection, the study of  
39 the reserves required by subsection 1 must be conducted by a person  
40 who holds a permit issued pursuant to chapter 116A of NRS. If the  
41 common-interest community contains 20 or fewer units and is  
42 located in a county whose population is 50,000 or less, the study of  
43 the reserves required by subsection 1 may be conducted by any  
44 person whom the executive board deems qualified to conduct the  
45 study.



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1 3. The study of the reserves must include, without limitation:

2 (a) A summary of an inspection of the major components of the  
3 common elements and any other portion of the common-interest  
4 community that the association is obligated to maintain, repair,  
5 replace or restore;

6 (b) An identification of the major components of the common  
7 elements and any other portion of the common-interest community  
8 that the association is obligated to maintain, repair, replace or  
9 restore which have a remaining useful life of less than 30 years;

10 (c) An estimate of the remaining useful life of each major  
11 component of the common elements and any other portion of the  
12 common-interest community that the association is obligated to  
13 maintain, repair, replace or restore identified pursuant to  
14 paragraph (b);

15 (d) An estimate of the cost of maintenance, repair, replacement  
16 or restoration of each major component of the common elements  
17 and any other portion of the common-interest community identified  
18 pursuant to paragraph (b) during and at the end of its useful life; and

19 (e) An estimate of the total annual assessment that may be  
20 necessary to cover the cost of maintaining, repairing, replacement or  
21 restoration of the major components of the common elements and  
22 any other portion of the common-interest community identified  
23 pursuant to paragraph (b), after subtracting the reserves of the  
24 association as of the date of the study, and an estimate of the  
25 funding plan that may be necessary to provide adequate funding for  
26 the required reserves.

27 4. *Upon completion of the study of the reserves required by*  
28 *this section, the association shall notify the units' owners that the*  
29 *study is available for review and make the study available in*  
30 *electronic format to a unit's owner at no charge. Not earlier than*  
31 *20 days after the association notifies the units' owners of the*  
32 *completion of the study, the executive board must conduct a*  
33 *meeting of the executive board for the purpose of approving the*  
34 *study. Before approving the study at the meeting, the executive*  
35 *board shall accept, review and consider comments by the units'*  
36 *owners in the manner required by NRS 116.31085.*  
37 *Notwithstanding any other provision of this chapter or the*  
38 *governing documents, the executive board may not take any*  
39 *actions based on the study, including, without limitation,*  
40 *establishing a funding plan to provide adequate funding for the*  
41 *reserves, unless and until the executive board approves the study*  
42 *at a meeting of the executive board.*

43 5. A summary of the study of the reserves required by  
44 subsection 1 must be submitted to the Division not later than 45



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1 days after the date that the executive board adopts the results of the  
2 study.

3 {5-} 6. If a common-interest community was developed as part  
4 of a planned unit development pursuant to chapter 278A of NRS and  
5 is subject to an agreement with a city or county to receive credit  
6 against the amount of the residential construction tax that is imposed  
7 pursuant to NRS 278.4983 and 278.4985, the association that is  
8 organized for the common-interest community may use the money  
9 from that credit for the repair, replacement or restoration of park  
10 facilities and related improvements if:

11 (a) The park facilities and related improvements are identified as  
12 major components of the common elements of the association; and

13 (b) The association is obligated to repair, replace or restore the  
14 park facilities and related improvements in accordance with the  
15 study of the reserves required by subsection 1.

16 Sec. 22. NRS 116.3116 is hereby amended to read as follows:

17 116.3116 1. The association has a lien on a unit for any  
18 construction penalty that is imposed against the unit's owner  
19 pursuant to NRS 116.310305, any assessment levied against that  
20 unit or any fines imposed against the unit's owner from the time the  
21 construction penalty, assessment or fine becomes due. Unless the  
22 declaration otherwise provides, any penalties, fees, charges, late  
23 charges, fines and interest charged pursuant to paragraphs (j) to (n),  
24 inclusive, of subsection 1 of NRS 116.3102 are enforceable as  
25 assessments under this section. If an assessment is payable in  
26 installments, the full amount of the assessment is a lien from the  
27 time the first installment thereof becomes due.

28 2. A lien under this section is prior to all other liens and  
29 encumbrances on a unit except:

30 (a) Liens and encumbrances recorded before the recordation of  
31 the declaration and, in a cooperative, liens and encumbrances which  
32 the association creates, assumes or takes subject to;

33 (b) A first security interest on the unit recorded before the date  
34 on which the assessment sought to be enforced became delinquent  
35 or, in a cooperative, the first security interest encumbering only the  
36 unit's owner's interest and perfected before the date on which the  
37 assessment sought to be enforced became delinquent; and

38 (c) Liens for real estate taxes and other governmental  
39 assessments or charges against the unit or cooperative.

40 The lien is also prior to all security interests described in  
41 paragraph (b) ~~{to the extent of any}~~ but only in an amount not  
42 exceed charges incurred by the association on a unit pursuant to  
43 NRS 116.310312 ~~{and to the extent of}~~ plus an amount not to  
44 exceed nine times the ~~{assessments}~~ monthly assessment for  
45 common expenses based on the periodic budget adopted by the



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1 association pursuant to NRS 116.3115 which ~~{would have become~~  
 2 ~~due in the absence of acceleration during the 9 months immediately~~  
 3 ~~preceding institution of an}~~ *is in effect at the time of the*  
 4 *commencement of a civil action to enforce the association's lien,*  
 5 unless federal regulations adopted by the Federal Home Loan  
 6 Mortgage Corporation or the Federal National Mortgage  
 7 Association require a ~~{shorter period of}~~ *lesser amount for the*  
 8 *amount of the priority for {the lien} assessments.* If federal  
 9 regulations adopted by the Federal Home Loan Mortgage  
 10 Corporation or the Federal National Mortgage Association require a  
 11 ~~{shorter period of}~~ *lesser amount for the amount of the priority for*  
 12 ~~{the lien} assessment,~~ the ~~{period during which the lien is prior to~~  
 13 ~~all security interests described in paragraph (b)}~~ *amount of*  
 14 *assessments to be given priority pursuant to this subsection must*  
 15 *be determined in accordance with those federal regulations, except*  
 16 *that notwithstanding the provisions of the federal regulations, the*  
 17 ~~{period of}~~ *amount of assessments to be given priority {for the lien}*  
 18 *must not be less than {the 6 months immediately preceding*  
 19 ~~institution of an}~~ *six times the monthly assessment for common*  
 20 *expenses based on the periodic budget adopted by the association*  
 21 *pursuant to NRS 116.3115 which is in effect at the time of the*  
 22 *commencement of a civil action to enforce the association's lien.*  
 23 This subsection does not affect the priority of mechanics' or  
 24 materialmen's liens, or the priority of liens for other assessments  
 25 made by the association.

26 3. Unless the declaration otherwise provides, if two or more  
 27 associations have liens for assessments created at any time on the  
 28 same property, those liens have equal priority.

29 4. Recording of the declaration constitutes record notice and  
 30 perfection of the lien. No further recordation of any claim of lien for  
 31 assessment under this section is required.

32 5. A lien for unpaid assessments is extinguished unless  
 33 proceedings to enforce the lien are instituted within 3 years after the  
 34 full amount of the assessments becomes due.

35 6. This section does not prohibit actions to recover sums for  
 36 which subsection 1 creates a lien or prohibit an association from  
 37 taking a deed in lieu of foreclosure.

38 7. A judgment or decree in any action brought under this  
 39 section must include costs and reasonable attorney's fees for the  
 40 prevailing party.

41 8. The association, upon written request, shall furnish to a  
 42 unit's owner a statement setting forth the amount of unpaid  
 43 assessments against the unit. If the interest of the unit's owner is real  
 44 estate or if a lien for the unpaid assessments may be foreclosed  
 45 under NRS 116.31162 to 116.31168, inclusive, the statement must



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1 be in recordable form. The statement must be furnished within 10  
2 business days after receipt of the request and is binding on the  
3 association, the executive board and every unit's owner.

4 9. In a cooperative, upon nonpayment of an assessment on a  
5 unit, the unit's owner may be evicted in the same manner as  
6 provided by law in the case of an unlawful holdover by a  
7 commercial tenant, and:

8 (a) In a cooperative where the owner's interest in a unit is real  
9 estate under NRS 116.1105, the association's lien may be foreclosed  
10 under NRS 116.31162 to 116.31168, inclusive.

11 (b) In a cooperative where the owner's interest in a unit is  
12 personal property under NRS 116.1105, the association's lien:

13 (1) May be foreclosed as a security interest under NRS  
14 104.9101 to 104.9709, inclusive; or

15 (2) If the declaration so provides, may be foreclosed under  
16 NRS 116.31162 to 116.31168, inclusive.

17 Sec. 23. NRS 116.31164 is hereby amended to read as  
18 follows:

19 116.31164 1. The sale must be conducted in the county in  
20 which the common-interest community or part of it is situated, and  
21 may be conducted by the association, its agent or attorney, or a title  
22 insurance company or escrow agent licensed to do business in this  
23 State, except that the sale may be made at the office of the  
24 association if the notice of the sale so provided, whether the unit is  
25 located within the same county as the office of the association or  
26 not. The association or other person conducting the sale may from  
27 time to time postpone the sale by such advertisement and notice as it  
28 considers reasonable or, without further advertisement or notice, by  
29 proclamation made to the persons assembled at the time and place  
30 previously set and advertised for the sale.

31 2. *If the sale does not occur within 120 days after the date on*  
32 *which a copy of the notice of default and election to sell was*  
33 *mailed to the unit's owner or his or her successor in interest in the*  
34 *manner required by paragraph (b) of subsection 3 of NRS*  
35 *116.31162, the association and any person acting on behalf of the*  
36 *association may not:*

37 (a) *Foreclose the association's lien by sale pursuant to NRS*  
38 *116.31162 to 116.31168, inclusive; or*

39 (b) *File a civil action to obtain a judgment against the unit's*  
40 *owner for the amount due,*

41 *unless, within the period set forth in this subsection, the*  
42 *association, the unit's owner and any other person with a lien on*  
43 *the unit execute and record in the office of the county recorder of*  
44 *the county in which the unit is located a written agreement*  
45 *extending the period. The written agreement must be*



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1 *acknowledged as required by law for the acknowledgment of*  
 2 *deeds. If the sale does not occur within the time provided in the*  
 3 *written agreement, the association and any person acting on*  
 4 *behalf of the association may not foreclose the association's lien*  
 5 *by sale pursuant to NRS 116.31162 to 116.31168, inclusive, or file*  
 6 *a civil action to obtain a judgment against the unit's owner for the*  
 7 *amount due.*

8 3. On the day of sale originally advertised or to which the sale  
 9 is postponed, at the time and place specified in the notice or  
 10 postponement, the person conducting the sale may sell the unit at  
 11 public auction to the highest cash bidder. Unless otherwise provided  
 12 in the declaration or by agreement, the association may purchase the  
 13 unit and hold, lease, mortgage or convey it. The association may  
 14 purchase by a credit bid up to the amount of the unpaid assessments  
 15 and any permitted costs, fees and expenses incident to the  
 16 enforcement of its lien.

17 ~~{3-}~~ 4. After the sale, the person conducting the sale shall:

18 (a) Make, execute and, after payment is made, deliver to the  
 19 purchaser, or his or her successor or assign, a deed without warranty  
 20 which conveys to the grantee all title of the unit's owner to the unit;

21 (b) Deliver a copy of the deed to the Ombudsman within 30  
 22 days after the deed is delivered to the purchaser, or his or her  
 23 successor or assign; and

24 (c) Apply the proceeds of the sale for the following purposes in  
 25 the following order:

26 (1) The reasonable expenses of sale;

27 (2) The reasonable expenses of securing possession before  
 28 sale, holding, maintaining, and preparing the unit for sale, including  
 29 payment of taxes and other governmental charges, premiums on  
 30 hazard and liability insurance, and, to the extent provided for by the  
 31 declaration, reasonable attorney's fees and other legal expenses  
 32 incurred by the association;

33 (3) Satisfaction of the association's lien;

34 (4) Satisfaction in the order of priority of any subordinate  
 35 claim of record; and

36 (5) Remittance of any excess to the unit's owner.

37 Sec. 24. NRS 116.31175 is hereby amended to read as  
 38 follows:

39 116.31175 1. Except as otherwise provided in this  
 40 subsection, the executive board of an association shall, upon the  
 41 written request of a unit's owner, make available the books, records  
 42 and other papers of the association, *including, without limitation,*  
 43 *the budget, the reserve study, contracts to which the association is*  
 44 *a party, records filed with a court relating to civil or criminal*  
 45 *action to which the association is a party, minutes of meetings of*



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1 the units' owners and of the executive board, attorney opinions  
 2 which do not relate to current litigation involving the association,  
 3 any architectural plan or specification submitted by a unit's  
 4 owner, agendas of meetings of the units' owners and of the  
 5 executive board, records of violations of the governing documents  
 6 excluding names and addresses, records relating to the  
 7 investments of the association, bank statements, cancelled checks,  
 8 insurance policies and any permits, even if the book, record or  
 9 paper is in draft form or is unapproved or in the process of being  
 10 developed, for review at the business office of the association or a  
 11 designated business location not to exceed 60 miles from the  
 12 physical location of the common-interest community and during the  
 13 regular working hours of the association. ~~including, without~~  
 14 ~~limitation, all contracts to which the association is a party and all~~  
 15 ~~records filed with a court relating to a civil or criminal action to~~  
 16 ~~which the association is a party.~~ The provisions of this subsection  
 17 do not apply to:

18 (a) The personnel records of the employees of the association,  
 19 except for those records relating to the number of hours worked and  
 20 the salaries and benefits of those employees;

21 (b) The records of the association relating to another unit's  
 22 owner ~~including, without limitation, any architectural plan or~~  
 23 ~~specification submitted by a unit's owner to the association during~~  
 24 ~~an approval process required by the governing documents, except~~  
 25 ~~for those records described in subsection 2; and~~

26 (c) Any document, including, without limitation, minutes of an  
 27 executive board meeting, a reserve study and a budget, if the  
 28 document:

29 ~~(1) Is in the process of being developed for final~~  
 30 ~~consideration by the executive board; and~~

31 ~~(2) Has not been placed on an agenda for final approval by~~  
 32 ~~the executive board; other than records specifically mentioned in~~  
 33 ~~this subsection.~~

34 2. The executive board of an association shall maintain a  
 35 general record concerning each violation of the governing  
 36 documents, other than a violation involving a failure to pay an  
 37 assessment, for which the executive board has imposed a fine, a  
 38 construction penalty or any other sanction. The general record:

39 (a) Must contain a general description of the nature of the  
 40 violation and the type of the sanction imposed. If the sanction  
 41 imposed was a fine or construction penalty, the general record must  
 42 specify the amount of the fine or construction penalty.

43 (b) Must not contain the name or address of the person against  
 44 whom the sanction was imposed or any other personal information



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1 which may be used to identify the person or the location of the unit,  
2 if any, that is associated with the violation.

3 (c) Must be maintained in an organized and convenient filing  
4 system or data system that allows a unit's owner to search and  
5 review the general records concerning violations of the governing  
6 documents.

7 3. If the executive board refuses to allow a unit's owner to  
8 review the books, records or other papers of the association, the  
9 Ombudsman may:

10 (a) On behalf of the unit's owner and upon written request,  
11 review the books, records or other papers of the association during  
12 the regular working hours of the association; and

13 (b) If the Ombudsman is denied access to the books, records or  
14 other papers, request the Commission, or any member thereof acting  
15 on behalf of the Commission, to issue a subpoena for their  
16 production.

17 4. The books, records and other papers of an association must  
18 be maintained for at least 10 years. The provisions of this subsection  
19 do not apply to:

20 (a) The minutes of a meeting of the units' owners which must be  
21 maintained in accordance with NRS 116.3108; or

22 (b) The minutes of a meeting of the executive board which must  
23 be maintained in accordance with NRS 116.31083.

24 5. The executive board shall not require a unit's owner to pay  
25 an amount in excess of \$10 per hour to review any books, records,  
26 contracts or other papers of the association pursuant to the  
27 provisions of this section.

28 6. If an official publication contains or will contain any  
29 mention of a candidate or ballot question, the official publication  
30 must, upon request and without charge, provide equal space to the  
31 candidate or a representative of an organization which supports the  
32 passage or defeat of the ballot question.

33 7. If an official publication contains or will contain the views  
34 or opinions of the association, the executive board, a community  
35 manager or an officer, employee or agent of an association  
36 concerning an issue of official interest, the official publication must,  
37 upon request and without charge, provide equal space to opposing  
38 views and opinions of a unit's owner, tenant or resident of the  
39 common-interest community. *If the views or opinions of the*  
40 *association, the executive board, a community manager or an*  
41 *officer, employee or agent of an association are published in an*  
42 *official newsletter or other similar publication that is circulated to*  
43 *each unit's owner, in addition to any other manner of official*  
44 *publication for the opposing views or opinions of a unit's owner,*  
45 *tenant or resident, those opposing views or opinions may be*



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1 published in the same such newsletter or publication or in the next  
 2 such newsletter or publication but the opposing views or opinions  
 3 must be published in an official newsletter or similar publication  
 4 within 45 days after publication of the views or opinions of the  
 5 association, the executive board, community manager or officer,  
 6 employee or agent of the association. If the views or opinions of  
 7 the association, the executive board, a community manager or an  
 8 officer, employee or agent of an association are published on an  
 9 official website or on an official bulletin board that is available to  
 10 each unit's owner, in addition to any other manner of official  
 11 publication for the opposing views or opinions, the opposing views  
 12 or opinions of a unit's owner, tenant or resident must be published  
 13 in the next official newsletter or other similar publication that is  
 14 circulated to each unit's owner or in an official newsletter or  
 15 similar publication published within 45 days after publication of  
 16 the views or opinions of the association, executive board,  
 17 community manager or officer, employee or agent of the  
 18 association, whichever is earlier.

19 8. The association and its officers, employees and agents are  
 20 immune from criminal or civil liability for any act or omission  
 21 which arises out of the publication or disclosure of any information  
 22 related to any person and which occurs in the course of carrying out  
 23 any duties required pursuant to subsection 6 or 7.

24 9. As used in this section:

25 (a) "Issue of official interest" includes, without limitation:

26 (1) Any issue on which the executive board or the units'  
 27 owners will be voting, including, without limitation, the election of  
 28 members of the executive board; and

29 (2) The enactment or adoption of rules or regulations that  
 30 will affect a common-interest community.

31 (b) "Official publication" means:

32 (1) An official website;

33 (2) An official newsletter or other similar publication that is  
 34 circulated to each unit's owner; or

35 (3) An official bulletin board that is available to each unit's  
 36 owner,

37 which is published or maintained at the cost of an association and  
 38 by an association, an executive board, a member of an executive  
 39 board, a community manager or an officer, employee or agent of an  
 40 association.

41 Sec. 25. NRS 116.31183 is hereby amended to read as  
 42 follows:

43 116.31183 1. An executive board, a member of an executive  
 44 board, a community manager or an officer, employee or agent of an  
 45 association shall not take, or direct or encourage another person to



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1 take, any retaliatory action against a unit's owner , including,  
2 without limitation, demanding money from a unit's owner,  
3 prohibiting the use of the common elements by the unit's owner,  
4 restricting the access of friends, relatives or any invitee of a unit's  
5 owner, filing against the unit's owner a false or fraudulent  
6 affidavit with the Division pursuant to NRS 116.760, filing against  
7 the unit's owner a false or fraudulent claim with the Division  
8 pursuant to NRS 38.320, or filing a frivolous civil action for the  
9 purpose of harassing the unit's owner, because the unit's owner

10 has:

11 (a) Complained in good faith about any alleged violation of any  
12 provision of this chapter , ~~for~~ the governing documents of the  
13 association ~~it~~ or any federal, state, county or municipal law,  
14 ordinance or code;

15 (b) Recommended the selection or replacement of an attorney,  
16 community manager or vendor; or

17 (c) Requested in good faith to review the books, records or other  
18 papers of the association.

19 2. In addition to any other remedy provided by law, upon a  
20 violation of this section, a unit's owner may bring a separate action  
21 to recover:

22 (a) Compensatory damages; and

23 (b) Attorney's fees and costs of bringing the separate action.

24 Sec. 26. NRS 116.330 is hereby amended to read as follows:

25 116.330 1. The executive board shall not and the governing  
26 documents must not prohibit a unit's owner from installing or  
27 maintaining drought tolerant landscaping within such physical  
28 portion of the common-interest community as that owner has a right  
29 to occupy and use exclusively, including, without limitation, the  
30 front yard or back yard of the unit's owner, except that:

31 (a) Before installing drought tolerant landscaping, the unit's  
32 owner must submit a detailed description or plans for the drought  
33 tolerant landscaping for architectural review and approval in  
34 accordance with the procedures, if any, set forth in the governing  
35 documents of the association; and

36 (b) The drought tolerant landscaping must be selected or  
37 designed to the maximum extent practicable to be compatible with  
38 the style of the common-interest community.

39 ➤ The provisions of this subsection must be construed liberally in  
40 favor of effectuating the purpose of encouraging the use of drought  
41 tolerant landscaping, and the executive board shall not and the  
42 governing documents must not unreasonably deny or withhold  
43 approval for the installation of drought tolerant landscaping or  
44 unreasonably determine that the drought tolerant landscaping is not  
45 compatible with the style of the common-interest community.



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2. *The association may not charge a fee to a unit's owner who is seeking approval to install drought tolerant landscaping pursuant to this section.*

3. Installation of drought tolerant landscaping within any common element or conversion of traditional landscaping or cultivated vegetation, such as turf grass, to drought tolerant landscaping within any common element shall not be deemed to be a change of use of the common element unless:

(a) The common element has been designated as a park, open play space or golf course on a recorded plat map; or

(b) The traditional landscaping or cultivated vegetation is required by a governing body under the terms of any applicable zoning ordinance, permit or approval or as a condition of approval of any final subdivision map.

{3.} 4. As used in this section, "drought tolerant landscaping" means landscaping which conserves water, protects the environment and is adaptable to local conditions. The term includes, without limitation, the use of mulches such as decorative rock and artificial turf.

Sec. 27. NRS 116.335 is hereby amended to read as follows:

116.335 1. Unless, at the time a unit's owner purchased his or her unit, the declaration prohibited the unit's owner from renting or leasing his or her unit, the association may not prohibit the unit's owner from renting or leasing his or her unit.

2. Unless, at the time a unit's owner purchased his or her unit, the declaration required the unit's owner to secure or obtain any approval from the association in order to rent or lease his or her unit, an association may not require the unit's owner to secure or obtain any approval from the association in order to rent or lease his or her unit.

3. If a declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, that provision of the declaration may not be amended to decrease that maximum number or percentage of units in the common-interest community which may be rented or leased.

4. The provisions of this section do not prohibit an association from enforcing any provisions which govern the renting or leasing of units and which are contained in this chapter or in any other applicable federal, state or local laws or regulations.

5. Notwithstanding any other provision of law or the declaration to the contrary:

(a) If a unit's owner is prohibited from renting or leasing a unit because the maximum number or percentage of units which may be rented or leased in the common-interest community have already



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1 been rented or leased, the unit's owner may seek a waiver of the  
2 prohibition from the executive board based upon a showing of  
3 economic hardship, and the executive board ~~may~~ *shall* grant such  
4 a waiver *upon proof of economic hardship* and approve the renting  
5 or leasing of the unit.

6 (b) If the declaration contains a provision establishing a  
7 maximum number or percentage of units in the common-interest  
8 community which may be rented or leased, in determining the  
9 maximum number or percentage of units in the common-interest  
10 community which may be rented or leased, the number of units  
11 owned by the declarant must not be counted or considered.

12 Sec. 28. NRS 116.350 is hereby amended to read as follows:

13 116.350 1. In a common-interest community which is not  
14 gated or enclosed and the access to which is not restricted or  
15 controlled by a person or device, the executive board shall not and  
16 the governing documents must not ~~provide~~ :

17 (a) *Provide* for the regulation of any road, street, alley or other  
18 thoroughfare the right-of-way of which is accepted by the State or a  
19 local government for dedication as a road, street, alley or other  
20 thoroughfare for public use.

21 (b) *Except as otherwise provided in paragraph (s) of NRS*  
22 *116.3102, interfere with the parking of any automobile, privately*  
23 *owned standard pickup truck, motorcycle or any other vehicle not*  
24 *specifically described in subsection 2.*

25 2. Except as otherwise provided in subsection 3, the provisions  
26 of subsection 1 do not preclude an association from adopting, and  
27 do not preclude the governing documents of an association from  
28 setting forth, rules that reasonably restrict the parking or storage of  
29 recreational vehicles, watercraft, trailers or commercial vehicles in  
30 the common-interest community to the extent authorized by law.

31 3. In any common-interest community, the executive board  
32 shall not and the governing documents must not prohibit a person  
33 from:

34 (a) Parking a utility service vehicle that has a gross vehicle  
35 weight rating of 20,000 pounds or less:

36 (1) In an area designated for parking for visitors, in a  
37 designated parking area or common parking area, or on the  
38 driveway of the unit of a subscriber or consumer, while the person is  
39 engaged in any activity relating to the delivery of public utility  
40 services to subscribers or consumers; or

41 (2) In an area designated for parking for visitors, in a  
42 designated parking area or common parking area, or on the  
43 driveway of his or her unit, if the person is:

44 (I) A unit's owner or a tenant of a unit's owner; and



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1 (II) Bringing the vehicle to his or her unit pursuant to his  
2 or her employment with the entity which owns the vehicle for the  
3 purpose of responding to emergency requests for public utility  
4 services; or

5 (b) Parking a law enforcement vehicle or emergency services  
6 vehicle:

7 (1) In an area designated for parking for visitors, in a  
8 designated parking area or common parking area, or on the  
9 driveway of the unit of a person to whom law enforcement or  
10 emergency services are being provided, while the person is engaged  
11 in his or her official duties; or

12 (2) In an area designated for parking for visitors, in a  
13 designated parking area or common parking area, or on the  
14 driveway of his or her unit, if the person is:

15 (I) A unit's owner or a tenant of a unit's owner; and

16 (II) Bringing the vehicle to his or her unit pursuant to his  
17 or her employment with the entity which owns the vehicle for the  
18 purpose of responding to requests for law enforcement services or  
19 emergency services.

20 4. An association may require that a person parking a utility  
21 service vehicle, law enforcement vehicle or emergency services  
22 vehicle as set forth in subsection 3 provide written confirmation  
23 from his or her employer that the person is qualified to park his or  
24 her vehicle in the manner set forth in subsection 3.

25 5. *In a common-interest community which is not gated or*  
26 *enclosed and the access to which is not restricted or controlled by*  
27 *a person or device, the association shall display a sign in plain*  
28 *view on or near any property on which parking is prohibited or*  
29 *restricted in a certain manner.*

30 6. As used in this section:

31 (a) "Emergency services vehicle" means a vehicle:

32 (1) Owned by any governmental agency or political  
33 subdivision of this State; and

34 (2) Identified by the entity which owns the vehicle as a  
35 vehicle used to provide emergency services.

36 (b) "Law enforcement vehicle" means a vehicle:

37 (1) Owned by any governmental agency or political  
38 subdivision of this State; and

39 (2) Identified by the entity which owns the vehicle as a  
40 vehicle used to provide law enforcement services.

41 (c) "Utility service vehicle" means any motor vehicle:

42 (1) Used in the furtherance of repairing, maintaining or  
43 operating any structure or any other physical facility necessary for  
44 the delivery of public utility services, including, without limitation,



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1 the furnishing of electricity, gas, water, sanitary sewer, telephone,  
2 cable or community antenna service; and

3 (2) Except for any emergency use, operated primarily within  
4 the service area of a utility's subscribers or consumers, without  
5 regard to whether the motor vehicle is owned, leased or rented by  
6 the utility.

7 Sec. 29. NRS 116.4117 is hereby amended to read as follows:

8 116.4117 1. Subject to the requirements set forth in  
9 subsection 2, if a declarant, community manager or any other person  
10 subject to this chapter fails to comply with any of its provisions or  
11 any provision of the declaration or bylaws, any person or class of  
12 persons suffering actual damages from the failure to comply may  
13 bring a civil action for damages or other appropriate relief.

14 2. ~~{Subject to the requirements set forth in NRS 38.310 and~~  
15 ~~except}~~ Except as otherwise provided in NRS 116.3111, a civil  
16 action for damages or other appropriate relief for a failure or refusal  
17 to comply with any provision of this chapter or the governing  
18 documents of an association may be brought:

19 (a) By the association against:

20 (1) A declarant;

21 (2) A community manager; or

22 (3) A unit's owner.

23 (b) By a unit's owner or a tenant or an invitee of a unit's  
24 owner or a tenant against:

25 (1) The association;

26 (2) A declarant; or

27 (3) Another unit's owner of the association.

28 (c) By a class of units' owners constituting at least 10 percent of  
29 the total number of voting members of the association against a  
30 community manager.

31 3. Except as otherwise provided in NRS 116.31036, punitive  
32 damages may be awarded for a willful and material failure to  
33 comply with any provision of this chapter if the failure is established  
34 by clear and convincing evidence.

35 4. The court may award reasonable attorney's fees to the  
36 prevailing party.

37 5. The civil remedy provided by this section is in addition to,  
38 and not exclusive of, any other available remedy or penalty.

39 Sec. 30. NRS 116.745 is hereby amended to read as follows:

40 116.745 As used in NRS 116.745 to 116.795, inclusive, and  
41 section 1 of this act, unless the context otherwise requires,  
42 "violation" means a violation of any provision of this chapter, any  
43 regulation adopted pursuant thereto or any order of the Commission  
44 or a hearing panel.



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1     **Sec. 31.** NRS 116.757 is hereby amended to read as follows:

2     116.757 1. Except as otherwise provided in this section and  
3 NRS 239.0115, a written affidavit filed with the Division pursuant  
4 to NRS 116.760, all documents and other information filed with the  
5 written affidavit and all documents and other information compiled  
6 as a result of an investigation conducted to determine whether to file  
7 a formal complaint with the Commission are confidential. ~~{The}~~  
8 *Except as otherwise provided in this subsection, the* Division shall  
9 not disclose any *findings or other* information that is confidential  
10 pursuant to this subsection, in whole or in part, to any person,  
11 ~~{including, without limitation, a person who is the subject of an~~  
12 ~~investigation or complaint,}~~ unless and until a formal complaint is  
13 filed pursuant to subsection 2 and the disclosure is required pursuant  
14 to subsection 2. *The Division shall provide to each party to the*  
15 *dispute for which the written affidavit was filed a copy of the*  
16 *documents and other information submitted by the other party.*

17     2. A formal complaint filed by the Administrator with the  
18 Commission and all documents and other information considered by  
19 the Commission or a hearing panel when determining whether to  
20 impose discipline or take other administrative action pursuant to  
21 NRS 116.745 to 116.795, inclusive, *and section 1 of this act* are  
22 public records.

23     **Sec. 32.** NRS 116.765 is hereby amended to read as follows:

24     116.765 1. Upon receipt of an affidavit that complies with  
25 the provisions of NRS 116.760, the Division shall refer the affidavit  
26 to the Ombudsman.

27     2. The Ombudsman shall give such guidance to the parties as  
28 the Ombudsman deems necessary to assist the parties to resolve the  
29 alleged violation. *The Ombudsman shall provide each party an*  
30 *opportunity to respond to any allegations or statements made by*  
31 *the other party or the Division.*

32     3. If the parties are unable to resolve the alleged violation with  
33 the assistance of the Ombudsman, the Ombudsman shall provide to  
34 the Division a report concerning the alleged violation and any  
35 information collected by the Ombudsman during his or her efforts to  
36 assist the parties to resolve the alleged violation.

37     4. Upon receipt of the report from the Ombudsman, the  
38 Division shall conduct an investigation to determine whether good  
39 cause exists to proceed with a hearing on the alleged violation.

40     5. If, after investigating the alleged violation, the Division  
41 determines that the allegations in the affidavit are not frivolous,  
42 false or fraudulent and that good cause exists to proceed with a  
43 hearing on the alleged violation, the Administrator shall file a  
44 formal complaint with the Commission and schedule a hearing on  
45 the complaint before the Commission or a hearing panel.



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1     Sec. 33. NRS 38.310 is hereby amended to read as follows:  
2     38.310 1. ~~[No]~~ *Except as otherwise provided in subsections*  
3     *2 and 3, no civil action based upon a claim relating to:*  
4     (a) The interpretation, application or enforcement of any  
5     covenants, conditions or restrictions applicable to residential  
6     property or any bylaws, rules or regulations adopted by an  
7     association; or  
8     (b) The procedures used for increasing, decreasing or imposing  
9     additional assessments upon residential property,  
10    ↪ may be commenced in any court in this State unless the action  
11    has been submitted to mediation or arbitration pursuant to the  
12    provisions of NRS 38.300 to 38.360, inclusive, and, if the civil  
13    action concerns real estate within a planned community subject to  
14    the provisions of chapter 116 of NRS or real estate within a  
15    condominium hotel subject to the provisions of chapter 116B of  
16    NRS, all administrative procedures specified in any covenants,  
17    conditions or restrictions applicable to the property or in any  
18    bylaws, rules and regulations of an association have been exhausted.  
19    2. *If:*  
20    (a) *A civil action described in subsection 1 concerns real estate*  
21    *within a planned community subject to the provisions of chapter*  
22    *116 of NRS and relates to a citation of a unit's owner or a tenant*  
23    *of a unit's owner for a violation of any covenants, conditions or*  
24    *restrictions applicable to residential property or any bylaws, rules*  
25    *or regulations adopted by an association; and*  
26    (b) *All administrative procedures specified in any covenants,*  
27    *conditions or restrictions applicable to the property or in any*  
28    *bylaws, rules and regulations of an association have been*  
29    *exhausted,*  
30    ↪ *the unit's owner or tenant may submit the civil action to*  
31    *mediation or arbitration pursuant to the provisions of NRS 38.300*  
32    *to 38.360, inclusive, or commence the civil action in a court of*  
33    *competent jurisdiction without complying with the provisions of*  
34    *NRS 38.300 to 38.360, inclusive.*  
35    3. *If a civil action described in subsection 1 concerns real*  
36    *estate within a planned community subject to the provisions of*  
37    *chapter 116 of NRS and is brought by an invitee of a unit's owner*  
38    *or a tenant of a unit's owner, the invitee may submit the civil*  
39    *action to mediation or arbitration pursuant to the provisions of*  
40    *NRS 38.300 to 38.360, inclusive, or commence the civil action in a*  
41    *court of competent jurisdiction without complying with the*  
42    *provisions of NRS 38.300 to 38.360, inclusive.*  
43    4. A court shall dismiss any civil action which is commenced  
44    in violation of the provisions of ~~[subsection 1.]~~ *this section.*



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1     **Sec. 34.** NRS 38.330 is hereby amended to read as follows:

2     38.330 1. If all parties named in a written claim filed  
3 pursuant to NRS 38.320 agree to have the claim submitted for  
4 mediation, the parties shall reduce the agreement to writing and  
5 shall select a mediator from the list of mediators maintained by the  
6 Division pursuant to NRS 38.340. Any mediator selected must be  
7 available within the geographic area. If the parties fail to agree upon  
8 a mediator, the Division shall appoint a mediator from the list of  
9 mediators maintained by the Division. Any mediator appointed must  
10 be available within the geographic area. Unless otherwise provided  
11 by an agreement of the parties, mediation must be completed within  
12 60 days after the parties agree to mediation. Any agreement  
13 obtained through mediation conducted pursuant to this section must,  
14 within 20 days after the conclusion of mediation, be reduced to  
15 writing by the mediator and a copy thereof provided to each party.  
16 The agreement may be enforced as any other written agreement. *If a*  
17 *party commences a civil action based upon any claim which was*  
18 *the subject of mediation, the findings of the mediator are not*  
19 *admissible in that action.* Except as otherwise provided in this  
20 section, the parties are responsible for all costs of mediation  
21 conducted pursuant to this section.

22     2. If all the parties named in the claim do not agree to  
23 mediation, the parties shall select an arbitrator from the list of  
24 arbitrators maintained by the Division pursuant to NRS 38.340. Any  
25 arbitrator selected must be available within the geographic area. If  
26 the parties fail to agree upon an arbitrator, the Division shall appoint  
27 an arbitrator from the list maintained by the Division. Any arbitrator  
28 appointed must be available within the geographic area. Upon  
29 appointing an arbitrator, the Division shall provide the name of the  
30 arbitrator to each party. An arbitrator shall, not later than 5 days  
31 after the arbitrator's selection or appointment pursuant to this  
32 subsection, provide to the parties an informational statement relating  
33 to the arbitration of a claim pursuant to this section. The written  
34 informational statement:

35     (a) Must be written in plain English;

36     (b) Must explain the procedures and applicable law relating to  
37 the arbitration of a claim conducted pursuant to this section,  
38 including, without limitation, the procedures, timelines and  
39 applicable law relating to confirmation of an award pursuant to NRS  
40 38.239, vacation of an award pursuant to NRS 38.241, judgment on  
41 an award pursuant to NRS 38.243, and any applicable statute or  
42 court rule governing the award of attorney's fees or costs to any  
43 party; and

44     (c) Must be accompanied by a separate form acknowledging that  
45 the party has received and read the informational statement, which



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1 must be returned to the arbitrator by the party not later than 10 days  
2 after receipt of the informational statement.

3 3. The Division may provide for the payment of the fees for a  
4 mediator or an arbitrator selected or appointed pursuant to this  
5 section from the Account for Common-Interest Communities and  
6 Condominium Hotels created by NRS 116.630, to the extent that:

7 (a) The Commission for Common-Interest Communities and  
8 Condominium Hotels approves the payment; and

9 (b) There is money available in the Account for this purpose.

10 4. *The fees for a mediator or an arbitrator selected or*  
11 *appointed pursuant to this section must not exceed \$750 and,*  
12 *except as otherwise provided in subsection 3, each party to the*  
13 *mediation or arbitration must pay an equal percentage of the fees*  
14 *for the mediator or arbitrator.*

15 5. *A party to a mediation or an arbitration conducted*  
16 *pursuant to this section is not liable for the costs or attorney's fees*  
17 *incurred by another party during the mediation or arbitration.*

18 6. *If a party to a mediation or an arbitration conducted*  
19 *pursuant to this section submits a written statement to the Division*  
20 *alleging that the mediator or arbitrator has a conflict of interest or*  
21 *is biased against that party and submits with the written statement*  
22 *evidence to substantiate the allegation, the Division shall remove*  
23 *the mediator or arbitrator and appoint a mediator or arbitrator*  
24 *from the list maintained by the Division pursuant to NRS 38.340*  
25 *who is acceptable to each party. A mediator or arbitrator who has*  
26 *been removed by the Division pursuant to this subsection shall*  
27 *refund to the parties any payments made by the parties for the fees*  
28 *of the mediator or arbitrator.*

29 7. Except as otherwise provided in this section and except  
30 where inconsistent with the provisions of NRS 38.300 to 38.360,  
31 inclusive, the arbitration of a claim pursuant to this section must be  
32 conducted in accordance with the provisions of NRS 38.231,  
33 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At  
34 any time during the arbitration of a claim relating to the  
35 interpretation, application or enforcement of any covenants,  
36 conditions or restrictions applicable to residential property or any  
37 bylaws, rules or regulations adopted by an association, the arbitrator  
38 may issue an order prohibiting the action upon which the claim is  
39 based. An award must be made within 30 days after the conclusion  
40 of arbitration, unless a shorter period is agreed upon by the parties to  
41 the arbitration.

42 ~~{5.}~~ 8. If all the parties have agreed to nonbinding arbitration,  
43 any party to the nonbinding arbitration may, within 30 days after a  
44 decision and award have been served upon the parties, commence a  
45 civil action in the proper court concerning the claim which was



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1 submitted for arbitration. Any complaint filed in such an action must  
2 contain a sworn statement indicating that the issues addressed in the  
3 complaint have been arbitrated pursuant to the provisions of NRS  
4 38.300 to 38.360, inclusive. *If an action is commenced within that*  
5 *period, the findings of the arbitrator are not admissible in that*  
6 *action.* If such an action is not commenced within that period, any  
7 party to the arbitration may, within 1 year after the service of the  
8 award, apply to the proper court for a confirmation of the award  
9 pursuant to NRS 38.239.

10 ~~{6-}~~ 9. If all the parties agree in writing to binding arbitration,  
11 the arbitration must be conducted in accordance with the provisions  
12 of this chapter. An award procured pursuant to such binding  
13 arbitration may be vacated and a rehearing granted upon application  
14 of a party pursuant to the provisions of NRS 38.241.

15 ~~{7-}~~ 10. If, after the conclusion of binding arbitration, a party:

16 (a) Applies to have an award vacated and a rehearing granted  
17 pursuant to NRS 38.241; or

18 (b) Commences a civil action based upon any claim which was  
19 the subject of arbitration,

20 the party shall, if the party fails to obtain a more favorable award  
21 or judgment than that which was obtained in the initial binding  
22 arbitration, pay all costs and reasonable attorney's fees incurred by  
23 the opposing party after the application for a rehearing was made or  
24 after the complaint in the civil action was filed.

25 ~~{8-}~~ *If a party commences a civil action based upon any claim*  
26 *which was the subject of arbitration, the findings of the arbitrator*  
27 *are not admissible in that action.*

28 11. Upon request by a party, the Division shall provide a  
29 statement to the party indicating the amount of the fees for a  
30 mediator or an arbitrator selected or appointed pursuant to this  
31 section.

32 ~~{9-}~~ 12. As used in this section, "geographic area" means an  
33 area within 150 miles from any residential property or association  
34 which is the subject of a written claim submitted pursuant to  
35 NRS 38.320.

36 Sec. 35. The provisions of NRS 116.31164, as amended by  
37 section 23 of this act, apply only if a notice of default and election to  
38 sell is recorded pursuant to NRS 116.31162 on or after July 1, 2011.

39 Sec. 36. This act becomes effective on July 1, 2011.

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## **EXHIBIT “E”**

ADOPTED DECEMBER 8, 2010

**COMMISSION FOR COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS  
ADVISORY OPINION NO. 2010-01**

**Subject:** Inclusion of Fees and Costs as an Element of the Super Priority Lien

**QUESTION**

Under NRS 116.3116, the super priority of an assessment lien includes "assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration" during the 6 or 9 month super priority period. May the association also recover, as part of the super priority lien, the costs and fees incurred by the association in collecting such assessments?

**ANSWER**

An association may collect as a part of the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of collecting" authorized by NRS 116.310313.

**ANALYSIS**

**Statutory Super Priority.** NRS Chapter 116 provides for a "super priority" lien for certain association assessments. NRS 116.3116 provides, in pertinent part, as follows:

**NRS 116.3116 Liens against units for assessments.**

1. The association has a lien on a unit for . . . any assessment levied against that unit . . . from the time the . . . assessment . . . becomes due. . . .
2. A lien under this section is prior to all other liens and encumbrances on a unit except:
  - (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
  - (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or,

in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312<sup>1</sup> and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. . .

NRS 116.3116 further provides that "Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section."

UCIOA. The "super priority" provisions of NRS Chapter 116, like the rest of the chapter, are based on the 1982 version of the Uniform Common Interest Ownership Act (UCIOA) adopted by the National Conference of Commissioners

<sup>1</sup> NRS 116.310312, enacted in 2009, provides for the recovery by the association of certain costs incurred by an association with respect to a foreclosed or abandoned unit, including costs incurred to "Maintain the exterior of the unit in accordance with the standards set forth in the governing documents" or "Remove or abate a public nuisance on the exterior of the unit...."

ADOPTED DECEMBER 8, 2010

of Uniform State Laws (NCCUSL). A comparison of the statutory language in UCIOA<sup>2</sup> and NRS reveals few material changes:

<b><u>UCIOA 3-116.</u> (1994)</b>	<b><u>NRS 116.3116 Liens against units for assessments.</u>(2009)</b>
<p>(a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.</p>	<p>1. The association has a lien on a unit for . . . any assessment levied against that unit or any fines imposed against the unit's owner from the time the . . . assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.</p>
<p>(b) A lien under this section is prior to all other liens and encumbrances on a unit except</p>	<p>2. A lien under this section is prior to all other liens and encumbrances on a unit except:</p>
<p>(i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to,</p>	<p>(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;</p>
<p>(ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and</p>	<p>(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and</p>

<sup>2</sup> The 1982 version of UCIOA was superseded by a 1994 version, which is used here, and a 2008 version, discussed below.

<p>(iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.</p> <p>The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien.</p>	<p>(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.</p> <p>The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.</p>
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**Reported Cases.** There are no reported Nevada cases addressing the issue of whether the super priority lien may include amounts other than just the 6 or 9 months of assessments. Because NRS Chapter 116 is based on a Uniform

Act, however, decisions in other states that have adopted UCIOA can be helpful. Colorado and Connecticut are both UCIOA states; reported cases in both these states have addressed the question presented in this opinion.

In *Hudson House Condominium Association, Inc. v. Brooks*, 611 A.2d 862 (Conn., 1992), the Connecticut Supreme Court rejected an argument by the holder of the first mortgage that "because [the statute] does not specifically include 'costs and attorney's fees' as part of the language creating [the association's] priority lien, those expenses are properly includable only as part of the nonpriority lien that is subordinate to [the first mortgagee's] interest." In reaching its conclusion, however, the court relied on a non-uniform statute dealing with the judicial enforcement of the association lien.<sup>3</sup> In a footnote the court also noted that the super priority language of the Connecticut version of UCIOA 3-116 had since been amended to expressly include attorney's fees and costs in the priority debt.

The two Colorado cases that have considered this issue reached their conclusion, that the priority debt *includes* attorneys' fees and costs, based on statutory language similar to Nevada's. The language of the court in *First Atl. Mortgage, LLC v. Sunstone N. Homeowners Ass'n*, 121 P.3d 254 (Colo. App 2005) is very helpful:

Within the meaning of Section 2(b), a "lien under this section" may include any of the expenses listed in subsection (1), including "fees, charges, late charges, attorney fees, fines, and interest." Thus, ***although the maximum amount of a super priority lien is defined solely by reference to monthly assessments, the lien itself may comprise debts other than delinquent monthly assessments.***[Emphasis added.]

<sup>3</sup> C.G.S.A. Section 47-258(g)

In support of its holding, the Sunstone court quoted the following language from James Winokur, *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Ownership Act*, 27 Wake Forest L. Rev. 353, 367:

A careful reading of the . . . language reveals that the association's Prioritized Lien, like its Less-Prioritized Lien, may consist not merely of defaulted assessments, but also of fines and, where the statute so specifies, enforcement and attorney fees. The reference in Section 3-116(b) to priority "to the extent of" assessments which would have been due "during the six months immediately preceding an action to enforce the lien" merely limits the maximum amount of all fees or charges for common facilities use or for association services, late charges and fines, and interest which can come with the Prioritized Lien.

The decision of the court in Sunstone was followed in *BA Mortgage, LLC v. Quail Creek Condominium Association, Inc.*, 192 P.2d 447 (Colo. App, 2008).

A comparison of the language of the Colorado statute and the language of the Nevada statute reveals that the two are virtually identical:

<b>CRS 38-33.3-316 Lien for assessments. (2008)</b>	<b>NRS 116.3116 Liens against units for assessments. (2009)</b>
(1) The association . . . has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, <b><u>fees, charges, late charges, attorney fees, fines, and interest</u></b> charged pursuant to section 38-33.3-302 (1) (j), (1) (k), and (1) (l), section 38-33.3-313 (6), and section 38-33.3-315 (2) are enforceable as assessments under this article. The amount of the lien shall include all those items set forth in this section from the time such items become due. . . .	. The association has a lien on a unit for . . . any assessment levied against that unit or any fines imposed against the unit's owner from the time the . . . assessment or fine becomes due. Unless the declaration otherwise provides, any . . . <b><u>fees, charges, late charges, fines and interest</u></b> charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. . . .

<p>(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except:</p> <p>***</p> <p>(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:</p> <p>(I) <u>An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315 (1) which would have become due, in the absence of any acceleration, during the six months immediately preceding</u> institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien. [Emphasis added.]</p>	<p>2. A lien under this section is prior to all other liens and encumbrances on a unit except:</p> <p>***</p> <p>The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and <u>to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding</u> institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [Emphasis added.]</p>
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2008 UCIOA. In 2008 NCCUSL proposed the following amendment to 3-116 of UCIOA<sup>4</sup>:

SECTION 3-116. LIEN FOR ASSESSMENTS; SUMS DUE ASSOCIATION; ENFORCEMENT.

(a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable to that unit . . . Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this [act], or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

~~(i)(1)~~ liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which that the association creates, assumes, or takes subject to;

~~(ii)(2)~~ except as otherwise provided in subsection (c), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

~~(iii)(3)~~ liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(c) ~~A~~ The lien under this section is also prior to all security interests described in subsection (b)(2) clause (ii) above to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. . . [Emphasis added.]

<sup>4</sup> The changes noted are to 1994 UCIOA.

New Comment No. 8 to 3-116 states as follows:

8. Associations must be legitimately concerned, as fiduciaries of the unit owners, that the association be able to collect periodic common charges from recalcitrant unit owners in a timely way. To address those concerns, the section contains these 2008 amendments:

**First, subsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b).<sup>5</sup> The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state. [Emphasis added.]**

**Discussion.** The Colorado Court of Appeals and the author of the Wake Forest Law Review article quoted by the court in the *Sunstone* case both concluded that although the assessment portion of the super priority lien is limited to a finite number of months, because the assessment lien itself includes "fees, charges, late charges, attorney fees, fines, and interest," these charges may be included as part of the super priority lien amount. This language is the same as NRS 116.3116, which states that "fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments." As the *Sunstone* court noted "although the maximum amount of the super priority lien is defined solely by reference to monthly assessments, the lien itself may comprise debts other than delinquent monthly assessments."

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<sup>5</sup> The statutory change noted by the Connecticut Supreme Court in the Hudson House case referred to above.

The referenced statute, NRS 116.3102, provides that an association has the power to:

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) Impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

It is immediately apparent that the charges authorized by NRS 116.3102(1)(j) through (n) cover a wide variety of circumstances. The fact that "fees, charges, late charges, fines and interest" that may be included as part of the assessment lien under NRS 116.3116 include amounts unrelated to monthly assessments does not mean, however, that such amounts should not be included in the super lien if they do relate to the applicable super priority monthly assessments. It appears that only those association charges authorized under NRS 116.3102(1) Subsections (k) and a portion of (n) apply to the collection of unpaid assessments, i.e., Subsection (k)'s charges for late payment of

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assessments and Subsection (n)'s charges for preparing any statements of unpaid assessments. Subsection (j)'s charges for use of common elements or providing association services, Subsection (l)'s construction penalties and Subsection (n)'s amendments to the declaration and providing resale information clearly do not relate to the collection of monthly assessments.

The inclusion of the word "fines" authorized by NRS 116.3102(1)(m) as part of the assessment lien presents an additional problem in Nevada. The "fines" referred to in NRS 116.3116/NRS 116.3102(1)(m) are fines authorized by NRS 116.31031. While fines may be imposed for "violations of the governing documents," which, of course, could include non-payment of assessments required by the governing documents, the hearing procedure mandated by NRS 116.31031 prior to the imposition of "fines" refers to an inquiry involving conduct or behavior that violates the governing documents, not the failure to pay assessments. Because "fines" involve conduct or behavior, enforcement of fines are given special treatment under NRS 116.31162:

4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

Thus, to use the words of the *Sunstone* court, the "plain language" of NRS 116.3116, when read in conjunction with NRS 116.3102(1) (j) through (n), supports the conclusion that the only additional amounts that can be included as part of the super priority lien in Nevada are "charges for late payment of

assessments pursuant to NRS 116.3115" and "reasonable charges for the preparation and recordation of . . . any statements of unpaid assessments." NRS 116.3102(1)(k),(n). Note that the reference in Subsection (k) to NRS 116.3115 appears to be solely for the purpose of identifying what is meant by the word "assessment," though NRS 116.3115(3) provides for the payment of interest on "Any assessment for common expenses or installment thereof that is 60 days or more past due...."

**Conclusion.** The super priority language contained in UCIOA 3-116 reflected a change in the traditional common law principle that granted first priority to a mortgage lien recorded prior to the date a common expense assessment became delinquent. The six month priority rule contained in UCIOA 3-116 established a compromise between the interests of the common interest community and the lending community. The argument has been advanced that limiting the super priority to a finite amount, i.e., UCIOA's six months of budgeted common expense assessments, is necessary in order to preserve this compromise and the willingness of lenders to continue to lend in common interest communities. The state of Connecticut, in 1991, NCCUSL, in 2008, as well as "Fannie Mae and local lenders"<sup>6</sup> have all concluded otherwise.

Accordingly, both a plain reading of the applicable provisions of NRS 116.3116 and the policy determinations of commentators, the state of Connecticut and lenders themselves support the conclusion that associations should be able to include specified costs of collecting as part of the association's super priority lien. We reach a similar conclusion in finding that Nevada law

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<sup>6</sup> See New Comment No. 8 to UCIOA 3-116(2008) quoted above.

authorizes the collection of "charges for late payment of assessments" as a portion of the super lien amount.

In 2009, Nevada enacted NRS 116.310313, which provides as follows:

**NRS 116.310313 Collection of past due obligation; charge of reasonable fee to collect.**

1. An association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation. The Commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.

2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

3. As used in this section:

(a) "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

Since Nevada law specifically authorizes an association to recover the "costs of collecting" a past due obligation and, further, limits those amounts, we conclude that a reasonable interpretation of the kinds of "charges" an association

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may collect as a part of the super priority lien include the "costs of collecting" authorized by NRS 116.310313. Accordingly, the following amounts may be included as part of the super priority lien amount, to the extent the same relate to the unpaid 6 or 9 months of super priority assessments: (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration in accordance with NRS 116.3102(1)(k), (c) charges for preparing any statements of unpaid assessments pursuant to NRS 116.3102(1)(n) and (d) the "costs of collecting" authorized by NRS 116.310313.

## **EXHIBIT “F”**



# COMMUNITY INSIGHTS

## Special Edition

VOLUME VI, ISSUE I

Department of Business and Industry, Real Estate Division

Winter 2010

### Nevada Real Estate Division

#### OUR MISSION

The mission of the Nevada Real Estate Division is to safeguard and promote interest in real estate transactions by developing an informed public and a professional real estate industry.

### Office of the Ombudsman

#### OUR MISSION

To provide a neutral and fair venue to assist homeowners in handling issues that may arise while living in a common-interest community.

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## 2009 Legislative Summary

NRS 116, the law governing HOAs in Nevada, was modified by 15 bills, most of which are now in effect. This special edition of the Community Insights newsletter offers a brief overview of the changes affecting homeowners associations from the 2009 Nevada Legislative Session and related information.

Changes to NRS 116 are reflected in the new law, copies of which may be purchased from the Office of the Ombudsman for \$15. This publication emphasizes key changes that affect the vast majority of associations statewide. It is distributed with the intent of bringing attention to new provisions that require action by most associations. For details on the implementation or adoption of new policies, associations are advised to consult an attorney, accountant, reserve study specialist or other appropriate professional.

## Bill Digest

**EDITOR'S NOTE:** The following summaries reflect the Real Estate Division's understanding of the changes to NRS 116 as it pertains to enforcement and administration. Some matters may be clarified further through regulations adopted by the Commission on Common-Interest Communities and Condominium Hotels, through hearings on specific complaints, or other means.

There are nearly 3,000 homeowner associations throughout the state, and the application of the law to any given association will vary depending upon its circumstances. Boards must exercise sound business judgment to determine the poli-

cies to ensure their associations are in compliance. They are advised to consult with their attorneys, CPAs or other appropriate expert on any matters in which they are in doubt.

### ASSOCIATION POWERS/ DUTIES/ RESTRICTIONS

AB 129 prohibits HOAs from restricting the parking of utility vehicles 20,000 lbs. or less, law enforcement vehicles and emergency service vehicles. Regarding utility vehicles, parking must be allowed  
*See Digest on Page 2*

## Focus shifts to regulatory changes

Following numerous changes to NRS 116, several new sections of regulations are under consideration that potentially will affect the way homeowners associations and community managers conduct business.

The Real Estate Division recently presented the text of several proposed regulations at public workshops held in Las Vegas and teleconferenced to Carson City.

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## COMMUNITY INSIGHTS

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Homeowner Representative

## Bill Digest

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where visitors can park, on common parking areas or in the driveways of the consumer while utility services are being provided to that unit. Also, these vehicles can also be parked in these same locations by owners and tenants if they are required by their employers to have these vehicles at home in order to respond to emergencies. For law enforcement and emergency vehicles, these same parking rules apply if they are engaged in their official duties or are required by their employers to have the vehicles at their homes. Associations can require written proof of the requirement of the employer. (NRS 116.350) (Eff. 10/1/09)

AB 204 requires the HOA Board to make available to unit owners – at the time it makes the budget available – the policies for collecting fees, fines, assessments, and costs from owners and include information on the rights and responsibilities regarding these collections. (NRS 116.31151) It also allows HOAs to have a super-priority lien for 9 months of unpaid assessments and related costs (increased from 6 months). (NRS 116.3116) (Eff. 10/1/09)

AB 350 (1.7) creates a new section of law authorizing associations to charge “reasonable fees” for collecting any past due obligations. (NRS 116.3102) (Eff. 6/9/09 for regulations, 1/1/10 for all other purposes)

AB 361 authorizes associations to improve the appearance of vacant and foreclosed properties. It allows, without liability for violating trespass laws, entry on the grounds of these kinds of properties to maintain the exteriors, or abate nuisances (visible, threaten health or safety, result in blight, adversely affect the use and enjoyment of neighbors' properties). This maintenance work can begin if -- after notice and a hearing -- the owner refuses to do so. Further, the costs for the maintenance can become a priority lien if the owner doesn't pay the costs. In addition, people who acquire foreclosed properties, including banks, must give the association contact information within 30 days after filing an action to recover the debt (such as the first mortgage) or recording a notice of a breach of the obligation and the election to sell the unit. (NRS 116.3102, .310312 and .3116) (Eff. 10/1/09)

SB 68 relates to security walls and provides that associations must maintain them unless the governing documents provide otherwise. However, for associations created before Oct. 1, 2009, the requirements of this bill do not apply until January 2013. (Eff. 1/1/13, or earlier)

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## Bill Digest

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SB 182 (28) and SB 183 (31) prohibit the association from interrupting utility services except for nonpayment of utility charges. Before any interruption, the owner or tenant must get at least a 10-day notice. (NRS 116.345) (Eff. 10/1/09)

SB 183 (28) An association's official publications (newsletters, Web sites, bulletin boards, magazines) now must provide "equal space" to opposing points of view upon request and at no cost. This equal space requirement is with respect to certain specific subject areas, including but not limited to: mentions of candidates or ballot questions, views or opinions on matters of official interest such as adoption of rules, issues on which there will be a vote, and so forth. In addition, there is protection from civil or criminal liability for the association, officers, employees and agents for any act or omission that arises out of the publication of information pursuant to this provision. (NRS 116.31175) (Eff. 10/1/09)

### BOARD MEMBERS

AB 350 (3.5, 5.5, and 16.5) adds to the duties of executive board members to clarify that not only must they act as fiduciaries but they must act: 1) on an informed basis, 2) and in the honest belief that their actions are in the best interest of the association. (NRS 116.3103) On the other hand, board members and officers are protected from punitive damages for acts and omissions that occur in their capacity as board members and officers. (NRS 116.31036) There is an exception to the protection from punitive damages where acts are willful and establish a material failure to comply with the law (NRS 116.4117);

## New NRS 116 on sale

Copies of NRS 116 are available for sale through the Office of the Ombudsman, as well as the Legislative Counsel Bureau. The latest copies contain all of the changes from last year's Legislative session. The price is \$15 per copy.

In Southern Nevada, interested parties may purchase copies at the Ombudsman's Office at 2501 E. Sahara Ave, Suite 202, or at the LCB on the fourth floor of the Sawyer Building, 555 E. Washington Ave.

In Carson City, copies are available at the Real Estate Division, 788 Fairview Drive, Suite 102, or the LCB at 401 S. Carson St.

these damages can be sought not only against the association but against unit owners and the declarant as well. (Eff. 7/1/09)

SB 182 (14) also addresses executive board and officer liability. It provides that punitive damages cannot be recovered from the association, the board members or officers for acts or omissions that occur in their official capacities as board members or officers. (NRS 116.31036) (Eff. 10/1/09)

SB 182 (13) When a declarant has fully terminated control of the HOA, the owners shall elect an executive board of at least 3 members, all of whom must be owners (previously a "majority" had to be owners). Then the executive board shall elect officers, but unless the governing documents provide otherwise, officers of the association are not required to be unit owners. (NRS 116.31034) (Eff. 10/1/09)

SB 182 (25) and SB 183 (29) prohibit executive board members and officers from contracting with the association to provide financing (this was added to provisions which already disallowed the providing of goods and services to the association). (NRS 116.31183 and NRS 116.31187) (Eff. 10/1/09)

SB 183 (3) and SB 253 (2) provide that an executive board member who will gain personal profit or compensation from a matter before the board must:

- 1) disclose that matter to the board and
- 2) abstain from voting on that matter.

If a board member is an employee or affiliate of the declarant, those factors do not by themselves violate this provision, nor does the fact that a board member is also a unit owner constitute a violation of this provision. SB 253 also provides that executive board members must disclose if members of households or certain relatives will profit from matters before the board. (NRS 116.31084) (Eff. 10/1/09)

SB 183 (14) Terms for executive board members may be increased from 2 to 3 years but there is no limitation on the number of terms -- unless the governing documents provide otherwise. (NRS 116.31034) (Eff. 10/1/09)

SB 351 (9) Unless the governing documents provide that executive board vacancies must be filled by a vote of the membership, vacancies can be filled by appointment by the remaining board members. (NRS 116.3103) (Eff. 10/1/09)

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## Questions? Contact Compliance

The laws are in place and hopefully, by now, most homeowner associations have implemented the necessary changes to their elections, meetings and policies. For associations uncertain of their obligations under the new laws, the Real Estate Division offers a valuable resource.

Compliance, the office within the Division charged with enforcement of NRS 116, offers regular hours to call or visit and seek answers to HOA-related questions.

Any party within an association may call statewide toll-free 877-829-9907 from 8 a.m. to 5 p.m. weekdays and ask to speak with an investigator. For more in-depth issues, investigators are available by appointment Tuesdays through Thursdays from 9-11 a.m. and 1:30-3:30 p.m. in Las Vegas, and weekdays from 8 a.m. to 1 p.m. and 2 p.m. to 5 p.m. in Carson City.

Bruce Alitt, chief investigator, encourages associations to contact his office, stating his office has helped many associations get into compliance with as little as a phone call or a letter of instruction.

"We're in the resolution business more than the punishment business," Alitt said. "While we have the tools to deal with serious matters, some things can be handled through simpler means."

Ultimately, Alitt said, associations must determine policies that are proper for their particular circumstances, using the appropriate expert's advice as needed.

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### UNIT OWNERS – RIGHTS/RESPONSIBILITIES

AB 350 (12.5) allows an owner who is retaliated against by the executive board, board members, officers, employees or agents for complaining in good faith about violations of laws or governing documents – or requesting to review association records – to bring a separate action in court to recover compensatory damages and attorney's fees. (NOTE: The definition of retaliatory action means "taking actions that affect the unit owner's rights as a unit owner," according to the Commission on Common-Interest Communities at its July 31, 2007 meeting.) (NRS 116.31183) (Eff. 7/1/09)

AB 350 (13.7) (15.5) These provisions clarify that the public offering or resale package contains a statement listing all current and expected fees per unit – association fees, fines, assessments, late charges and penalties, interest rates for assessments, additional costs for collecting past due fines, and charges for opening and closing files (NRS 116.4103 and NRS 116.4109) (Eff. 7/1/09)

SB 114 prohibits CC&Rs from prohibiting or unreasonably restricting the use of solar or wind energy systems, and specifically allows the use of black solar glazing (NRS 111.239 and NRS 278.0208) (Eff. 6/9/09)

SB 182 (19) provides that when the executive board receives a written complaint from an owner alleging that the board has violated NRS 116 or the governing documents, the board shall acknowledge receipt of the complaint within 10 days. The board shall also notify the owner that he or she may make a written request to

place the subject of the complaint on the agenda of the next board meeting. (NRS 116.31087) (Eff. 10/1/09)

SB 182 (26) increases the number of political signs allowed on property, though the size limit remains the same (24 x 36 inches). There can now be one sign for each candidate, political party or ballot question, and an owner cannot place signs on property where there is a tenant without the tenant's consent. All other laws governing political signs still apply. (NRS 116.325) (Eff. 10/1/09)

SB 182 (27) clarifies that owners cannot be prohibited from installing drought-tolerant landscaping in their own front and back yards, but still must submit plans for architectural review, and the plans must still be compatible with the community's style. However, executive boards shall not unreasonably deny approval. Also, "drought-tolerant landscaping" specifically is now defined to include decorative rock and artificial turf along with other landscaping that conserves water. (NRS 116.330) (Eff. 10/1/09)

SB 216 Associations may not unreasonably restrict, prohibit or withhold approval for owners to add shutters to improve security or conserve energy, even if they will be attached to certain common elements or limited common elements. The owner is responsible for their maintenance. A CC&R that does not unreasonably restrict shutters and that is in the governing documents or policies is enforceable if it existed as of July 1, 2009 or was in the governing documents in effect on the close of escrow of the first sale of a unit. (NRS 116.2111) (Eff. 7/1/09)

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SB 253 (6) Unless at the time of purchase there is a rental prohibition, the association may not prohibit an owner from renting a unit. Further, unless at the time of purchase the declaration requires the owner to receive approval from the association to rent the unit, this approval cannot be required. If the declaration has a limit on the number of units that can be rented, it cannot be amended to decrease the number of units which can be rented. Even if there is a limitation on the number of rentals, an owner can seek a waiver based upon a showing of "economic hardship." Where there is a limit on the number of rental units, the units owned by the declarant cannot be counted or considered when determining the maximum number of rental units allowed. (NRS 116.335) (Eff. 10/1/09)

SB 253 (8) It is the responsibility of the owner to pay for the resale package when the property is being sold. Further, this resale package must include information on transfer fees, transaction fees, and other fees involved in unit resales. (NRS 116.4109) (Eff. 6/9/09 pursuant to AB 350)

### ELECTIONS AND VOTING

AB 251 changes procedures for elections where the number of candidates running is the same or less than the number of vacancies. In such cases, the executive board must send out a notice informing owners that those nominated will be deemed to be elected to the

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## Regulations

*Continued from Page 1*

The first workshop of the year was for R-204-09, which would affect conditions under which an association could deposit funds with an out-of-state bank. The workshop was conducted by the Division with two members of the Commission on Common-Interest Communities and Condominium Hotels in attendance.

Workshops provide the opportunity for the public to view regulations and submit comment in person before adoption. Both the Division and the Commission hold scheduled workshops.

Future workshops will affect standards for receiving credentials to serve as a community manager or reserve study specialist, the way reserve studies are conducted, among several other matters. For a list of upcoming workshops and adoption hearings, visit [www.red.state.nv.us](http://www.red.state.nv.us), click on Common-Interest Communities and then Workshops and Adoptions (on the left side of the page). Visitors may also find the copies of proposed text on adjoining links.

Workshops conducted by the Commission are usually held in conjunction with regular meetings, the schedule of which may also be found online, under the heading Commission Meetings and Agendas on the Division's Web site.



**The Commission on Common-Interest Communities and Condominium Hotels holds hearings on violations of NRS 116 at a 2009 meeting.**

Regulations add specifics to laws passed by the Legislature and have the full effect of law. In time, those regulations pertaining to NRS 116, the section of law governing common-interest communities, are codified into NAC 116.

Those who wish to write to the Division or Commission regarding a proposed regulation may do so through Administrative Legal Officer Joanne Gierer at Nevada Real Estate Division, 2501 E. Sahara Ave., Las Vegas, NV, 89104.

## Bill Digest

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board unless an owner submits a nomination form within 30 days after receiving the board's notice (the nomination period). In that case, a regular election will be held with the normal balloting procedure. If no one else is nominated, then no ballots will be mailed out and the previously nominated candidates will be considered elected to the board 30 days after the date of the closing of the nomination period. (NRS 116.31034) (Eff. 7/1/09)

SB 182 (3) states that persons who knowingly, willfully and with fraudulent intent alter the outcome of executive board elections can be found guilty of a category D felony (1 to 4 year sentence, possible fine up to \$5,000). (NRS 116.31034) (Eff. 10/1/09)

SB 182 (4) provides that community managers or executive board members who ask for or receive compensation to influence a vote, opinion or action are guilty of a category D felony, along with those who offer or give such compensation. (NRS 116.31189) (Eff. 10/1/09)

SB 182 (13) prohibits an association from adopting rules or regulations that effectively prohibit or unreasonably interfere with election campaigns for the executive board. However, campaigning can be limited to 90 days before the date ballots are required to be returned. Also, candidates may request (to the secretary or officer specified in the bylaws) that the association send - 30 days before the election date - a "candidate informational statement." This statement may be limited to a single typed page and may be sent either with the ballot, or in a separate mailing, at the association's expense. This campaign material cannot contain defamatory, libelous or profane information. Further, the association, directors, officers, employees and agents are immune from criminal and civil liability for any act or omission resulting from the publication or disclosure of information regarding any individuals that occurs during this election process. (NRS 116.31034) (Eff. 10/1/09)

SB 182 (14) Removal elections: It is now easier to remove members of the executive board. If at least 35% of the voting members vote - and a majority of those voting vote in favor of removal - then the board member is removed. In a practical sense, this means that in a community of 100 voting members, if 35 vote, and 18 vote in favor of removal, then the board member is removed. (NRS 116.31036) Also, pursuant to SB 182 (16), the association cannot adopt any rule or regulation that prevents or unreasonably interferes with the collection of signatures for a petition for a special meeting for a removal election. (NRS 116.3108) (Eff. 10/1/09)

SB 183 (8) (14) (15) (18) (20) (21) provides that there cannot be delegate voting in the election or removal of executive board members. (NRS 116.31105(1)) (Eff. 10/1/09)

SB 183 (22) provides an exception to the prohibition on delegates during the period of declarant control and 2 years after declarant control is terminated. (NRS 116.1201) (Eff. 10/1/11)

SB 183 (14) requires that the association distribute the candidate disclosure statements with the ballots but the association is not obligated to distribute any disclosure if it contains information that is believed to be defamatory, libelous or profane. (NRS 116.31034) (Eff. 10/1/09)

### RECORDS

AB 350 (6.5, 7.5) provides that owners may receive a copy or summary of unit owner or executive board meeting minutes cost-free in an electronic format or, if not in electronic format, at the following costs: 25 cents per page for the first 10 pages, 10 cents per page thereafter. (NRS 116.3108, 116.31083) (Eff. 7/1/09)

AB 350 (10.5, 12.2) provides that association books and records, including the budget, must be made available at a location not to exceed 60 miles from the CIC. (NRS 116.31151, NRS 116.31175) (Eff. 7/1/09)

SB 182 (23.5) now includes attorney's contracts as records that are available for review by owners. (NOTE: It is the opinion of the Division that this applies to current contracts that were in place on the day the statute went into effect, not to past ones.) (NRS 116.31175) (Eff. 10/1/09)

SB 183 (28) provides that although books, records and other papers of the association are generally available to owners - if that document (including minutes, a reserve study, and budget) is in a draft stage and has not been placed on the agenda for final approval by the board - it does not have to be provided to the owner. (NRS 116.31175) (Eff. 10/1/09)

SB 351 (13) Regarding records which are to be made available to owners upon written request, this new law protects the privacy of an owner's architectural plans or specifications submitted for approval to the association's

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## Bill Digest

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architectural review committee. (NRS 116.31175) (Eff. 10/1/09)

### MEETINGS

AB 350 (7.5) Regarding executive board meetings, on an annual basis, two of the meetings must be held outside "standard business hours." (NRS 116.31083) (Eff. 7/1/09) NOTE: NAC 116.300 defines standard business hours as follows: "As used in this section, 'regular business hours' means Monday through Friday, 9 a.m. to 5 p.m., excluding state and federal holidays."

SB 182 (17) requires audio recordings of executive board meetings (but not of the executive sessions). Within 30 days of that meeting, the audio recordings, the minutes and/or a summary of the minutes must be made available to owners, including copies. (NRS 116.31083) (Eff. 10/1/09)

SB 182 (18) now requires that if the association is taking any action on contracts with the association's attorney, it must be done during the open portion of the executive board meeting (in the past attorney's contracts were only allowed to be discussed in executive session). Further, these contracts can be reviewed by owners. (NRS 116.31085) (Eff. 10/1/09)

SB 183 (19) provides that executive board meetings must be held at least once every quarter, and not less than once every 100 days (previously the reference was to every 90 days). (NRS 116.31083) (Eff. 10/1/09)

SB 253 (3) provides that if the association solicits bids for an "association project", the bids must be opened during executive board meetings. Such project is defined as including maintenance, replacement and restoration of common elements or the provision of services to the association. (NRS 116.31144) (Eff. 10/1/09)

### BUDGETS/ ACCOUNTS

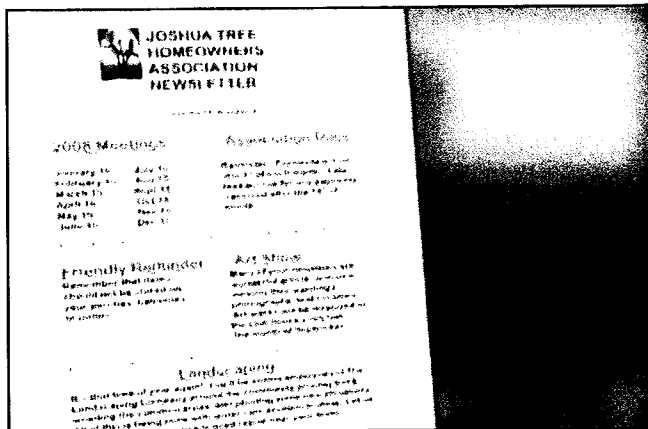
AB 311 (1) changes audit requirements. If the HOA budget is under \$75,000, financial statements only have to be reviewed by a CPA during the year immediately preceding the year of the reserve study (Audits are no longer required). If budgets are \$75,000 to \$150,000, there just needs to be an annual review (again, no audit). For both of these types of associations, however, 15% of the voting members can submit a written request for an audit. Further, if budgets are above \$150,000 there must be an annual audit by a CPA. (NRS 116.31144) (Eff. 10/1/09)

SB 182 (21) provides that even if the governing documents state otherwise, the executive board has authority to impose assessments to establish adequate reserves - without seeking or obtaining the approval of owners. These assessments, however, must be based on the reserve study. (NRS 116.3115) (Eff. 10/1/09)

SB 183 (26) Money in operating accounts may not be withdrawn without 2 signatures: one must be of an executive board member or an officer and the second must be of another mem-

ber of an executive board, an officer or the community manager. However, there can be a withdrawal with just 1 signature for 2 limited purposes: transferring money to the reserve account at regular intervals, or making auto-

## Pass it along



**Got a newsletter in your community? Be sure to let your community know where they can review all of recent changes. Residents may see Community Insights, as well as related publications, online at [www.red.state.nv.us](http://www.red.state.nv.us).**

SB 182 (17) also provides that there are 2 comment periods for owners. At the beginning of the meeting, comments are limited to agenda items. At the end of the meeting, comments can be on any subject. (NRS 116.31083) (Eff. 10/1/09)

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## Bill Digest

*Continued from Page 7*

matic payments for utilities. This does NOT apply to limited-purpose associations. (NRS 116.31153) (Eff. 10/1/09)

SB 351 (3) This section provides that associations, executive boards and community managers must deposit association funds in financial institutions that are 1) in Nevada, 2) qualified to conduct business in Nevada, or 3) have consented to jurisdiction of Nevada courts and the Division, if out-of-state. In addition, except as otherwise provided by the governing documents, an association shall deposit, maintain and invest funds in:

- 1) properly insured accounts (FDIC, National Credit Union Share Insurance Fund, or Securities Investor Protection Corp.);
- 2) with a private insurer (approved under NRS 678.755); or
- 3) 3) in United States government backed securities. (NRS 116.311395) (Eff. 10/1/09)

SB 351 (12) (12.3) and (12.7) require that the association establish reserves not only for major components of the common elements but also for "any other portion of the CIC that the association is obligated to maintain, repair, replace or restore." (NRS 116.31151) (Eff. 10/1/09)

### VIOLATIONS, ENFORCEMENT OF CC&RS

AB 350 (4.5) Past due fines can no longer accrue interest. (NRS 116.31031) However, interest can be accrued for past due assessments under AB 350 (9). (NRS 116.3115) (Eff. 7/1/09)

AB 350 (9) Past due assessments that are 60 days or more past due bear interest at a rate equal to the prime rate at the largest bank in Nevada, plus 2 percent. The official rate is posted at [www.fid.state.nv.us](http://www.fid.state.nv.us). (NRS 116.3115) (Eff. 7/1/09)

SB 182 (12) Where there are fines against an owner for violations which have been committed by tenants or invitees, the board cannot impose a fine against the owner unless the unit owner 1) participated in or authorized the violation, 2) had prior notice of the violation, or 3) had an opportunity to stop the violation and failed to do so. (NRS 116.3101) (Eff. 10/1/09)

SB 182 (18) creates additional due process protections during violation hearings. Owners must be informed that they have the right to counsel, the right to present

*See Bill Digest on Page 9*

## Glossary

**Assembly Bill (AB)** – One of two potential prefixes for legislation in Nevada, the other being Senate Bill (SB). Nevada has a bicameral Legislature, similar to the U.S. Congress. Legislation may originate in either the state Senate or the state Assembly. Even though it must eventually pass both houses, a bill retains its original name, which also includes a number based upon the order it was drafted (e.g., SB 183 followed right after SB 182). There is no practical difference between the two.

**Assessments (or dues)** – Each unit owner is obligated pay a share of the common expenses of the association, such as the cost of landscape maintenance, insurance, utilities and administrative costs. The amount the unit owner is obligated to pay is the assessment. This may be paid monthly, annually, or anywhere in between depending upon the HOA's governing documents.

**Common-Interest Community (CIC)/ Homeowners Association (HOA or association)** – means real estate described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to

pay for a share of the real estate taxes, insurance premiums, maintenance or other improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration (NRS 116.021). The more familiar term "homeowners association" is used interchangeably with CIC.

**Commission on Common-Interest Communities and Condominium Hotels (Commission)** – A seven-member (as of Oct. 1, 2009) panel, appointed by the governor, charged with adopting regulations and holding hearings regarding violations of NRS 116. The commission comprises an attorney, a CPA, a community manager, a development company executive, and three homeowner association members.

**Executive Board/ Board of Directors/ Board** – These terms are used interchangeably. As the governing body of an association, it may create policy, hold hearings on violations of governing documents, and perform administrative roles. After an association transitions from developer to homeowner control, directors are



## Bill Digest

*Continued from Page 8*

witnesses, and the right to present information regarding any conflict of interest of anyone on the hearing panel. The Commission may be adopting regulations on these rights in the future. Also, these rights are minimum due process rights, and do not preempt any governing document provisions that provide greater protections. (NRS 116.31085) (Eff. 10/1/09)

SB 183 (12) With respect to not only owners and tenants but also invitees, there are some changes regarding fines. There can be no fines imposed against an owner, tenant or invitee regarding the delivery of goods or services by vehicle. In addition, "notice" requirements have been expanded so that fines cannot be imposed unless the owner AND, if different, the person against whom the fine will be imposed, has written notice of the violation. An owner will not be deemed to have received written notice unless it was mailed to the address of the unit AND, if different, to a mailing address specified by the owner. At the hearings, an executive board member who has not paid all assessments cannot participate in the hearing or vote. Such actions will render the board's actions void. The party who receives the fine can request, within 60 days after paying any payment on the fine, a

statement of any remaining balance owed. (NRS 116.31031) (Eff. 10/1/09)

SB 183 (13) Associations shall establish a compliance account to account for fines, which must be separate from any account established for assessments. (NRS 116.310315) (Eff. 10/1/11)

### CREDENTIALLED PROFESSIONALS

SB 182 (24) Community managers are prohibited from taking retaliatory action against an owner who complained in good faith about violations of the law or governing documents, or recommended the selection or replacement of an attorney, community manager or vendor. These prohibitions also apply to executive board members and officers, employees and agents of the HOAs. (NRS 116.31183) (Eff. 10/1/09)

SB 182 (29) A civil suit can now be filed against a manager for failing to comply with NRS 116 or the governing documents. These suits can be filed by the association – or by a class of owners (at least 10% of the voting members). Further, managers are subject to punitive

*See Bill Digest on Page 10*

## Glossary

elected by the membership, although vacancies of unexpired terms may be appointed by the board (if the governing documents allow). Directors typically select officers (president, etc.) from amongst themselves, although officers are not required by law to be directors.

**Nevada Administrative Code (NAC)** – Many Nevada Revised Statutes (see below) include provisions for regulations that "fill in the details." These details become part of the Nevada Administrative Code. Regulations have the power of law, but are subordinate to the statutes that authorize them and may be adopted only for the purposes specified by the statute. After regulations are adopted, they are later "codified" into the Nevada Administrative Code. The Commission on Common-Interest Communities and Condominium Hotels holds hearings and adopts regulations authorized by NRS 116. These become part of NAC 116.

**Nevada Revised Statutes (NRS)** – The laws passed by the Nevada Legislature, which are organized by subject into chapters. For instance, Chapter 116 of the Nevada

Revised Statutes (NRS 116) is called "Common-Interest Ownership" and directly pertains to homeowners associations. Other chapters of state law also apply to HOAs, such as the chapters affecting the towing of vehicles, pools and spas, energy efficiency and fair housing.

**Ombudsman for Owners in Common-Interest Communities and Condominium Hotels (Ombudsman)** – The office, part of the Real Estate Division, that produces this newsletter. It also educates HOA residents on their rights and responsibilities, assists in resolving HOA-related disputes, and maintains a registry of all HOAs in Nevada. Its duties are supplemented by other sections of the Division, which licenses and regulates community managers and investigates issues relating to NRS 116.

**Senate Bill (SB)** – See Assembly Bill.

**Unit Owner/ Homeowner/ Member** – These terms are used interchangeably. The members of a homeowners association are the owners, not the tenants. A more detailed definition may be found in NRS 116.095.

## Bill Digest

*Continued from Page 9*

damages under certain conditions. (NRS 116.4117) (Eff. 10/1/09)

SB 182 (39) provides for the issuance of temporary certificates for community management for a period of one year under certain circumstances. (NRS 116A.410) (Eff. 1/1/10)

SB 183 (39) Reserve study specialists must be registered with the Division (changed from being required to have a permit). (NRS 116A.260) (Eff. 10/1/09)

### ARBITRATORS

SB 182 (40) This provision establishes that arbitrators must provide specific information to parties, in plain English, that explains the procedures and law, including information on confirmation of awards, judgments on awards, and applicable laws and court rules regarding attorney's fees and costs. It also clarifies that in nonbinding arbitration, parties have 30 days to commence an action in court, and a year to apply to court for confirmation of the award. In binding arbitration, if a party seeks to have that award vacated, or commences an action in court, that person will be responsible for the opposing party's attorney fees and costs if a more favorable award or judgment is not received. (NRS 38.330) (Eff. 10/1/09)

### DECLARANT ISSUES

SB183 (16) provides that the declarant must provide to the association an accounting for money of the association and audited financial statements for each fiscal year and any ancillary period from the date of the last audit.

Further, the declarant must pay for this ancillary audit and must deliver it within 210 days after the date the declarant's control ends. (NRS 116.31038) (Eff. 10/1/09)

SB 183 (17) provides that, with respect to the converted building reserve deficit which the declarant must deliver to the association, it is defined as the amount necessary to replace major components within 10 years after the date of the first close of escrow of a unit (previously had been the date of the first sale). (NRS 116.310395) (Eff. 10/1/09)

### OMBUDSMAN/REAL ESTATE DIVISION

SB 182 (5) allows petitions to the Division for advisory opinions and rulings. (NRS 116.623) (Eff. 10/1/09)

SB 182 (30) adds 2 members who are unit owners to the CICCH Commission. (NRS 116.600) (Eff. 10/1/09)

SB 253 (9) The CICCH Commission now can impose administrative fines of up to \$10,000 per violation (previously the limit was \$5,000). (NRS 116A.900) (Eff. 10/1/09)

\*\*\*

**NOTE: This bill digest is not a legal document or legal advice. It is a summary of select laws from the 2009 Nevada Legislative session relating to common-interest communities. It is not a complete listing of all Legislative changes.**

\*\*\*

## HOAs: Forms have changed — Get yours up to date

When the law changes, so does everything else. This is true especially of all the myriad paperwork associated with a homeowner association.

Some of these changes are internal: Do your agendas list both homeowner comment periods? Do your candidate disclosures forms ask all the relevant questions? Do your resale packages contain a statement listing all current and expected fees, fines, assessments and other costs?

Just as important: Is your association using the most updated form to do business with the Office of the Ombudsman? To ensure compliance with the law, associations should check the Real Estate Division's Web site, [www.red.state.nv.us](http://www.red.state.nv.us), each time they have business with

the state. From the main page, select the gray button marked Forms on the home page, then look for the form by Type (click on the word "Type" to sort). Scroll down to the set of forms marked as Common-Interest Community.

Some of the documents affected by the 2009 Legislative Session include: Annual Association Registration, Reserve Study Summary and the Candidacy Disclosure Statement.

In addition, associations submitting payment for annual registration must remember that all HOA operating expenses now require two signatures (except limited-purpose ones), one from a director or officer AND another from a director, officer or community manager.

## Educational Opportunities expand in 2010

### *Outreach classes cover fundamentals of managing an association*

It is a duty and legal responsibility of all HOA board members to keep informed of changes to the law. While there is much to learn, the Office of the Ombudsman hopes to make this task a little easier. Our staff has created publications and classes to make learning the new material as simple and convenient as possible.

The first class dates are already under way. Basics for Board Members is presented monthly at locations throughout the state. This 3-hour presentation addresses HOA basics, such as meetings, elections, recordkeeping, and fiduciary duty. It also offers a forum for asking ques-

tions, and presents information on addressing common association challenges.

Additional classes on various HOA topics will be scheduled throughout the year. In addition, seminars taught by contracted subject matter experts are planned throughout the year. Visit [http://www.red.state.nv.us/CIC/Seminars/omb\\_seminars](http://www.red.state.nv.us/CIC/Seminars/omb_seminars) for an updated listing of class opportunities.

Registration is required as seating is limited. Contact Nicholas Haley at 486-4480 or email to [nhaley@red.state.nv.us](mailto:nhaley@red.state.nv.us) to register.



HOA residents attend the first "Basics for Board Members" class, held at the Bradley Building and teleconferenced to Carson City. The three-hour presentation covers the fundamentals of serving as a board member and incorporates changes to the law from the 2009 session. Additional dates are scheduled monthly throughout 2010, as well as classes on specific subjects.

### *Publications synthesize old, new law on meetings, elections*

Adding new law to old, the Office of the Ombudsman recently issued updated brochures on meetings, elections, and general information for Spanish speakers.

The brochures are available online at <http://www.red.state.nv.us/CIC/cic.htm> and in print form at select state offices, including the Real Estate Division at 2501 E. Sahara Ave. in Las Vegas and 788 Fairview Drive in Carson City.

*Association Meetings* explains the different kinds of meetings, the general purpose of each, and scheduling and agenda requirements. It lists the varying timelines for all types of meetings—reason alone to keep it handy.

*Association Elections* gives a start-to-finish overview of how to comply with HOA election law, including a depiction of a three-envelope system.

The Ombudsman's Spanish brochure covers the very basics of how an association works, as well as information on our office. It is useful for bridging the communication gap with residents not well versed in English.

"The brochures bring together all of the details of a particular subject within NRS 116," said Nick Haley, education and information officer for the Office of the Ombudsman. "While some of our products speak to changes in the law, the brochures take a particular topic—say elections—and present the topic as a whole. This is ultimately how all of us will come to understand these changes: within the context of the existing law."

Additional subjects are coming online. Check the Web site for updates, or ask the Ombudsman staff what's new.

## ***Frequently used links to government agencies***

Following are links to public agencies used by HOAs:

List of registered Reserve Study Specialists —  
<http://www.red.state.nv.us/CIC/rss.htm>

Nevada Secretary of State (used for HOA's corporate filing) - <http://www.nvsos.gov/online/>

Upcoming classes — [http://www.red.state.nv.us/CIC/Seminars/omb\\_seminars.pdf](http://www.red.state.nv.us/CIC/Seminars/omb_seminars.pdf)

Prime rate (basis for which associations may charge interest on assessments) —  
<http://www.fid.state.nv.us/Prime/PrimeInterestRate.pdf>

Mortgage Lending Division — <http://mld.nv.gov/>

Neighborhood Services, Henderson —  
[http://www.cityofhenderson.com/neighborhood\\_services/index.php](http://www.cityofhenderson.com/neighborhood_services/index.php)

Neighborhood Services, Las Vegas —  
<http://www.lasvegasnevada.gov/Government/neighborhoodservices.htm>

Neighborhood Services, North Las Vegas —  
<http://cityofnorthlasvegas.com/Departments/CityManager/NeighborhoodServices.shtm>

### **Real Estate Division Forms and links**

Real Estate Division — <http://www.red.state.nv.us/>

Annual Associations Registration —  
<http://www.red.state.nv.us/forms/562.pdf>

Reserve Study Summary —  
<http://www.red.state.nv.us/forms/609.pdf>

Declaration of Certification (signed by new board members) —  
<http://www.red.state.nv.us/forms/602.pdf>

Before You Purchase in a Common-Interest Community Did you Know? —  
<http://www.red.state.nv.us/forms/584.pdf>

Intervention Affidavit —  
<http://www.red.state.nv.us/forms/530.pdf>

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3820  
 State of Nevada  
 Department of Business & Industry  
 Real Estate Division  
 2501 E. Sahara Avenue, Suite 202  
 Las Vegas, NV 89104-4137

## **EXHIBIT “G”**

Logout My Account Search Menu New District Civil/Criminal Search Refine Search Back

Location : District Court Civil/Criminal Help

## REGISTER OF ACTIONS

CASE No. 06A523959

Korbel Family Living Trust vs Spring Mountain Ranch Master  
Assn, Bay Capital Corp

\$  
\$  
\$  
\$  
\$  
\$

Case Type: Title to Property  
Subtype: Liens  
Date Filed: 06/27/2006  
Location: Department 15  
Conversion Case Number: A523959

### PARTY INFORMATION

#### Lead Attorneys

Defendant Bay Capital Corp

Defendant Spring Mountain Ranch Master Assn

Intervenor Recontrust Company

Plaintiff Korbel Family Living Trust

John Eric Leach

Retained

7027910308(W)

Jeremy T. Bergstrom

Retained

702-369-5960(W)

Anita K. Holden-  
McFarland

Retained.

702-435-4175(W)

### EVENTS & ORDERS OF THE COURT

09/18/2006 All Pending Motions (9:00 AM) (Judicial Officer Glass, Jackie)  
ALL PENDING MOTIONS 9/18/06 Court Clerk: Sandra Jeter Reporter/Recorder: Rachelle Hamilton Heard By: Jackie Glass

#### Minutes

09/18/2006 9:00 AM

APPEARANCES CONTINUED: Steven Yarmy, Esq., present representing the Intervenor. INTERVENOR RECONSTRUST CO'S MOTION TO INTERVENE: MOTION TO INTERPLEAD EXCESS PROCEEDS...PLTFS' MOTION FOR PRELIMINARY INJUNCTION Mr. Yarmy stated he wishes to interplead the excess funds. Mr. Leach advised he has no objection to the interpleader; however, he does object to the amount of legal fees Mr. Yarmy requested. Further advised, deft. agreed to the preliminary injunction and has provided Plt. with an accounting; however, there is a legal dispute over the interpretation of NRS 116. Brief argument by Mr. Yarmy in support of his request for attorney's fees. COURT ORDERED. Motion to Interplead Funds, GRANTED. FURTHER, Mr. Yarmy to prepare the Order, attach a detailed billing and leave a blank for the amount of attorney's fees. Mr. Yarmy moved to be relieved as a stake holder. SO ORDERED. Matter trailed for Ms. McFarland's presence. Matter recalled. Ms. McFarland present and stated she told Mr. Yarmy not to file an interpleader because she would make sure he gets his fees and costs. Court informed Ms. McFarland regarding the status of Mr. Yarmy's request for fees. Mr. Leach stated deft. has stipulated to the entry of the Preliminary Injunction and requested that if a bond is required, that it be diminimus. Further, the parties have reached an agreement with everything except the interpretation of the one statute and could probably stipulate to the facts. Colloquy. Ms. McFarland requested the Court elaborate on its decision reference the legal issue stating it keeps coming up over and over again. COURT ORDERED, counsel are to prepare a stipulation of the facts and matter CONTINUED and SET for ARGUMENT. 10/16/06 9:00 AM ARGUMENT

Parties Present

Return to Register of Actions

## **EXHIBIT “H”**

ORIGINAL FILED

OCT 30 3 57 PM '06

CLERK

BREF  
Anita KH McFarland, Esq.  
Nevada Bar No. 8118  
Marty G. Baker, Esq.  
Nevada Bar No. 7591  
THE COOPER CHRISTENSEN LAW FIRM, LLP  
820 South Valley View Blvd.  
Las Vegas, Nevada 89107  
(702) 435-4175  
Attorneys for Plaintiff  
KORBEL FAMILY LIVING TRUST

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

KORBEL FAMILY LIVING TRUST

Plaintiff(s),

v.

SPRING MOUNTAIN RANCH  
MASTER ASSOCIATION; BAY  
CAPITAL CORP.,

Defendant(s).

Case No.: A523959

Dept. No.: V

PLAINTIFF'S BRIEF

Hearing Date: November 6, 2006.  
Hearing Time: 9:00 a.m.

Plaintiff KORBEL FAMILY LIVING TRUST (hereinafter "Plaintiff"), by and through its attorneys of record, Anita KH McFarland, Esq. and Marty G. Baker, Esq. of The Cooper Christensen Law Firm, LLP, hereby respectfully submits this brief pursuant to the Court's minute order of September 18, 2006 and in support of its position regarding the judicial interpretation of NRS 116.3116.

I. STATEMENT OF THE CASE

This case concerns the determination of what homeowners assessment amounts are owed

THE COOPER CHRISTENSEN LAW FIRM, LLP  
820 South Valley View Blvd & Las Vegas, Nevada 89107  
Phone: 702.435.4175 & Fax: 702.877.7424

RECEIVED

OCT 30 2006

COUNTY CLERK



1 by a new property owner who purchases real property a foreclosure sale conducted by the  
2 beneficiary of a first deed of trust.

## 3 II. LEGAL ISSUE PRESENTED

4  
5 What is the correct application of NRS 116.3116(2), which states:

6 "The lien [for assessments] is also prior to all security interests described in  
7 paragraph (b) to the extent of the assessments for common expenses based on the  
8 periodic budget adopted by the association pursuant to NRS 116.3115 which  
9 would have become due in the absence of acceleration during the 6 months  
immediately preceding institution of an action to enforce the lien."

## 10 III. ARGUMENT

### 11 A. GENERAL STATEMENT OF ISSUES AND PROBLEMS

12 Although NRS 116.3116 establishes lien priorities with respect to the rights and  
13 obligations as to a homeowners association such as Defendant Spring Mountain Ranch Master  
14 Association (hereinafter "Spring Mountain"), there has been a great deal of confusion with  
15 respect to what payment may be demanded from persons who purchase property at foreclosure  
16 sales conducted by the beneficiaries of first deeds of trust held against the property. As a general  
17 rule, the first mortgage security interest is of the highest priority, and any junior lien or mortgage  
18 is extinguished when there is a foreclosure by the first deed of trust.  
19

20 Nevada, however, has adopted what is known as a "superpriority" lien statute with  
21 respect to planned community/homeowner's associations. According to NRS 116.3116(2), a lien  
22 assessment for delinquent "common expenses" (i.e. association dues, common area maintenance  
23 dues, etc., as set forth in NRS 116.3115) incurred up to six (6) months prior to institution of an  
24 action to enforce said lien, does have a priority over a first security interest regardless of the prior  
25 recording. Landscape violations, fines, and collection costs are clearly not "common expenses."  
26  
27  
28

1 based on the periodic budget adopted by the association."

2 Unfortunately, since there has been no judicial interpretation of this statute by the  
3 Supreme Court of Nevada, homeowners associations, as well as the collection agencies who  
4 work for them, very frequently and improperly demand payment of thousands of dollars from  
5 new purchasers for items that are not properly included in this superpriority portion of the lien.  
6 Sometimes lien release fees and other items are demanded from both the new owner (as a  
7 superpriority claim) and from available excess proceeds (as a non-superpriority claim).  
8  
9 Frequently, a lien which was only a few hundred dollars balloons into a demand for thousands of  
10 dollars for attorney fees and costs for simply recording a standard lien and notice of default. The  
11 legal and collection fees are often many times the amount of the lien.  
12

13 Like Plaintiff in this case, most parties who purchase homes at foreclosure sales are banks  
14 or investors who intend to refurbish and resell the property as quickly as possible. Frequently,  
15 the amounts demanded remain unknown until the property is to be sold to a subsequent bona fide  
16 purchaser. At this point an Escrow Demand is generally requested from the pertinent association  
17 in order to clear the lien and provide clear title to the subsequent purchaser. Typically, at this  
18 point an escrow has already been opened and the transaction with the buyer must close within a  
19 short period of time. When the owner/investor is faced with an excessive and incorrect demand,  
20 they are forced to make the decision as to whether or not it is financially feasible to file suit  
21 against the association and their agents to have the lien reduced, which may result in the loss of a  
22 sale to a subsequent purchaser because clear title cannot be provided until the association  
23 releases the lien. The owner/investor's other and often more feasible option is to simply pay the  
24 amount demanded by the association in order to preserve the sale to the subsequent purchaser.  
25  
26  
27  
28

1           B.    NRS 116.3116 AS APPLIED TO THE FACTS OF THIS CASE

2           In the case at hand, the beneficiary of the second deed of trust conducted a non-judicial  
3 foreclosure sale and sold the property locally known as 9021 Little Horse Avenue, Las Vegas,  
4 Nevada, APN #125-08-221-016 (hereinafter "the Property") to Defendant Bay Capital Corp.  
5 (hereinafter "Bay Capital"), who became the vested owner of the Property. Upon taking  
6 ownership of the Property, Bay Capital did not correct landscape issues which were causing  
7 violations to be assessed against the Property, and did not cure amounts owing to Spring  
8 Mountain.  
9

10           Then, on or about May 1, 2006 and after the sale to Bay Capital, the beneficiary of the  
11 first deed of trust conducted a non-judicial foreclosure sale, at which time the Property was sold  
12 to Plaintiff. A Trustee's Deed Upon Sale was recorded in favor of Plaintiff on May 9, 2006.  
13 Plaintiff promptly refurbished the Property and arranged to sell it to a subsequent purchaser.  
14 Even though the monthly assessments on the Property are approximately \$40.00 per month,  
15 Spring Mountain initially presented Plaintiff with a superpriority demand for \$7,528.07. Spring  
16 Mountain also initially presented a non-superpriority demand for payment from excess proceeds  
17 in the amount of \$2,151.67.  
18

19           Plaintiff telephoned the collection agent who was handling this account for Spring  
20 Mountain and requested that said demand be re-apportioned to the correct amounts between the  
21 super-priority portion owed by Plaintiff, and the non-superpriority portion to be paid from excess  
22 proceeds, but Spring Mountain refused to amend its demand to comply with NRS Chapter 116.  
23 Rather than assent to Spring Mountain's demand, Plaintiff elected to file suit under NRS  
24 108.2275 for *Frivolous or Excessive Notice of Lien*. In order to provide their subsequent  
25  
26  
27  
28

1 purchaser with clear title, Plaintiff was forced to deposit \$10,000.00 with the title company  
2 pending the outcome of this case.

3 Because of the dispute between the parties, Counsel for the trustee who conducted the  
4 foreclosure sale on the first deed of trust elected to intervene in this case, interplead the excess  
5 proceeds, and request attorneys' fees for doing so pursuant to NRS 40.462. The excess proceeds  
6 have now been depleted by thousands of dollars because of Spring Mountain's refusal to  
7 reapportion its demand.  
8

9 Under the clear and precise application of NRS 116.3116(2), the only amounts that  
10 survived the foreclosure sale and constitute the superpriority portion of the lien are "assessments  
11 for common expenses based on the periodic budget adopted by the association pursuant to NRS  
12 116.3115 which would have become due in the absence of acceleration during the 6 months  
13 immediately preceding institution of an action to enforce the lien." Based on this language,  
14 Plaintiff's position is that it should have to pay only six months of monthly assessments with  
15 interest thereon, any assessments which accrued during Plaintiff's ownership of the Property, and  
16 any charges incident to the transfer of the Property (Assessments of \$219.00 plus interest;  
17 Escrow Demand of \$150.00; and Transfer Fee of \$300.00, for a total owing of \$669.00 plus  
18 interest on the assessments).  
19

20 In discussing statutory interpretation generally, the Supreme Court of Nevada stated in  
21 Irving v. Irving, 122 Nev. Adv. Rep. 44, 134 P.3d. 718, 720 (2006), as follows:  
22

23 "This court follows the plain meaning of a statute absent an ambiguity. Whether  
24 a statute is deemed ambiguous depends upon whether the statute's language is  
25 susceptible to two or more reasonable interpretations. When a statute is  
26  
27  
28

1                   ambiguous, we look to the Legislature's intent in interpreting the statute."

2       In this case, the language of the statute regarding "assessments for common expenses based on  
3       the periodic budget adopted by the association" is unambiguous. This language clearly includes  
4       delinquent assessments within the statutory six month period, and clearly does not include fines,  
5       late fees, collection costs, or attorneys' fees. Following the plain meaning of NRS 116.3116,  
6       Plaintiff should not have to pay Spring Mountain for these other items. Spring Mountain may  
7       still collect these non-superpriority expenses from the excess proceeds on deposit with the Court.  
8  
9

10           C.     SPRING MOUNTAIN SEEKS AN EXPANSIVE INTERPRETATION OF  
11                   NRS 116.3116

12           The Supreme Court of Nevada has yet to interpret NRS 116.3116. The State of  
13       Connecticut has adopted a superpriority statute similar to Nevada's, and Spring Mountain relies  
14       on the Connecticut case of Hudson House Condominium Association, Inc. v. Brooks, 223 Conn.  
15       610, 611 A.2d 862 (1992) in support of its revised demand of \$1,963.00. However, the  
16       Connecticut statute and the Connecticut court's interpretation thereof are inapposite. Nevada and  
17       Connecticut are as far apart legally and they are geographically. As set forth above, the better  
18       interpretation for the Court in this case is to look at the plain meaning of the Nevada statute.  
19  
20

21           Based upon the Connecticut court's decision, in addition to six months of delinquent  
22       assessments, Spring Mountain contends that it is entitled to recover collection costs and  
23       attorneys' fees from Plaintiff as part of its superpriority lien. These costs and fees are associated  
24       with the former owners' delinquency, and pursuant to the plain meaning of NRS 116.3116 are  
25       properly recoverable from the excess proceeds as part of the non-superpriority portion of the lien.  
26  
27

28       \*\*\*

1           D.    THE EQUITIES OF THE INSTANT CASE ALSO DEMAND A STRICT  
2                    INTERPRETATION OF NRS 116.3116

3           In the instant case, the beneficiary of the second deed of trust foreclosed and Bay Capital  
4           became the vested owner of the Property. Thus, after satisfaction of junior liens and mortgages  
5           under NRS 40.462(2)(c), Bay Capital is entitled to recover any excess proceeds remaining  
6           pursuant to NRS 40.462(2)(d). After Bay Capital became the owner of the Property it paid ~~none~~  
7           of the amounts that were owing to Spring Mountain and did not correct the landscaping  
8           condition, causing additional fines and violations to continually accrue while Bay Capital was the  
9           owner.

10           Spring Mountain originally insisted that the superpriority portion of the lien was  
11           \$7,528.07, and stated that non-superpriority demand was an additional \$2,151.67. Since there  
12           was \$7,495.65 in excess proceeds, Spring Mountain's interpretation of the statute would have  
13           resulted in Bay Capital being awarded approximately \$5,000.00 from the excess proceeds even  
14           though it failed and refused to pay Spring Mountain or correct violations.

15           If this Court were to honor Spring Mountain's request for the adoption of the Connecticut  
16           court's interpretation of our Nevada statute, the result would be that Plaintiff would be forced to  
17           pay an additional \$1,234.00 to Spring Mountain. Since these funds would be paid by Plaintiff  
18           under the superpriority portion of the lien, this amount would not need to come from the  
19           remaining excess proceeds and Bay Capital would therefore benefit by this amount. Spring  
20           Mountain's interpretation of the statute would thus reward Bay Capital's bad behavior by  
21           allowing Bay Capital to profit from not paying amounts it should have paid to Spring Mountain.

22           Additionally, inclusion of these additional fees and costs in the superpriority portion of  
23

1 the lien would give association collection agencies free reign to continue charging thousands of  
2 dollars in collection costs and attorneys' fees for filing a couple of simple, standard documents.  
3 Purchasers at foreclosure sales would thereby be forced to either pay the exorbitant amounts  
4 demanded or seek court review of the lien amounts pursuant to NRS 108.2275. Both of these  
5 options result in improper and excessive expenditures for foreclosure sale purchasers.  
6

#### 7 IV. CONCLUSION

8 At the outset of this matter, Spring Mountain had the choice of collecting \$669.00 from  
9 Plaintiff and collecting the bulk of the remaining monies it was owed from excess proceeds that  
10 were held by the sale trustee. Spring Mountain's refusal to amend its demand resulted in a  
11 depletion of available excess proceeds, and caused Plaintiff to seek relief from the Court.  
12

13 Additionally, Spring Mountain's interpretation of NRS 116.3116 would reward persons  
14 collecting excess proceeds under NRS 40.462(2)(d), such as Bay Capital in this case, for not  
15 paying homeowners assessments, while saddling the foreclosure sale purchaser with thousands of  
16 dollars in additional costs. Finally, Spring Mountain's suggested interpretation of NRS 116.3116  
17 would allow the associations' collection agencies to continue demanding thousands of dollars for  
18 fines, late fees, attorneys' fees and collection costs from foreclosure sale purchasers.  
19

20 Both the clear language of the statute and the equities of this case demand a strict  
21 interpretation of the statute. Pursuant to NRS 116.3116, Plaintiff is entitled to a ruling that  
22 Plaintiff only owes \$669.00 (plus interest on six months of assessments) to Spring Mountain.  
23 Plaintiff is also entitled to an order pursuant to NRS 108.2275 releasing Spring Mountain's lien,  
24

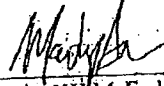
25 \*\*\*

26 \*\*\*

1 and a ruling that Plaintiff recover its attorneys' fees pursuant to NRS 108.2275(6)(b).

2 DATED this 30<sup>th</sup> day of October, 2006

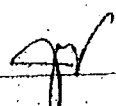
3 THE COOPER CHRISTENSEN LAW FIRM, LLP

4  
5 By:   
6 Anita K. McFarland, Esq.  
7 Nevada Bar No. 8118  
8 Marty G. Baker, Esq.  
9 Nevada Bar No. 7591  
10 820 South Valley View Blvd.  
11 Las Vegas, Nevada 89107  
12 Attorneys for Plaintiff  
13 KORBEL FAMILY LIVING TRUST

14 CERTIFICATE OF MAILING

15 I HEREBY CERTIFY that I am an employee of THE COOPER CHRISTENSEN LAW  
16 FIRM, LLP, and that on the 30<sup>th</sup> day of October, 2006, I served a true and correct copy of the  
17 foregoing PLAINTIFF'S BRIEF, via First Class United States mail, postage prepaid, on the  
18 parties indicated below.

19 John E. Leach, Esq.  
20 Santoro, Driggs, Walch, Kearney, Johnson & Thompson  
21 400 South Fourth Street, Third Floor  
22 Las Vegas, Nevada 89101  
23 Attorneys for Defendant  
24 Spring Mountain Ranch Master Association

25  
26   
27 An employee of  
28 THE COOPER CHRISTENSEN LAW FIRM, LLP



## **EXHIBIT “I”**

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400 SOUTH FOURTH STREET, THIRD FLOOR, LAS VEGAS, NEVADA 89101  
(702) 791-0308 - FAX (702) 791-1912

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CLERK

1 BREF  
2 JOHN E. LEACH, ESQ.  
3 Nevada Bar No. 1225  
4 TRACY A. GALLEGOS, ESQ.  
5 Nevada Bar No. 9023  
6 SANTORO, DRIGGS, WALCH,  
KEARNEY, JOHNSON & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

7 Attorneys for Spring Mountain Ranch Master Association

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 KORBEL FAMILY TRUST

11 Plaintiff,

12 v.

13 SPRING MOUNTAIN RANCH MASTER  
ASSOCIATION, BAY CAPITAL CORP.,

14 Defendants.

Case No.: 06-A-523959-C  
Dept. No.: V

DEFENDANT SPRING MOUNTAIN  
RANCH ASSOCIATION'S BRIEF

Hearing Date: November 20, 2006  
Time: 9:00 A.M.

16 Defendant Spring Mountain Ranch Master Association (hereinafter the "Association"),  
17 by and through its attorneys of record, John E. Leach, Esq. of the law firm of Santoro, Driggs,  
18 Walch, Kearney, Johnson & Thompson respectfully submits this Brief pursuant to the Court's  
19 Minute Order of September 18, 2006, and in support of its position regarding the judicial  
20 interpretation of Nevada Revised Statutes ("NRS") 116.3116.

21 STATEMENT OF THE FACTS

22 On or about August 26, 2004, Jose Olivera ("Olivera") purchased the real property  
23 located at 9021 Little Horse Avenue, Las Vegas, Nevada (the "Property"). The Property is  
located within the community known as Spring Mountain Ranch (the "Community") and,  
therefore, is subject to the terms and conditions of the Amended and Restated Master Declaration  
of Covenants, Conditions and Restrictions and Grant of Easements for Spring Mountain Ranch  
(the "Declaration"), which was recorded with the Clark County Recorder's Office on November

02638-08/126425

18  
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Shirley A. Burges  
CLERK

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1 25, 1998, in Book No. 981125, as Instrument No. 03642. A true and correct copy of relevant  
2 portions of the Declaration are attached hereto as Exhibit "1" and incorporated herein by this  
3 reference.

4 Concurrent with the purchase of the Property, Olivera executed and consented to the  
5 recordation of a first deed of trust against the Property. Also concurrent with the purchase of the  
6 Property, Olivera executed and consented to the recordation of a second deed of trust against the  
7 Property.

8 According to the Declaration, Olivera was required to pay assessments for common  
9 expenses, among other things, to the Association. See Declaration, Article V, Section 5.1(a).  
10 The Declaration further provides that if an owner fails or refuses to pay assessments due and  
11 owing to the Association, then the Association may place a lien upon the Property and ultimately  
12 foreclose upon the same. See Exhibit "1", Article V, Section 5.10.

13 On or about February 16, 2005, the Association caused a Notice of Delinquent  
14 Assessment Lien (the "Lien") to be recorded against the Property. A true and correct copy of the  
15 Lien is attached hereto as Exhibit "2" and incorporated herein by this reference. When Olivera  
16 continued to fail or refuse to pay his assessments, the Association caused a Notice of Default and  
17 Election To Sell Under Homeowners Association Lien (the "Notice of Default") to be recorded  
18 against the Property on March 25, 2005. A true and correct copy of the Notice of Default is  
19 attached hereto as Exhibit "3" and herein incorporated by this reference.

20 On or about March 14, 2006, the beneficiary of the second deed of trust conducted a non-  
21 judicial foreclosure sale and sold the Property to Defendant Bay Capital Corp. ("Capital") who  
22 recorded its Trustee's Deed Upon Sale on March 22, 2006. A true and correct copy of the  
23 Trustee's Deed Upon Sale is attached hereto as Exhibit "4" and incorporated herein by this  
24 reference.

25 On or about April 28, 2006, the beneficiary of the first deed of trust conducted a non-  
26 judicial foreclosure sale and sold the Property to Plaintiff Korbel Family Living Trust  
27 ("Plaintiff"), who recorded its Trustee's Deed Upon Sale on May 9, 2006. A copy of the  
28 Trustee's Deed Upon Sale is attached hereto as Exhibit "5" and incorporated herein by this

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1 reference.

2 Based on the information provided by the Plaintiff, the Plaintiff paid the sum of Three  
3 Hundred Thousand Forty-Seven Three Hundred Dollars (\$347,300.00) for the Property. The  
4 foreclosing beneficiary of the first deed of trust was only owed Three Hundred Thousand Thirty-  
5 Nine Eight Hundred Four Dollars and Thirty-Nine Cents (\$339,804.35). As a result, surplus  
6 funds in the amount of Seven Thousand Four Hundred Ninety-Five Dollars and Sixty-Five Cents  
7 (\$7,495.65) remained to be distributed in accordance with NRS 40.462.

8 After the foreclosure sale, Plaintiff requested that the Association provide it with a payoff  
9 on the Association's lien so that it could clear title to the Property. The Association initially  
10 presented Plaintiff with a demand for Seven Thousand Five Hundred Twenty-Eight Dollars and  
11 Seven Cents (\$7,528.07). A true and correct copy of the Association's initial payoff is attached  
12 hereto as Exhibit "6" and incorporated herein by this reference. The Association subsequently  
13 provided a payoff demand in the amount of Two Thousand One Hundred Fifty-One Dollars and  
14 Sixty-Seven Cents (\$2,151.67). A true and correct copy of the subsequent payoff demand is  
15 attached hereto as Exhibit "7" and incorporated herein by this reference.

16 When the Plaintiff and the Association could not agree on the apportionment of the  
17 Association's claim, Plaintiff initiated this instant action against the Association. The issue  
18 currently before the court is the value of the superpriority portion of the Association's lien,  
19 which is the responsibility of Plaintiff, and the amount of the surplus funds that should be  
20 distributed to the Association.

#### 21 STATEMENT OF THE LAW

22 In 1991, the Nevada Legislature adopted the Uniform Common-Interest Ownership Act  
23 (the "Act"). The Act, which was originally created by the Uniform Law Commissioners, was  
24 codified at NRS 116 and became effective January 1, 1992. Included in the Act is a section that  
25 governs the association assessment liens and the priority of those liens. Specifically, NRS  
26 116.3116(2) reads, as follows:

27 A lien under this section is prior to all other liens and  
28 encumbrances on a unit except:

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1 (a) Liens and encumbrances recorded before the  
2 recordation of the declaration and, in a cooperative, liens and  
3 encumbrances which the association creates, assumes or takes  
4 subject to;

5 (b) A first security interest on the unit recorded before  
6 the date on which the assessment sought to be enforced became  
7 delinquent or, in a cooperative, the first security interest  
8 encumbering only the unit's owner's interest and perfected before  
9 the date on which the assessment sought to be enforced became  
10 delinquent; and

11 (c) Liens for real estate taxes and other governmental  
12 assessments or charges against the unit or cooperative. The lien is  
13 also prior to all security interests described in paragraph (b) to the  
14 extent of the assessments for common expenses based on the  
15 periodic budget adopted by the association pursuant to NRS  
16 116.3115 which would have become due in the absence of  
17 acceleration during the 6 months immediately preceding institution  
18 of an action to enforce the lien. This subsection does not affect the  
19 priority of mechanics' or materialmen's liens, or the priority of  
20 liens for other assessments made by the association.

21 This statute provides for the "superpriority" of a portion of an association's lien over  
22 even a first deed of trust or mortgage recorded against the property. In the comments to the  
23 Uniform Common-Interest Ownership Act, it states as follows:

24 To ensure prompt and efficient enforcement of the association's  
25 lien for unpaid assessments, such liens should enjoy statutory  
26 priority over most other liens. Accordingly, subsection (b)  
27 provides that the association's lien takes priority over all other  
28 liens and encumbrances except those recorded prior to the  
recordation of the declaration, those imposed for real estate taxes  
or other governmental assessments or charges against the unit, and  
first security interests recorded before the date the assessment  
became delinquent. However, as to prior first security interests,  
the association's lien does have priority for 6 months' assessments  
based on the periodic budget. A significant departure from  
existing practice, the 6 months' priority for the assessment lien  
strikes an equitable balance between the need to enforce collection  
of unpaid assessments and the obvious necessity for protecting the  
priority of the security interests of lenders. As a practical matter,  
secured lenders will most likely pay the 6 months' assessments  
demanded by the association rather than having the association  
foreclose on the unit.

25 The Nevada Supreme Court has never ruled on the scope and extent of the six (6) month  
26 "superpriority" portion of the Association's lien. Plaintiff requests that the court limit it to no  
27 more than the six (6) months assessments. However, the Association asserts that the  
28 Association's priority should be greater.

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1           A.    The Association's Lien Has Priority Over the Second Deed of Trust.

2           As set forth in NRS 116.3116(2), the Association's Lien has priority over all other liens  
3 or encumbrances recorded against the Property, except: (1) those recorded prior to the  
4 recordation of the Declaration, (2) those imposed for real estate taxes or other governmental  
5 assessments or charges against the Property, and (3) first security interests recorded before the  
6 assessments became due.

7           The Declaration was recorded on November 25, 1998. See Exhibit "I". The second deed  
8 of trust was recorded on August 26, 2004. The second deed of trust was not imposed for real  
9 estate taxes or other governmental assessments. A second deed of trust is not a first security  
10 interest. Accordingly, the Association's lien has priority over the second deed of trust.

11           When the second deed of trust holder foreclosed on the Property, the purchaser, Capital,  
12 acquired title to the Property subject to the Association's lien. The Association's lien claim  
13 survived the second deed of trust foreclosure and has priority over any claim made by Capital.  
14 See NRS 116.3116(2).

15           B.    Association Lien Has Priority Over the First Deed of Trust.

16           As set forth in NRS 116.3116(2) a portion of the Association's lien has priority over even  
17 the first deed of trust. Plaintiff acknowledges the Association's position of priority but  
18 challenges the calculation of the Association's claim.

19           C.    The Superpriority Portion of the Association's Claim Should Include  
20 Interest, Collection Costs, Late Fees and Interest.

21           The Plaintiff contends that the Association's "superpriority" claim should be in the  
22 amount of Six Hundred Ninety Nine Dollars (\$699.00), plus interest. The Association contends  
23 that its "superpriority" claim should be valued at One Thousand Nine Hundred Sixty-Three  
24 Dollars (\$1,963.00), plus interest. As noted above, the Nevada Supreme Court has not ruled on  
25 this issue.

26           The State of Connecticut has also adopted and codified the Uniform Common-Interest  
27 Ownership Act, including the assessment lien and priority of lien provisions. The Connecticut  
28 statute is identical to the one adopted by the Nevada legislature and codified at NRS

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2   HORIZONS AT SEVEN HILLS  
3   HOMEOWNERS ASSOCIATION,

4                   Appellant,

5   v.

6   IKON HOLDINGS, LLC, a Nevada  
7   limited liability company,

8                   Respondent.

Supreme Court No. 63178

District Court Case No. A-11-647850-B

Electronically Filed  
Nov 21 2013 10:31 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

9  
10  
11                   **APPELLANT'S APPENDIX**

12                   **VOLUME 5 OF 11**

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27                   *Attorneys for Appellant*  
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Ex.	Pleading	Date	Vol.	Pages
2	Answer to Complaint	11/3/2011	I	0099-0105
16	Appendix of Exhibits to Defendant's Motion for Clarification or, in the alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	2/6/2012	V	1002-1172
7	Business Court Order	12/8/2011	IV	0781-0785
1	Complaint	9/6/2011	I	0001-0098
49	Correspondence dated 3/28/13 re: Proposed Final Judgment	4/10/2013	X	2114-2140
10	Court Minutes: Decision re: Plaintiff's Motion for Partial Summary Judgment & Defendant's Countermotion	12/16/2011	IV	0833-0834
9	Court Minutes: All Pending Motions	12/12/2011	IV	0831-0832
27	Court Minutes: All Pending Motions	3/12/2012	VII	1538-1539
34	Court Minutes: All Pending Motions	5/7/2012	VIII	1755
38	Court Minutes: All Pending Motions	6/11/2012	IX	1888
63	Court Minutes: All Pending Motions	6/3/2013	XI	2464
48	Court Minutes: Bench Trial	3/12/2013	X	2112-2113
46	Court Minutes: Calendar Call	2/19/2013	IX	2101
30	Court Minutes: Decision	3/28/2012	VII	1550
40	Court Minutes: Decision	6/22/2012	IX	1893
11	Court Minutes: Mandatory Rule 16 Conference	1/9/2012	IV	0835-0836
25	Court Minutes: Minute Order	3/7/2012	VII	1511-1512
64	Court Minutes: Minute Order – Decisions re: 6/3/13 Motion for Attorney Fees and Costs	6/28/2013	XI	2465
43	Court Minutes: Motion for Reconsideration	7/12/2012	IX	2081-2082
60	Court Minutes: Motion to Retax	5/28/2013	XI	2427
29	Decision	3/28/2012	VII	1547-



				1549
39	Decision	6/22/2012	IX	1889-1892
65	Decision	6/28/2013	XI	2466-2470
56	Defendant's Case Appeal Statement	5/8/2013	X	2328-2331
70	Defendant's Case Appeal Statement	9/5/2013	XI	2505-2508
15	Defendant's Motion for Clarification or, in the alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	2/6/2012	V	0975-1001
37	Defendant's Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	6/8/2012	VIII-IX	1774-1887
52	Defendant's Motion to Retax Costs	4/25/2013	X	2173-2186
69	Defendant's Notice of Appeal and Notice of Related Case	9/5/2013	XI	2485-2504
55	Defendant's Notice of Appeal and Notice of Related Cases	5/8/2013	X	2253-2327
57	Defendant's Notice of Filing Cost Bond on Appeal	5/10/2013	X	2332-2337
59	Defendant's Opposition to Motion for Attorney's Fees and Costs	5/24/2013	XI	2377-2426
5	Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment and Counter-Motion for Summary Judgment	11/30/2011	III-IV	0544-0756
18	Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Counter-Motion for Summary Judgment	2/14/2012	VI-VII	1181-1433
33	Defendant's Opposition to Plaintiff's Third Motion for Summary Judgment / Countermotion for Summary Judgment	4/25/2012	VIII	1668-1754
23	Defendant's Reply In Support of Motion for Clarification or, in the alternative, Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	3/6/2012	VII	1486-1507

42	Defendant's Reply in Support of Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	7/9/2012	IX	1952-2080
36	Defendant's Reply Memorandum in Support of Countermotion for Summary Judgment	6/4/2012	VIII	1766-1773
22	Defendant's Reply to Plaintiff's Opposition to Defendant's Counter-Motion for Summary Judgment	3/6/2012	VII	1477-1485
50	Final Judgment	4/11/2013	X	2141-2168
53	Final Judgment	5/1/2013	X	2187-2212
17	Joint Case Conference Report	2/10/2012	VI	1173-1180
47	Joint Pre-Trial Memorandum	3/11/2013	IX	2102-2111
68	Judgment	8/18/2013	XI	2481-2484
54	Motion for Attorney Fees and Costs	5/2/2013	X	2213-2252
66	Order Denying Motion to Retax Costs	7/3/2013	XI	2471-2475
32	Order Denying Plaintiff's Motion for Summary Judgment/Order Granting Defendant's Countermotion for Summary Judgment	4/16/2012	VIII	1661-1667
71	Order for Return of Monies on Deposit	9/9/2013	XI	2509-2510
28	Order re: Defendant's Motion for Clarification	3/16/2012	VII	1540-1546
45	Order re: Defendant's Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	7/24/2012	IX	2095-2100
67	Order re: Plaintiff's Motion for Attorney Fees and Costs and Defendant's Motion to Retax Costs	7/23/2013	XI	2476-2480
14	Order re: Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief	1/19/2012	V	0967-0974

	and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief			
44	Order re: Plaintiff's Motion for Summary Judgment on Declaratory Relief and Defendant's Counter-Motion for Summary Judgment	7/20/2012	IX	2083-2094
13	Order re: Rule 16 Conference	1/18/2012	V	0964-0966
24	Order Setting Civil Non-Jury Trial and Calendar Call	3/6/2012	VII	1508-1510
51	Plaintiff's Memorandum of Costs and Disbursements	4/16/2013	X	2169-2172
4	Plaintiff's Motion for Partial Summary Judgment on Issue of Declaratory Relief	11/7/2011	I-III	0108-0543
12	Plaintiff's Motion for Summary Judgment	1/16/2012	IV-V	0837-0963
31	Plaintiff's Motion for Summary Judgment on Issue of Declaratory Relief	3/30/2012	VII-VIII	1551-1660
19	Plaintiff's Opposition to Motion for Clarification or in the alternative for Reconsideration of Order Granting Summary Judgment	2/27/2012	VII	1434-1472
41	Plaintiff's Opposition to Motion for Reconsider [sic] of Order Granting Summary Judgment on Claim of Declaratory Relief	6/27/2012	IX	1894-1951
58	Plaintiff's Opposition to Motion to Retax Costs	5/23/2013	X-XI	2338-2376
62	Plaintiff's Reply to Opposition to Motion for Attorney Fees and Costs	5/29/2013	XI	2444-2463
35	Plaintiff's Reply to Opposition to Motion for Partial Summary Judgment on Issue of Declaratory Relief & Opposition to Counter Motion for Summary Judgment	5/18/2012	VIII	1756-1765
3	Plaintiff's Request to Transfer to Business Court	11/4/2011	I	0106-0107
61	Plaintiff's Supplement to Memorandum of Costs and Disbursements	5/29/2013	XI	2428-2443
26	Recorder's Transcript of Proceedings: Plaintiff's Motion for Summary	3/12/2012	VII	1513-1537

	Judgment/Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment			
6	Reply to Opposition to Motion for Partial Summary Judgment on Issue of Declaratory Relief & Opposition to Counter Motion for Summary Judgment	12/7/2011	III-IV	0757-0780
21	Scheduling Memo	2/28/2012	VII	1476
20	Scheduling Order	2/28/2012	VII	1473-1475
8	Transcript of Proceedings: Motions	12/12/2011	IV	0786-0830

Ex. 4

APN NO. 177-35-610-137  
RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

**REGIONAL TRUSTEE SERVICES CORPORATION**  
616 1st Avenue, Suite 500  
Seattle, WA 98104

Trustee's Sale No: 07-FMB-74757

20090603-0001992

Fee: \$15.00 RPTT: \$0.00

N/C Fee: \$0.00

06/03/2009 10:24:54

T20090193865

Requestor:

FIDELITY NATIONAL DEFAULT SO

Debbie Conway GWC

Clark County Recorder Pgs: 2

0903/8/16

**\*FMB747570342000000\***

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST**

**NOTICE IS HEREBY GIVEN** that REGIONAL SERVICE CORPORATION, is either the duly appointed Trustee, the substitute Trustee or acting as agent for the Beneficiary under a Deed of Trust dated 9/8/2005, executed by HAWLEY MCINTOSH, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, as Trustor, to secure obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS, as Beneficiary, recorded 9/15/2005, as Instrument No. 20050915-0004492, and rerecorded as Instrument No. 20090601-0007303, of Official Records in the office of the Recorder of CLARK County, NEVADA. There is now owing upon the note secured by said Deed of Trust the sum of \$136,453.63 principal, with interest thereon from 12/1/2008. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred as follows:

**FAILURE TO PAY INSTALLMENTS OF PRINCIPAL, INTEREST, IMPOUNDS AND LATE CHARGES WHICH BECAME DUE 1/1/2009 TOGETHER WITH ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST, IMPOUNDS, LATE CHARGES, FORECLOSURE FEES AND EXPENSES; ANY ADVANCES WHICH MAY HEREAFTER BE MADE; ALL OBLIGATIONS AND INDEBTEDNESSES AS THEY BECOME DUE; AND ANY INSTALLMENTS ALREADY MADE, THAT AT A LATER DATE PROVE TO BE INVALID.**

That by reason thereof, ONEWEST BANK FSB, the present beneficiary under such Deed of Trust, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said Trustee, such Deed of Trust and all the documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

N.R.S. 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of the principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within 35 days following recording and mailing of this Notice to Trustor or Trustor's successor in interest, the right of reinstatement will terminate and the property may thereafter be sold.

**To find out the amount you must pay, or to arrange for payment to stop the foreclosure or if your property is in foreclosure for any other reason, contact:**

STATE OF CA

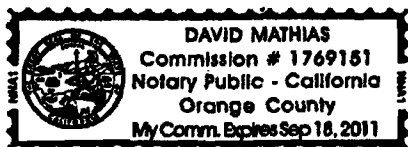
COUNTY OF ORANGE

On 6/3/09 before me, DAVID MATHIAS, Notary Public, personally  
appeared Sheppard who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that  
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

David Mathias  
DAVID MATHIAS



# Ex. 5



APN # 177-35-610-137  
Trustee's Sale # N47664  
North American Title # 17927  
Property Address: 950 Seven Hills Drive #1411

Inst #: 200908040003419  
Fees: \$15.00  
N/C Fee: \$0.00  
08/04/2009 10:22:10 AM  
Receipt #: 2550  
Requestor:  
NORTH AMERICAN TITLE COMPANY  
Recorded By: MSH Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER  
HOMEOWNERS ASSOCIATION LIEN**

**IMPORTANT NOTICE**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS  
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT  
IS IN DISPUTE!**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT  
MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in  
good standing by paying all your past due payments plus permitted costs and expenses within the time permitted  
by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice  
of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$4,289.50 as of July 28, 2009 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes)  
required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and  
Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the  
property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your  
Covenants Conditions and Restrictions, the Horizons at Seven Hills (the Association) may insist that you do so in  
order to reinstate your account in good standing. In addition, the Association may require as a condition to  
reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard  
insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You  
may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you  
must pay all amounts in default at the time payment is made. However, you and your Association may mutually  
agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the  
default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default;  
or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the  
obligation being foreclosed upon or a separate written agreement between you and your Association permits a  
longer period, you have only the legal right to stop the sale of your property by paying the entire amount  
demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your  
property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Horizons at  
Seven Hills, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or  
toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of  
assessment on your property.

Trustee's Sale # N47664

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT  
TAKE PROMPT ACTION.  
NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION  
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Hawley McIntosh, dated June 15, 2009, and recorded on June 17, 2009 as instrument number 0001827 Book 20090617 in the official records of Clark County, Nevada, executed by Horizons at Seven Hills, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on July 06, 2005, as instrument number 0003420 Book 20050706, as security has occurred in that the payments have not been made of homeowner's assessments due from September 01, 2008 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.


That by reason thereof, the Association has executed and delivered to said agent a written authorization and has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby immediately due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark

Dated: July 28, 2009

  
By: Natasha Collins, of Nevada Association Services, Inc.  
on behalf of Horizons at Seven Hills

When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
(702) 804-8885  
(888) 627-5544

Ex. 6

5-1

Inst #: 201007210001842  
Fees: \$17.00 N/C Fee: \$0.00  
RPTT: \$186.15 Ex: #  
07/21/2010 12:07:20 PM  
Receipt #: 434089  
Requestor:  
SCOT LUDWIG  
Recorded By: TAH Pgs: 5  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO  
And SEND TAX STATEMENT TO:

SCOT M. LUDWIG  
900 S 4TH ST #207  
LAS VEGAS, NV 89101

Trustee's Sale No: 07-FMB-74757

APN NO. 177-35-610-137



### TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

1. The Grantee herein was not the foreclosing beneficiary.
1. The amount of the unpaid debt together with costs was \$156,956.95.
2. The amount paid by the Grantee at the Trustee's Sale was \$36,000.01.
3. The documentary transfer tax is: \$186.15.

**THIS INDENTURE** made June 28, 2010, between REGIONAL SERVICE CORPORATION, a California corporation, hereinafter called Trustee and SCOT M. LUDWIG, hereinafter called Grantee, **WITNESSETH:**

**WHEREAS**, HAWLEY MCINTOSH, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, by a Deed of Trust dated 9/8/2005, and recorded 9/15/2005, as Instrument No. 20050915-0004492, and rerecorded as Instrument No. 20090601-0007303, of Official Records in the office of the Recorder of CLARK County, NEVADA, did grant and convey to said Trustee, upon the trusts therein expressed, the property hereinafter described, among other uses and purposes to secure the payment of a certain promissory note and interest, according to the terms thereof, and other sums of money advanced, with interest thereon, to which reference is hereby made, and,

**WHEREAS**, breach and default was made under the terms of said Deed of Trust in the particulars set forth in the Notice of said Beach and Default, to which reference is hereby made; and,

**WHEREAS**, on 5/2/2009, the then Beneficiary, or holder of said note did execute and deliver to the Trustee written declaration of default and demand for sale and thereafter there was filed

for record on 6/3/2009, in the office of the County Recorder of CLARK County, NEVADA, a Notice of such breach and default and of election to cause the Trustee to sell said property to satisfy the obligation secured by said Deed of Trust, which Notice was recorded in Instrument No. 20090603-0001992, of Official Records of said County and,

**WHEREAS**, Trustee, in consequence of said election, declaration of default, and demand for sale, and in compliance with said Deed of Trust and with the Statutes in such cases made and provided, made and published for more than twenty (20) days before the date of sale therein fixed in a newspaper of general circulation printed and in each county in which the property or any part thereof is situated, Notice of Sale as required by law, containing a correct description of the property to be sold and stating that the Trustee would under the provisions of said Deed of Trust, sell the property therein and herein described at public auction to the highest bidder for cash in lawful money of the United States of America on June 28, 2010, at 10:00 AM, of said day, **THE FRONT ENTRANCE TO NEVADA LEGAL NEWS, 930 SOUTH FOURTH STREET, in the City of LAS VEGAS, County of CLARK, State of NEVADA, and**

**WHEREAS**, three true and correct copies of said Notice were posted in three of the most public places in the County of CLARK, State of NEVADA, in which said sale was noticed to take place, and where the property was to be sold for not less than twenty days before the date of sale therein fixed, and,

**WHEREAS** compliance having been made with all the statutory provisions of the State of NEVADA and with all of the provisions of said Deed of Trust as to the acts to be performed and notices to be given, and in particular, full compliance having been made with all requirements of law regarding the service of notices required by statute, and with the Soldiers' and Sailors' Relief Act of 1940, said Trustee, at the time and place aforesaid did then and there at public auction sell the property hereinafter described to the said Grantee for the sum of \$36,000.01, said Grantee being the highest and best bidder therefore,

**NOW, THEREFORE**, Trustee, in consideration of the premises recited and the sum of the above mentioned bid paid by the Grantee, the receipt whereof is hereby acknowledged, and by virtue of these premises, does **GRANT AND CONVEY**, but without warranty or covenants, expressed or implied, unto the said Grantee, SCOT M. LUDWIG, all that certain property situate in the County of CLARK, State of NEVADA, described as follows:

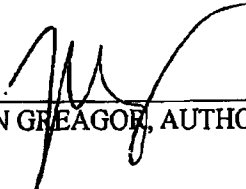
**ATTACHED HERETO AS EXHIBIT 'A' AND INCORPORATED HEREIN  
AS THOUGH FULLY SET FORTH.**

Tax Parcel No: 177-35-610-137

**IN WITNESS WHEREOF**, the said REGIONAL SERVICE CORPORATION, as Trustee has this day caused its corporate name to be hereunto affixed by its **AUTHORIZED AGENT** thereunto duly authorized by resolution of its Board of Directors.

Dated: 7/6/2010

REGIONAL SERVICE CORPORATION,  
Trustee

By   
JEAN GREAGOR, AUTHORIZED AGENT

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF KING )

On 7/6/2010, before me, the undersigned, a Notary Public in and for said state, duly commissioned and sworn, personally appeared JEAN GREAGOR, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument, as AUTHORIZED AGENT, on behalf of the corporation therein named and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



NOTARY PUBLIC in and for the State of  
WA, residing at: Seattle  
My commission expires: 01-20-14



**EXHIBIT FOR LEGAL DESCRIPTION**

Trustee's Sale 07-FMB-74757

EXHIBIT 'A'

**PARCEL I:**

UNIT 1411 ("UNIT") IN BUILDING 14 ("BUILDING") AND GARAGE NO. G4 ("GARAGE") AND GARAGE BUILDING NO. G1 AS SHOWN ON THE FINAL PLAT OF HORIZONS AT SEVEN HILLS RANCH, FILED IN BOOK 125 OF PLATS, PAGE 58, IN THE OFFICIAL RECORDS OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA ("PLAT"), AND AS DEFINED AND SET FORTH IN AND SUBJECT TO THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HORIZONS AT SEVEN HILLS RANCH, RECORDED JULY 6, 2005 AS INSTRUMENT NO. 0003420 IN BOOK 20050706, OFFICIAL RECORDS, CLARK COUNTY, NEVADA ("HORIZONS AT SEVEN HILLS RANCH DECLARATION").

**PARCEL II:**

TOGETHER WITH AN UNDIVIDED ALLOCATED FRACTIONAL INTEREST IN AND TO THE GENERAL COMMON ELEMENTS, AS SET FORTH IN, AND SUBJECT TO, THE PLAT AND THE HORIZONS AT SEVEN HILLS RANCH DECLARATION.

**PARCEL III:**

TOGETHER WITH AN EXCLUSIVE INTEREST IN AND TO THOSE LIMITED COMMON ELEMENTS, IF ANY, APPURTENANT TO THE UNIT, AS SET FORTH IN, AND SUBJECT TO, THE PLAT AND THE HORIZONS AT SEVEN HILLS RANCH DECLARATION.

**PARCEL IV:**

TOGETHER WITH A NON-EXCLUSIVE EASEMENT OF REASONABLE INGRESS TO AND EGRESS FROM THE UNIT, AND OF ENJOYMENT OF THE GENERAL COMMON ELEMENTS, AS SET FORTH IN, AND SUBJECT TO, THE PLAT AND THE HORIZONS AT SEVEN HILLS RANCH DECLARATION.

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

- a. 177-35-610-137  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

**2. Type of Property:**

- a. ☐ Vacant Land      b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
i. ☐ Other \_\_\_\_\_

<b>FOR RECORDER'S OPTIONAL USE ONLY</b>	
Book: _____	Page: _____
Date of Recording: _____	
Notes: _____	

3. a. Total Value/Sales Price of Property \$ 36,000.01  
b. Deed in Lieu of Foreclosure Only (value of property) (\_\_\_\_\_)  
c. Transfer Tax Value: \$ 36,000.01  
d. Real Property Transfer Tax Due \$ 186.15

**4. If Exemption Claimed:**

- a. Transfer Tax Exemption per NRS 375.090, Section N/A  
b. Explain Reason for Exemption: N/A

**5. Partial Interest: Percentage being transferred: 100.00 %**

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature \_\_\_\_\_ Capacity Grantor

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION  
(REQUIRED)**

Print Name: Regional Services Corporation  
Address: 616 1st Avenue #500  
City: Seattle  
State: WA Zip: 98104

**BUYER (GRANTEE) INFORMATION  
(REQUIRED)**

Print Name: SCOT M. LUDWIG  
Address: 900 S 4TH ST #207  
City: LAS VEGAS  
State: NV Zip: 89101

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Print Name: Fannel Peterson  
Address: 209 S Stephanie, Ste B123  
City: Henderson

Escrow #: \_\_\_\_\_  
State: NV Zip: 89012

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



Ex. 7

C (41)

Inst #: 201007210001843  
Fees: \$16.00 N/C Fee: \$25.00  
RPTT: \$186.15 Ex: #  
07/21/2010 12:07:20 PM  
Receipt #: 434089  
Requestor:  
SCOT LUDWIG  
Recorded By: TAH Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN# 177-35-010-137

11-digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrealprop/ownr.aspx>

Quit Claim Deed

**Type of Document**

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

**Recording Requested By:**

Konnel Peterson

**Return Documents To:** and Tax Statements

**Name** Ikon Holdings, LLC

**Address** 209 S Stephanie, Ste B123

**City/State/Zip** Henderson NV 89012

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

CCOR\_Coversheet.pdf ~ 06/06/07

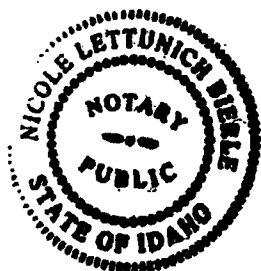
FOR VALUE RECEIVED, SCOT M. LUDWIG does hereby convey, release, remise and forever quitclaim unto IKON Holdings, LLC, as its sole and separate property, whose address is 209 South Stephanie Street, Suite B-123, Henderson, Nevada 89102, all of his right, title and interest in the following described premises, to-wit:

together with their appurtenances, this property is located in Clark County, also known as 950 Seven Hills Drive, Unit 1411, Henderson, Nevada 89052

SCOT M. LUDWIG

On this 14 day of July, 2010, before me, the undersigned, personally appeared SCOT M. LUDWIG, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year first above written.



~~Notary Public~~

Residing at:

Comm. Expires:

EXHIBIT 'A'

**PARCEL I:**

UNIT 1411 ("UNIT") IN BUILDING 14 ("BUILDING") AND GARAGE NO. G4 ("GARAGE") AND GARAGE BUILDING NO. G1 AS SHOWN ON THE FINAL PLAT OF HORIZONS AT SEVEN HILLS RANCH, FILED IN BOOK 125 OF PLATS, PAGE 58, IN THE OFFICIAL RECORDS OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA ("PLAT"), AND AS DEFINED AND SET FORTH IN AND SUBJECT TO THAT, CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HORIZONS AT SEVEN HILLS RANCH, RECORDED JULY 6, 2005 AS INSTRUMENT NO. 0003420 IN BOOK 20050706, OFFICIAL RECORDS, CLARK COUNTY, NEVADA ("HORIZONS AT SEVEN HILLS RANCH DECLARATION").

**PARCEL II:**

TOGETHER WITH AN UNDIVIDED ALLOCATED FRACTIONAL INTEREST IN AND TO THE GENERAL COMMON ELEMENTS, AS SET FORTH IN, AND SUBJECT TO, THE PLAT AND THE HORIZONS AT SEVEN HILLS RANCH DECLARATION.

**PARCEL III:**

TOGETHER WITH AN EXCLUSIVE INTEREST IN AND TO THOSE LIMITED COMMON ELEMENTS, IF ANY, APPURTENANT TO THE UNIT, AS SET FORTH IN, AND SUBJECT TO, THE PLAT AND THE HORIZONS AT SEVEN HILLS RANCH DECLARATION.

**PARCEL IV:**

TOGETHER WITH A NON-EXCLUSIVE EASEMENT OF REASONABLE INGRESS TO AND EGRESS FROM THE UNIT, AND OF ENJOYMENT OF THE GENERAL COMMON ELEMENTS, AS SET FORTH IN, AND SUBJECT TO, THE PLAT AND THE HORIZONS AT SEVEN HILLS RANCH DECLARATION.

STATE OF NEVADA  
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a. 177-35-610-137  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

a. ☐ Vacant Land  
b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse  
d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg  
f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural  
h. ☐ Mobile Home  
Other \_\_\_\_\_

FOR RECORDER'S OPTIONAL USE ONLY

Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property \$ 36,000.01  
b. Deed in Lieu of Foreclosure Only (value of property) \_\_\_\_\_  
c. Transfer Tax Value: \$ 36,000.01  
d. Real Property Transfer Tax Due \$ 186.15

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section N/A  
b. Explain Reason for Exemption: N/A

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature \_\_\_\_\_ Capacity Grantor

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
(REQUIRED)

Print Name: Scot M. Ludwig  
Address: 900 S 4th #207  
City: Las Vegas  
State: NV Zip: 89101

**BUYER (GRANTEE) INFORMATION**  
(REQUIRED)

Print Name: IFan Holdings, LLC  
Address: 709 S Stephanie 7 Ste B123  
City: Henderson  
State: NV Zip: 89012

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Print Name: Kennel Peterson Escrow #: \_\_\_\_\_  
Address: 709 S Stephanie 7 Ste B123  
City: Henderson State: NV Zip: 89012

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Ex. 8

APN # 177-35-610-137  
# N47664

Recorded On: 09/30/2010  
Book/Instr: 0002154 Book 20100930  
County Of: Clark

### NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on July 06, 2005, as instrument number 0003420 Book 20050706, of the official records of Clark County, Nevada, the Horizons at Seven Hills has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 950 Seven Hills Drive #1411 Henderson, NV 89052 and more particularly legally described as: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):  
Ikon Holdings LLC

Mailing address(es):  
209 S. Stephanie Ste B123, Henderson, NV 890112

\*Total amount due through today's date is \$6,050.14.

This amount includes late fees, collection fees and interest in the amount of \$2,692.64.

\* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: September 28, 2010



By: Winter Henrie, of Nevada Association Services, Inc., as agent for Horizons at Seven Hills.

When Recorded Mail To:  
Nevada Association Services, Inc.  
TS #N47664  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885 Toll Free: (888) 627-554



Ex. 9





Nevada Association Services  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
Phone: (702) 804-8885  
Fax: (702) 804-8887  
Toll Free: (888) 627-5544

October 18, 2010

Ikon Holdings LLC  
209 S. Stephanie Ste B123  
Henderson NV 890112

RE: 950 Seven Hills Drive #1411 / N47664  
Horizons at Seven Hills / Ikon Holdings LLC

Dear Sir/Madam:

Per your request the current balance for the above property is \$6287.94. If you wish to resolve this matter, please remit payment in full of \$6287.94 in the form of a cashier's check or money order on or before 10/28/10. This amount includes October's assessment. Enclosed is an itemized breakdown for your review. If you are unable to remit payment in full, you may wish to fill out and return the enclosed Request for a Payment Plan Form which will be forwarded to the Management Company for approval. If you choose not to reinstate the account, collection proceedings will continue as indicated in previous correspondence.

Sincerely,

Veronica Meraz  
Nevada Association Services, Inc.

## Horizons @ Seven Hills

Account No: t0016551

**TS# N 47664**

*Dates of Delinquency: 06/28/2010-10/10*

<b>Attorneys Fees &amp; Collection Costs</b>	<b>Amount</b>	<b>Amount</b>	<b>Amount</b>	<b>Amount</b>	<b>Amount</b>
<i>Dates of Delinquency: 06/28/2010-10/10</i>	<b>Present rate</b>	<b>Prior rate</b>	<b>Prior rate</b>	<b>Water</b>	<b>Prior rate</b>
	<b>07/10-Current</b>	<b>01/10-06/10</b>	<b>10/09-12/09</b>	<b>10/09-12/09</b>	
Balance forward	0.00	0.00	0.00	0.00	0.00
No. of Months Subject to Interest	0	0	0	0	0
Interest due on Balance Forward	0.00	0.00	0.00	0.00	0.00
Monthly Assessment Amount	190.00	190.00	172.50	25.00	0.00
No. of Months Delinquent	4	6	3	3	0
No. of Months Subject to Interest	0	0	0	0	0
Total Monthly Assessments due	760.00	1,140.00	517.50	75.00	0.00
Late Fee	10.00	10.00	10.00	0.00	0.00
No. of Months Late Fees Incurred	4	6	3	0	0
Total Late Fees due	40.00	60.00	30.00	0.00	0.00
Interest Rate	0.12	0.12	0.12	0.12	0.12
Interest due	53.42	60.02	0.00	0.00	0.00
Special Assessment Due	0.00	0.00	0.00	0.00	0.00
Special Assessment Late Fee	0.00	0.00	0.00	0.00	0.00
Special Assessment Months Late	0	0	0	0	0
Legal Fees	235.00	0.00	0.00	0.00	0.00
Capital Contribution	380.00	0.00	0.00	0.00	0.00
Mgmt Co. Intent to Lien	75.00	0.00	0.00	0.00	0.00
Transfer Fee	300.00	300.00	0.00	0.00	0.00
Management Co. Fee	210.00	0.00	0.00	0.00	0.00
Demand Letter	135.00	135.00	0.00	0.00	0.00
Lien Fees	325.00	325.00	0.00	0.00	0.00
Prepare Lien Release	30.00	30.00	0.00	0.00	0.00
Certified Mailing	32.00	80.00	0.00	0.00	0.00
Recording Costs	28.00	57.00	0.00	0.00	0.00
Pre NOD Ltr	0.00	75.00	0.00	0.00	0.00
Payment Plan Fee	0.00	0.00	0.00	0.00	0.00
Breach letters	0.00	0.00	0.00	0.00	0.00
Personal check returns	0.00	0.00	0.00	0.00	0.00
Statutory Filing Fee	0.00	0.00	0.00	0.00	0.00
Collection Costs on Violations	0.00	0.00	0.00	0.00	0.00
Subtotals	\$2,603.42	\$2,262.02	\$547.50	\$75.00	\$0.00
<u>Credit</u>					
	(0.00)				
	(0.00)				
	(0.00)				
	(0.00)				
	(0.00)				
	(0.00)				
	(0.00)				
	(0.00)				
	(0.00)				
	(0.00)				
NAS Fees & Cost	(0.00)				

COPY

**\$6,287.94**

[illegible]

COPY

Ex. 10

APN # 177-35-610-137  
NAS # N47664  
First American Title Nevada/NDTS # 4787654A5  
PropertyAddress: 950 Seven Hills Drive #1411

Inst #: 201011180001634  
Fees: \$15.00  
N/C Fee: \$0.00  
11/18/2010 09:23:54 AM  
Receipt #: 582598  
Requestor:  
FIRST AMERICAN NATIONAL DEF  
Recorded By: BRT Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER  
HOMEOWNERS ASSOCIATION LIEN**

**IMPORTANT NOTICE**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS  
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT  
IS IN DISPUTE!**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in good standing by paying all your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$7,349.50 as of November 16, 2010 and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, the Horizons at Seven Hills (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Association may mutually agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Horizons at Seven Hills, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of assessment on your property.

NAS # N47664

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT  
TAKE PROMPT ACTION.**

**NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION  
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Ikon Holdings LLC, dated September 28, 2010, and recorded on September 30, 2010 as instrument number 0002154 Book 20100930 in the official records of Clark County, Nevada, executed by Horizons at Seven Hills, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on July 06, 2005, as instrument number 0003420 Book 20050706, as security has occurred in that the payments have not been made of homeowner's assessments due from and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

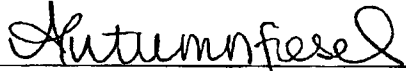
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark

Dated: November 16, 2010



By: Autumn Fesel, of Nevada Association Services, Inc.  
on behalf of Horizons at Seven Hills

When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146  
(702) 804-8885  
(888) 627-5544

Electronically Filed  
01/18/2012 12:10:51 PM

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Alvin D. Shuman*  
CLERK OF THE COURT

IKON HOLDINGS, LLC, )  
 )  
Plaintiff(s), )  
 )  
vs. ) CASE NO. A647850-B  
 ) DEPT. NO. XIII  
HORIZONS AT SEVEN HILLS HOMEOWNERS )  
ASSOCIATION, )  
 )  
Defendant(s). )

ORDER RE RULE 16 CONFERENCE

THIS MATTER having come before the Court in chambers on January 9, 2012 pursuant to the Business Court Order previously entered herein and NRCP 16, and the Court having discussed with counsel, as appropriate, the subjects referred to in NRCP 16(c);

NOW, THEREFORE, in accordance with NRCP 16(e), the Court hereby issues this Order reciting the action taken at such conference:

1. Discovery shall proceed in accordance with the Scheduling Order issued or to be issued herein by the Discovery Commissioner.
2. The Court will hear any discovery motions.
3. Counsel/parties in proper person are to file a Joint Case Conference Report or Individual Case Conference Reports, as the case may be, by February 10, 2012, with full courtesy copy(ies) delivered concurrently to the Discovery Commissioner.

RECEIVED  
JAN 18 2012  
CLERK OF THE COURT  
44  
MARK R. DENTON  
DISTRICT JUDGE  
DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

1 4. A status check re: filing of Case Conference  
2 Report is hereby set on February 16, 2012 at 9:00 a.m. If such  
3 Case Conference Report(s) is (are) filed before this date, then  
4 the status check will be vacated.

5  
6 5. Deadlines for Motions shall be as set forth in the  
7 Scheduling Order issued or to be issued herein by the Discovery  
8 Commissioner.

9 6. If and when there is agreement among counsel that  
10 the case is ripe for a settlement conference with a Business  
11 Court judge, counsel are to contact the departmental JEA of this  
12 Department for direction in scheduling the same. If there is no  
13 such agreement, any effort to obtain such a settlement conference  
14 should be made by motion herein.

15 COUNSEL FOR PLAINTIFF(S) IS DIRECTED TO PROVIDE PROMPT  
16 WRITTEN NOTICE OF ENTRY HEREOF.

17 DATED this 12<sup>th</sup> day of January, 2012.

18  
19  
20 MARK R. DENTON  
21 DISTRICT JUDGE

22 CERTIFICATE

23 I hereby certify that on or about the date filed, and  
24 as a courtesy not comprising formal written notice of entry, this  
25 document was e-served or a copy of this document was placed in  
26 the attorney's folder in the Clerk's Office or mailed to:  
27



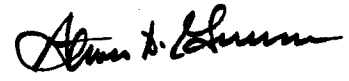
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PUOY K. PREMSRIRUT, ESQ.

ALVERSON, TAYLOR, MORTENSEN & SANDERS  
Attn: Eric Hinckley, Esq.

*Lorraine Tashiro*

LORRAINE TASHIRO  
Judicial Executive Assistant  
Dept. No. XIII



CLERK OF THE COURT

1 NEOJ  
2 ADAMS LAW GROUP, LTD.  
3 JAMES R. ADAMS, ESQ.  
4 Nevada Bar No. 6874  
5 ASSLY SAYYAR, ESQ.  
6 Nevada Bar No. 9178  
7 8010 W Sahara Avenue Suite 260  
8 Las Vegas, Nevada 89117  
9 (702) 838-7200  
10 (702) 838-3636 Fax  
11 [james@adamslawgroup.com](mailto:james@adamslawgroup.com)  
12 [assly@adamslawgroup.com](mailto:assly@adamslawgroup.com)  
13 Attorneys for Plaintiff

8 PUOY K. PREMSRIRUT, ESQ., INC.  
9 Puoy K. Premsrirut, Esq.  
10 Nevada Bar No. 7141  
11 520 S. Fourth Street, 2<sup>nd</sup> Floor  
12 Las Vegas, NV 89101  
13 (702) 384-5563  
14 (702)-385-1752 Fax  
15 [ppremsrirut@brownlawlv.com](mailto:ppremsrirut@brownlawlv.com)  
16 Attorneys for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

17 IKON HOLDINGS, LLC, )  
18 a Nevada limited liability company, )

19 Plaintiff,

20 vs.

21 HORIZONS AT SEVEN HILLS )  
22 HOMEOWNERS ASSOCIATION, )  
23 and DOES 1 through 10 and ROE )  
24 ENTITIES 1 through 10 inclusive, )


25 Defendant.

Case No. A-11-647850-C  
Dept No. 13

**NOTICE OF ENTRY OF ORDER**

26 PLEASE TAKE NOTICE that on the 1st day, January 2012, the attached  
27 Order was entered in the above referenced matter.

28 Dated this 20<sup>th</sup> day of January, 2012.



ADAMS LAW GROUP, LTD.  
JAMES R. ADAMS, ESQ.  
Nevada Bar No. 6874  
ASSLY SAYYAR, ESQ.  
Nevada Bar No. 9178  
8010 W Sahara Ave. Ste. 260  
Las Vegas, NV 89117

ADAMS LAW GROUP, LTD.  
8681 W. SAHARA AVENUE SUITE 280  
LAS VEGAS, NEVADA 89117  
TELEPHONE (702) 838-7200  
FACSIMILE (702) 838-3636

ADAMS LAW GROUP, LTD.  
8681 W. SAHARA AVENUE, SUITE 280  
LAS VEGAS, NEVADA 89117  
TELEPHONE (702) 838-7200  
FACSIMILE (702) 838-3636

**CERTIFICATE OF SERVICE**

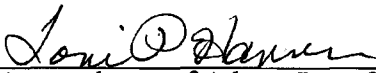
Pursuant to NRCP 5(b), I certify that I am an employee of the Adams Law Group, Ltd., and that on this date, I served the following **NOTICE OF ENTRY OF ORDER** upon all parties to this action by:

X	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.

addressed as follows:

Eric Hinckley, Esq.  
Alverson Taylor  
Mortensen and Sanders  
7401 W Charleston Blvd.  
Las Vegas, NV 89117-1401

Dated the 20th day of January, 2012.

  
An employee of Adams Law Group, Ltd.

  
CLERK OF THE COURT

1 **ORD**  
2 ADAMS LAW GROUP, LTD.  
3 JAMES R. ADAMS, ESQ.  
4 Nevada Bar No. 6874  
5 ASSLY SAYYAR, ESQ.  
6 Nevada Bar No. 9178  
7 8330 W. Sahara Ave. Suite 290  
8 Las Vegas, Nevada 89117  
9 (702) 838-7200  
10 (702) 838-3636 Fax  
11 [james@adamslawnevada.com](mailto:james@adamslawnevada.com)  
12 [assly@adamslawnevada.com](mailto:assly@adamslawnevada.com)  
13 Attorneys for Plaintiff

8 PUOY K. PREMSRIRUT, ESQ., INC.  
9 Puoy K. Premsrirut, Esq.  
10 Nevada Bar No. 7141  
11 520 S. Fourth Street, 2<sup>nd</sup> Floor  
12 Las Vegas, NV 89101  
13 (702) 384-5563  
14 (702)-385-1752 Fax  
15 [ppremsrirut@brownlawlv.com](mailto:ppremsrirut@brownlawlv.com)  
16 Attorneys for Plaintiff

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 IKON HOLDINGS, LLC, a Nevada limited liability  
16 company,

17 Plaintiff,

18 vs.

18 HORIZONS AT SEVEN HILLS HOMEOWNERS  
19 ASSOCIATION, and DOES 1 through 10 and ROE  
20 ENTITIES 1 through 10 inclusive,

21 Defendant.

Case No: A-11-647850-C  
Dept: No. 13

ORDER

22 This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's  
23 Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for  
24 Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group,  
25 Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the  
26 Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the  
27 Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and  
28 for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as  
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)  
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy  
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief  
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in  
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the  
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and  
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether  
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS  
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which  
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a  
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is  
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the  
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the  
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and  
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,  
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have  
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and  
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the  
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)  
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position  
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super  
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as  
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in  
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted  
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'  
9 associations a general statutory lien against a homeowner's unit for (a) any  
10 construction penalty that is imposed against the unit's owner pursuant to NRS  
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed  
12 against the unit's owner from the time the construction penalty, assessment or fine  
13 becomes due (the "General Statutory Lien"). The homeowners' associations'  
14 General Statutory Lien is noticed and perfected by the recording of the associations'  
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim  
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory  
18 Lien is junior to a first security interest on the unit recorded before the date on which  
19 the assessment sought to be enforced became delinquent ("First Security Interest")  
20 except for a portion of the homeowners' association's General Statutory Lien which  
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,  
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),  
24 inclusive, are enforceable in the same manner as assessments are enforceable under  
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and  
26 interest are not actual "assessments," they may be enforced in the same manner as  
27  
28

1 assessments are enforced, i.e., by inclusion in the association's General Statutory  
2 Lien against the unit.

3 5. Homeowners' associations, therefore, have a Super Priority Lien which has priority  
4 over the First Security Interest on a homeowners' unit. However, the Super Priority  
5 Lien amount is not without limits and NRS §116.3116 is clear that the amount of the  
6 Super Priority Lien (which is that portion of a homeowners' associations' General  
7 Statutory Lien which retains priority status over the First Security Interest) is limited  
8 "to the extent" of those assessments for common expenses based upon the  
9 association's adopted periodic budget that would have become due in the 9 month  
10 period immediately preceding an association's institution of an action to enforce its  
11 General Statutory Lien (which is 9 months of regular assessments) and "to the extent  
12 of" external repair costs pursuant to NRS §116.310312.

13 6. The base assessment figure used in the calculation of the Super Priority Lien is the  
14 unit's un-accelerated, monthly assessment figure for association common expenses  
15 which is wholly determined by the homeowners association's "periodic budget," as  
16 adopted by the association, and not determined by any other document or statute.  
17 Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the  
18 assessments for common expenses based on the periodic budget adopted by the  
19 association pursuant to NRS 116.3115 which would have become due in the absence  
20 of acceleration during the 9 months immediately preceding institution of an action  
21 to enforce the lien..." means a maximum figure equaling 9 times the association's  
22 regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3  
23 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus  
24 external repair costs pursuant to NRS §116.310312.

25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"  
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which  
27 cannot be exceeded.  
28

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may  
2 be included within the Super Priority Lien, in no event can the total amount of the  
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'  
4 association's regular monthly assessment amount to unit owners for common  
5 expenses based on the periodic budget which would have become due immediately  
6 preceding the association's institution of an action to enforce the lien, plus external  
7 repair costs pursuant to NRS 116.310312.

8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or  
9 the Federal National Mortgage Association require a shorter period of priority for the  
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be  
11 used in the calculation of the Super Priority Lien, except that notwithstanding the  
12 provisions of the regulations, that shorter period used in the calculation of the Super  
13 Priority Lien must not be less than the 6 months immediately preceding institution  
14 of an action to enforce the lien.

15 10. Moreover, <sup>the need for the institution of an actual civil action</sup> the Super Priority Lien can exist only if an "action" is instituted by the  
16 association to enforce its General Statutory Lien. <sup>An order to enforce the Super Priority Lien can be obtained if the</sup> The term "action" as used in NRS  
17 §116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(7)), does  
18 not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,  
19 "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with  
20 the court).

21 IT IS SO ORDERED.

22   
DISTRICT COURT JUDGE

Date 

23  
24  
25 Submitted by 

26 JAMES R. ADAMS, ESQ.  
27 Nevada Bar No. 6874  
28 ASSLY SAYYAR, ESQ.



1 Nevada Bar No. 9178  
2 ADAMS LAW GROUP, LTD.  
3 8330 W. Sahara Ave., Suite 290  
4 Las Vegas, Nevada 89117  
5 Tel: 702-838-7200  
6 Fax: 702-838-3600  
7 james@adamslawnevada.com  
8 assly@adamslawnevada.com  
9 Attorneys for Plaintiff

6 PUOY K. PREMSRIRUT, ESQ., INC.  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**IKON HOLDINGS, LLC, a Nevada limited liability company,**

Plaintiff,

vs.

**HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION; and DOES 1 through 10; and ROE ENTITIES 1 through 10 inclusive,**

Defendants.

Case No. : A-11-647850-B  
Dept. No.: XIII

**MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF**

Hearing Date:

Hearing Time:

Defendant Horizons At Seven Hills Homeowners Association ("Horizons"), by and through their attorneys of record Holland & Hart LLP, hereby submit its Motion for Reconsideration of the Order Granting Summary Judgment on Claim of Declaratory Relief entered January 20, 2012 ("Order").

///

///

1 This Motion is made and based upon the attached memorandum of points and authorities,  
2 the pleadings and papers on file herein, and any oral argument this Court may choose to hear.

3 DATED this 6th day of February, 2012.

4 HOLLAND & HART LLP

5  
6 By 

Patrick J. Reilly, Esq.  
Nicole E. Lovelock, Esq.  
9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134

7  
8  
9 *Attorneys for Horizons At Seven Hills*  
10 *Homeowners Association*

11 **NOTICE OF MOTION**

12 TO: All Interested Parties and/or their Counsel of Record

13 PLEASE TAKE NOTICE the undersigned will bring the foregoing Motion on for hearing  
14 before the above-entitled court on the 12 day of <sup>March</sup> ~~February~~, 2012, at the hour of 9:00 am  
15 a.m./p.m. or as soon thereafter as may be heard.

16 DATED this 6th day of February 2012.

17 HOLLAND & HART LLP

18  
19 By 

Patrick J. Reilly, Esq.  
Nicole E. Lovelock, Esq.  
9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134

20  
21  
22 *Attorneys for Defendant Horizons At Seven*  
23 *Hills Homeowners Association*

1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2                   **DEFENDANT'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE,**  
3                   **RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON**  
4                   **CLAIM OF DECLARATORY RELIEF**

5                   **I.**

6                   **INTRODUCTION**

7                   Horizons respectfully requests that this Court clarify or, in the alternative, reconsider part  
8 of its decision concerning the scope of the so-called "super-priority lien" under NRS 116.3116,  
9 as set forth in the Order attached hereto as **Exhibit "A"**. Unbeknownst to Horizon or this Court,  
10 this Court's recent decision was based upon an incomplete view of the facts and the law—an  
11 incomplete picture that was knowingly and deliberately pursued by Plaintiff. This is an  
12 incomplete picture that needs to be addressed in full by this Court and on the merits.

13                   In the Order, this Court concluded that collection fees and costs are not assessments, but  
14 are enforceable in the same manner as assessments and may be included in a homeowners  
15 association's ("HOA") super-priority lien under NRS 116.3116(2), but then concluded that the  
16 super-priority lien is limited to nine (9) times the unit's un-accelerated, monthly assessment  
17 amount. *See* Exhibit A. Accordingly, the Order holds that the maximum amount that survives a  
18 lender foreclosure is an amount equaling nine (9) times the amount an HOA invoices a  
19 prototypical homeowner each month.

20                   For several reasons, Horizons respectfully requests that the Court clarify or, in the  
21 alternative, reconsider this issue, based on the following issues which were not addressed in the  
22 Order:<sup>1</sup>

- 23                   • The Nevada Legislature specifically removed the limitations in the Uniform  
24 Common Interest Ownership Act (the "UCIOA") so that Nevada's super-priority lien  
25 includes as common expenses *all* of NRS 116.3115. *This includes amounts*  
26 *assessed against a specific unit, including those costs and fees caused from a unit*  
27 *owner's misconduct.*
- 28                   • This Court's Order fails to analyze and consider the absurd results that will occur if a  
numerical cap is implemented, contrary to black letter Nevada law regarding the  
rules of statutory construction. This includes the very practical implications of  
destroying an HOA's ability to collect on its liens, triggering a "race to the

<sup>1</sup> Horizons is not seeking reconsideration on the issue as to whether filing a complaint with the court to enforce an HOA's statutory lien is a condition precedent to the existence of an HOA's super-priority lien.

courthouse” as HOAs are forced to pursue judicial foreclosures of statutory liens ahead of bank foreclosures, and burdening HOAs and their homeowners.

- NRS 116.3116(2) contains no language justifying a numerical cap. The Order fails to acknowledge and address the fact that *Nevada’s super-priority lien language is much broader than the UCIOA, incorporating all costs and fees under NRS 116.3115* and including much more than monthly invoices to a prototypical homeowner.
- The legislative history of Nevada’s Chapter 116 does not support a decision to assert a numerical cap on collection costs and fees because any changes to Nevada’s super-priority lien were merely to clarify (and not change) the existing statute.
- Importantly, the Nevada Real Estate Division’s Commission for Common Interest Communities and Condominium Hotels adopted its Advisory Opinion and concluded that NRS 116.3116(2) includes collection costs but with no numerical limitation.
- The Court disregarded *Korbel Family Living Trust v. Spring Mountain Ranch Master Ass’n*, largely because of a poorly drafted order prepared by the prevailing party. However, the underlying record demonstrates unequivocally that the super-priority lien issue was briefed thoroughly by both sides at the direction of Judge Glass, argued by both sides, and thoroughly considered by Judge Glass before issuing a ruling interpreting the super-priority lien.

For these reasons, Horizons requests that the Court clarify and/or reconsider the conclusion that the super-priority lien contains a numerical maximum. Such a conclusion contradicts the broad language of the Nevada super-priority lien, particularly as related to NRS 116.3115, and would create absurd results, including granting an HOA a lien with absolutely no practical means of enforcement. Horizons therefore requests the Court clarify and/or reconsider that holding and, instead, rule that the super-priority lien, based on its plain language and public policy, must include costs of collection with no numerical limit.

## II.

### STANDARD OF REVIEW

District court judges are allowed unlimited discretion to clarify prior orders before to the entry of final judgment. *See* NRCP 56; *Harvey’s Wagon Wheel v. MacSween*, 96 Nev. 215, 606 P.2d 1095 (1980) (district judge did not abuse his discretion by rehearing the motions for summary judgment). In addition, Rule 2.24 of the Eighth Judicial District Court Rules (“EDCR”) provides for the reconsideration of a ruling by the Court after service of the written notice of the order or judgment. A trial court judge is granted great discretion on reconsideration of its prior ruling. *See, e.g., Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev.

1 737, 941 P.2d 486 (1997) (reconsideration is appropriate if substantially different evidence is  
2 subsequently introduced or the decision is clearly erroneous); *Moore v. City of Las Vegas*, 92  
3 Nev. 402, 405, 551 P.2d 244 (1976) (reconsideration appropriate where “new issues of fact or  
4 law are raised supporting a ruling contrary to the ruling already reached.”).

5 Clarification and reconsideration is particularly appropriate in this case, which is likely to  
6 be appealed to the Nevada Supreme Court, in that public policy directs that matters be heard on  
7 the merits whenever possible, and with a complete record before the court. *See, e.g., Schulman*  
8 *v. Bongberg-Whitney Elec., Inc.*, 98 Nev. 226, 228, 645 P.2d 434, 435 (1982).

9 III.

10 LEGAL ARGUMENT

11 A. *The Plain Language of NRS 116.3116 and Nevada Law Do Not Permit An Illogical*  
12 *Interpretation of NRS 116.3116.*

13 The Order did not address whether the Court reached this ruling based upon the plain  
14 language of the statute. *See* Exhibit A. However, the Court must give a clear and unambiguous  
15 statute its plain meaning, unless doing so violates the spirit of the act. *D.R. Horton, Inc. v.*  
16 *Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 468, 476, 168 P.3d. 731, 737  
17 (2007). It is well established in Nevada that the words in a statute, “should be given their plain  
18 meaning unless this violates the spirit of the act.” *State Dep’t of Ins. v. Humana Health, Ins.*,  
19 112 Nev. 356, 360 (1999) (quoting *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648 (1986)).  
20 When interpreting the plain language of a statute, Nevada courts “presume that the Legislature  
21 intended to use words in their usual and natural meaning.” *McGrath v. Dep’t of Public Safety*,  
22 123 Nev. 120, 123, 159 P.3d 239, 241 (2007). In doing so, the Court must consider a statute’s  
23 provisions as a whole, reading them “in a way that would not render words or phrases  
24 superfluous or make provisions nugatory.” *S. Nev. Homebuilders Ass’n v. Clark County*, 121  
25 Nev. 446, 339, 117 P.3d 171, 173 (2005) (quotation omitted). Meaningless or unreasonable  
26 results should be avoided by courts when interpreting statutes. *Matter of Petition of Phillip*  
27 *A.C.*, 122 Nev. 1284, 1293 (2006). As such, “where a statute is susceptible to more than one  
28 interpretation it should be construed in line with what reason and public policy would indicate

1 the legislature intended.” *County of Clark, ex rel. Univ. Med. Ctr. V. Upchurch*, 114 Nev. 749,  
2 753, 961 P.2d 754, 757 (1998) (quotation omitted). Moreover, “when the legislature has  
3 employed a term or phrase in one place and excluded it in another, it should not be implied  
4 where excluded.” *Coast Hotels & Casinos, Inc. v. Nev. State Labor Comm’n*, 117 Nev. 835,  
5 841, 34 P.3d 546, 550 (2001).

6 Here, pursuant to the plain language of NRS Chapter 116 and the important policy  
7 considerations behind these statutes, Plaintiff’s interpretation of NRS 116.3116 is without merit.  
8 While the super-priority lien authorized by NRS 116.3116 has one material *temporal* limitation,  
9 there is no *numerical* limit capping the lien. Moreover, fees and costs of collection are clearly  
10 intended to be considered as part of the super-priority lien. Accordingly, HOAs are entitled to  
11 collect fees and costs of collection as a portion of the super-priority lien.

12 1. **Assessments Enforceable Under NRS 116.3116 and Given Super Priority**  
13 **Status Include All Reasonable Collection Costs and Fees Relating to the**  
14 **Relevant Nine Month Period.**

15 Pursuant to NRS 116.3116, HOAs have a lien on real property to recover  
16 assessments owed by delinquent homeowners, a portion of which has a superior position over  
17 even a first deed of trust recorded before the delinquency. Nevada law is clear that the  
18 component portions of the super-priority lien include both common expenses and multiple other  
19 charges and fees that are also deemed to be “enforceable as assessments under this section [NRS  
20 116.3116]” unless said charges are restricted by a community HOA’s governing documents.

21 NRS 116.3116 is titled “Liens against units for assessments” and states that:

- 22 1. **The Association has a lien on a unit for** any construction  
23 **penalty that is imposed against the unit’s owner pursuant to**  
24 **NRS 116.310305, any assessments against that unit or any**  
25 **finances imposed against the unit’s owner from the time the**  
26 **construction penalty, assessment or fine becomes due. Unless**  
27 **the declaration provides otherwise, any penalties, fees,**  
28 **charges, late charges, fines and interest charged pursuant**  
**to paragraphs (j) to (n), inclusive, of subsection 1 of NRS**  
**116.3102 are enforceable as assessments under this section.**  
If an assessment is payable in installments, the full amount of  
the assessment is a lien from the time the first installment  
thereof becomes due.

- 1                   2. A lien under this section . . . is also prior to all security  
2                   interests described in paragraph (b) [“a first security interest  
3                   on the unit recorded before the date on which the assessment  
4                   sought to be enforced became delinquent . . .”] to the extent of  
5                   any charges incurred by the Association on a unit pursuant to  
6                   NRS 116.310312 and to the extent of the assessments for  
7                   common expenses based on the periodic budget adopted by  
8                   the Association pursuant to NRS 116.3115 which would  
9                   have become due in the absence of acceleration during the 9  
10                  months immediately preceding institution of an action to  
11                  enforce the lien . . .

12       NRS 116.3116 (emphasis added). Thus, the plain language describing a lien for assessments  
13       under the statute clearly incorporates each of the following component assessments into the lien  
14       amount “unless the declaration provides otherwise:” (1) any assessment levied against the unit  
15       from the time the assessment comes due, (2) penalties, (3) fees, (4) charges, (5) late charges, (6)  
16       fines, and (7) interest. There can be no doubt that all charges itemized in NRS 116.3116(1) are  
17       meant to be a part of an HOA’s lien for assessments where the statute clearly denotes that said  
18       charges are “enforceable as assessments under this section” – a section aptly titled “Liens  
19       against units for assessments” by the Nevada Legislature in the Nevada Revised Statutes. NRS  
20       116.3116 (*see* statute section title) (emphasis added). Despite this, the Order states that  
21       “penalties, fees, charges, late charges, fines and interest are not actual ‘assessments.’” *See*  
22       Exhibit A, pg. 3, ln 25-26. Yet, the plain language of the statute unequivocally established that  
23       these are “assessments.” Indeed, NRS 116.3116(7) goes on to state that collection costs and  
24       attorney’s fees are recoverable as part of the lien. Thus, not only does NRS 116.3116 grant an  
25       association an enforceable lien for assessments, which includes assessments for common  
26       expenses, penalties, fees, charges, interest, attorney’s fees, and costs of suit, but Nevada law  
27       additionally deems the super-priority portion of the lien to be “prior to all security interests.”

28                   Importantly, subsection (2) of NRS 116.3116 does not set a numerical cap on the  
29       super-priority lien based upon any particular HOA’s assessments charged to homeowners. The  
30       only material proviso placed on the amount of the HOA’s super-priority lien is that any  
31       assessment for common expenses “based on the periodic budget adopted by the Association  
32       pursuant to NRS 1116.3115” be limited to a *period* of “9 months preceding institution of an



1 action to enforce the lien.”<sup>2</sup> The portion of the HOA lien given super-priority status is defined  
2 with regard to a particular time period only – there is no mention in the statute of any numerical  
3 limitation or simple mathematical calculation. Indeed, if the Legislature wanted to define the  
4 super-priority lien by some simple mathematical calculation it could have done so simply by  
5 setting forth that mathematical calculation in the statute.

6 In addition, NRS 116.3115 defines assessments for common expenses as those  
7 “made *at least* annually.” NRS 116.3115 sets forth several different categories of common  
8 expenses that are to be included in the assessments, many of which do not apply equally to all  
9 owners. These categories include:

- 10 1. Common expenses for repair of limited common elements, Subsection 4(a);
- 11 2. Common expenses benefitting fewer than all of the units, Subsection 4(b);
- 12 3. Common expenses to pay the cost of insurance, Subsection 4(c);
- 13 4. Common expenses to pay a judgment, Subsection 5; and, most importantly,
- 14 5. **Common expenses caused by the misconduct of any unit’s owner**, Subsection 6.

15 NRS 116.3115. Clearly, if an owner fails to pay his or her assessments, that failure is  
16 misconduct. If the HOA incurs expenses in an effort to collect those unpaid assessments, under  
17 NRS 116.3115(6), those expenses are chargeable to the unit’s owner **as part of the association’s**  
18 **periodic budget under NRS 116.3115.** Because they are part of the HOA’s periodic budget  
19 under NRS 116.3115, they are included in the super priority portion of the HOA’s lien under  
20 NRS 116.3116(2).

21 **2. NRS 116.3116 is Broader than the UCIOA.**

22 “It is a well-known rule of statutory construction that words shall be given their  
23 plain meaning, unless to do so would clearly violate the evident spirit of the statute . . . unless  
24 from a consideration of the entire act it appears that some other intentment should be given to it.  
25 We cannot arbitrarily ignore plain language, but must be controlled by it, except in the instance

26  
27 <sup>2</sup> There is one other limiting proviso found outside of NRS 116.3116. NRS 116.31162(4) states that “[t]he  
28 association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of  
the Association . . . .” Thus, any portion of assessments for violation fines cannot, by definition (with some limiting  
exceptions), be incorporated into a super priority lien for assessments that could be the impetus for foreclosure.

1 mentioned.” *Ex parte Zwissig*, 178 P. 20, 21 (Nev. 1919) (emphasis added). Thus, where the  
2 intent of the Legislature or the evident spirit of the statute would be violated under a plain  
3 language interpretation of the statute, effect must be given to the intent of the Legislature and the  
4 spirit of the statute.

5 In this matter, Plaintiff has relied heavily on the UCIOA in support of its position,  
6 neglecting to note that *Nevada’s statute is materially different from the UCIOA*. In order to  
7 fully understand the intent of the Legislature and the spirit of NRS Chapter 116, it is important to  
8 look first at the UCIOA. The UCIOA was originally promulgated in 1982 by the National  
9 Conference on Commissioners on Uniform State Laws (“Uniform Law Commissioners” or  
10 “ULC”). The UCIOA is a comprehensive act that governs the formation, management, and  
11 termination of common interest communities. In 1991, Nevada adopted the UCIOA, with some  
12 changes, by enacting NRS Chapter 116.

13 Notably, the super-priority lien as provided in the UCIOA is much more limited  
14 than the actual super-priority lien adopted by Nevada. The super-priority lien in all three (3)  
15 versions of the UCIOA (1982, 1994 and 2008) is limited to the extent of “common expenses  
16 based on the periodic budget adopted by the Association pursuant to section 3-115(a).” *Nevada,*  
17 *however, specifically removed the limitation to subsection (a)* (which is Subsection 1 of NRS  
18 116.3115 in Nevada’s statutory format). Thus, common expenses for purposes of the super-  
19 priority lien under the UCIOA are limited to 3-115(a), while common expenses for purposes of  
20 the super-priority lien in Nevada includes *all* of NRS 116.3115. In other words, “common  
21 expenses” is much broader under the Nevada statute than it is under the UCIOA, and includes  
22 amounts assessed against a specific unit. Such common expenses, including those costs and fees  
23 caused from a unit owner’s misconduct, must be included in Nevada’s super-priority lien  
24 amount. Thus, by broadening the super-priority lien to include common expenses under all  
25 subsections of NRS 116.3116, the Nevada Legislature plainly intended to allow Nevada HOA’s  
26 and their attorneys or collection agencies to assess and recover as assessments the fees and costs  
27 of collection while enforcing the super-priority lien.

28 ///

1 ***B. The Order Fails to Consider Whether Its Interpretation of NRS 116.3116 Creates***  
2 ***Unreasonable or Absurd Results or Contradicts the Spirit of the Act.***

3 There is no discussion in the Order of whether Plaintiff's interpretation of NRS 116.3116  
4 would: (1) violate the spirit of the Act; or (2) produce unreasonable or absurd results. However,  
5 the answer to both of these questions is a resounding yes.

6 The obvious and undisputed public policy underlying the "super-priority" lien is to  
7 compensate HOAs for the unpaid assessments that are incurred prior to a lender foreclosure. As  
8 evidenced by the Affidavit of Debbie Kluska, which is attached hereto as **Exhibit "B"**,  
9 borrowers who are in default with their lenders simultaneously default on their HOA obligations,  
10 almost without exception. This results in unpaid assessments and neglected properties. *Id.* By  
11 giving priority to the HOA ahead of a lender's deed of trust, HOAs are able to pay bills,  
12 abandoned properties do not become blighted, and neighboring "good" homeowners who pay  
13 their bills are not subject to increased HOA fees. *Id.* Defendant Horizons (along with most  
14 other HOAs in Nevada) lacks the resources, staff, and ability to pursue collections on its own.  
15 Exhibit B. While Horizons possesses a statutory lien pursuant to NRS Chapter 116 on such  
16 assessments, it must take active steps to collect if it has any chance of recovering amounts that  
17 are past due. *Id.* As a result, without collection agencies to pursue these past due charges,  
18 HOAs would have little or no ability to enforce their rights to collect said charges from  
19 homeowners who do not pay voluntarily, thereby significantly increasing the costs to those  
20 homeowners who are not delinquent. *Id.*

21 As a result, Horizons has engaged Nevada Association Services, Inc. to pursue  
22 collections of unpaid assessments and penalties. Exhibit B. Collecting interest, late fees, and  
23 costs of collection as part of Nevada's super-priority lien is and has been common practice in the  
24 industry for years. *Id.* An integral part of the collection process is the recording of a notice of  
25 lien with the Clark County Assessor. *Id.* Such recordation provides notice of the super-priority  
26 lien to subsequent purchasers after foreclosure. *Id.*

27 The types of charges HOAs retain their collection agencies to collect often include many  
28 different categories of assessments for common expenses. Exhibit B. These assessments for

1 common expenses can include special assessments for repairs to common areas, charges for late  
2 payment of assessments, and fees or charges for the use, rental or operation of the common  
3 elements. *Id.*

4 In addition, to pursue collection, HOAs and their collection agencies are forced to incur  
5 out of pocket costs, such as publication costs in advance of a foreclosure sale. Exhibit B. The  
6 out of pocket costs for publication and posting in advance of a foreclosure in Las Vegas are  
7 approximately \$500.00. Depending on the monthly amount due from the homeowner, the  
8 publication costs alone often exceed the “nine times” super-priority lien calculation proposed by  
9 Plaintiff in this case. *Id.* As a result, using the calculation proposed by the Plaintiff in this case,  
10 a HOA would never bother to pursue collection through a collection agency, as the out-of pocket  
11 costs alone would exceed the amount recoverable. *Id.*

12 Given the foregoing, if HOAs cannot recover reasonable collection costs, they will be  
13 effectively unable to pursue and collect from property owners who are in violation of the CC&Rs  
14 when there is a lender foreclosure. Exhibit B. As such, an “unreasonable” and “absurd” result is  
15 therefore created by the Order, which offers the conclusion that collection fees and costs are not  
16 assessments and the super-priority lien has “a maximum figure equaling 9 times the association’s  
17 regular, monthly (not annual) assessments.” *See* Exhibit A, pg 4, ln 21-24.

18 The result of the Order provides for an inherently inequitable result from a given HOA’s  
19 perspective. Consider, for example, one HOA where the total common expenses that would  
20 have become due in the 9 month period immediately preceding the first action to enforce the lien  
21 totaled \$95, excluding collection fees and costs and another HOA where the total common  
22 expenses that would have become due in the 9 month period immediately preceding the first  
23 action to enforce the lien totaled \$950, excluding collection fees and costs. Under the Order, the  
24 relatively “poor” HOA will be able to recover only \$95, whereas the relatively “rich” HOA will  
25 be able to recover \$950. Although it is highly unlikely even the “rich” neighborhood could even  
26 absorb the prohibitive costs of collecting on such limited amounts, the “poor” HOA would never  
27 be able to afford the cost of collecting from a delinquent homeowner. Indeed, no HOA could  
28 possibly hope to recover its collection fees and out of pocket costs for a mere \$95. It is fiscal

1 nonsense to expect an HOA to pay several thousand dollars out of its own pocket to collect only  
2 a few hundred dollars in assessments. This could not possibly have been the result envisioned by  
3 the Legislature when it enacted NRS 116.3116.

4 Indeed, the Order's interpretation of the statute would encourage poor public policy. If  
5 costs of collection were not recoverable as part of a super-priority lien, the Legislature would  
6 have created a disincentive for HOA community managers and collection agencies to attempt  
7 collection of delinquent assessments. Instead, the only alternative for a HOA would be to file a  
8 judicial foreclosure action in accordance with NRS 116.3116(7), which specifically allows for  
9 "costs and reasonable attorney's fees" as part of the recovery.<sup>3</sup> Exhibit B. However, this would  
10 necessarily require (1) the hiring of an attorney; (2) the filing of a civil action; and (3) a race to  
11 the courthouse between the HOA and the trust deed holder for the borrower which is in default.  
12 *Id.* The obvious result would be a flood of civil lawsuits and a flood of foreclosures—results  
13 that are plainly contrary to the public purpose of the statute itself—that might otherwise be  
14 avoided. Such a ridiculous and obscene result promises to increase the number, speed, and cost  
15 of foreclosures at a time when Nevada's real estate market (and its property values) are hanging  
16 on by a thread. Nevada law strictly forbids such a nonsensical statutory interpretation. *See*  
17 *Upchurch*, 114 Nev. at 753, 961 P.2d at 757 ("where a statute is susceptible to more than one  
18 interpretation it should be construed in line with what reason and public policy would indicate  
19 the legislature intended." Accordingly, fees and costs of collection (without a numerical cap)  
20 clearly must have been intended to be part of the HOA's super-priority lien.

21 Horizons' concerns are particularly important and significantly impact the role of HOAs  
22 during these difficult economic times. With more foreclosures in Nevada than in any other state,  
23 HOAs have stepped up to maintain homes that have fallen into disrepair. Exhibit B. Dead or  
24 overgrown landscaping is a common problem, as are unattended pools rife with algae. *Id.*  
25 Poorly kept residences create neighborhood blight that depresses surrounding property values –

26  
27 <sup>3</sup> Interestingly, Plaintiff's counsel has argued in many cases that the filing of a "civil action" is required to even  
28 recover any part of a super-priority lien, simply because the words "civil action" are used in NRS 116.3116(7). No  
court has adopted this argument. Of course, if a "civil action" is not required to recover any part of a super-priority  
lien, it follows that subsection 7 expressly allows for the recovery of reasonable fees and costs.

1 values that have already been devastated by the worst housing market downturn in Nevada  
2 history. *Id.* If HOAs are unable to recover the costs of collection, in addition to the delinquent  
3 assessments themselves, then HOAs have no ability to collect the delinquent assessments, and  
4 their task of maintaining these communities becomes much more daunting. *Id.*

5 For instance, the Winokur law review article relied upon by Plaintiff sets forth some of  
6 the important policy implications in granting HOAs the ability and the means to collect past due  
7 assessments. Indeed, the article notes that “the financial strength of an association often bears  
8 strongly on the value of the housing units in which both lenders and residents have invested.”  
9 Winokur, *Meaner Lienor Community Associations: The “Super Priority” Lien and Related*  
10 *Reforms Under the Uniform Common Interest Ownership Act*, 27 Wake Forest L. Rev. 353, 359  
11 (1992). However, “[i]n hard economic times, assessment collection typically becomes both  
12 more important and less effective.” *Id.* at 357. Indeed, in difficult economic times—the current  
13 Nevada foreclosure crisis being a perfect example—foreclosures and abandonment of units  
14 severely deplete the assessment base, making it exceedingly difficult for HOAs to maintain  
15 common elements. *See id.* at 360. In fact, when “assessments go uncollected, . . . the defaulting  
16 homeowner’s share of community costs to maintain common elements currently falls on those  
17 least responsible for the default—neighboring homeowners who regularly pay their assessments,  
18 remain in good standing, and constitute the community association.” *Id.* at 359. In other words,  
19 when delinquent homeowners fail to pay assessments due the HOA, the resultant burden and  
20 expense will fall on those “good” homeowners, unless the HOA has a means to recover the  
21 delinquent assessments.<sup>4</sup>

22 The means to recover the delinquent assessments is the super-priority lien established by  
23 the Nevada Legislature. However, “since individual delinquencies are often small components  
24 of a substantial total of assessments owed by all residents in a community, *enforcement of*

25  
26 <sup>4</sup> It is also important to note that, although the “good” homeowners bear this financial responsibility, they have no  
27 control over the financial worthiness of their neighbors. The financial institutions, however, do. Financial  
28 institutions review (or at least were supposed to have reviewed) the income and credit worthiness of a prospective  
purchaser before making the decision to lend the purchase price. Having made a poor decision, the financial  
institutions should not now be able to impose the entire responsibility for that poor decision on the “good”  
homeowners.

1 *assessment delinquencies will often not take place if the association lacks recourse to recover*  
2 *its expenses.”* Winokur, *supra*, at 363 (emphasis added). In other words, if an HOA is permitted  
3 to recover only a certain amount of its delinquent assessments without the ability to recover  
4 collection costs above that number, the HOA simply will not have the means to recover the past  
5 due assessments, unless, of course, the HOA passes those substantial collection costs onto the  
6 law-abiding homeowners who pay their assessments.

7 In addition, in rendering this decision, it appears that the Court gave no weight to  
8 *Hudson House Condominium Ass’n, Inc. v. Brooks*, 611 A.2d 862, 865 (Conn. 1992), the only  
9 legal authority on point fashioned by a state supreme court.<sup>5</sup> *Hudson House* goes precisely to  
10 the spirit and purpose of the legislation as a whole and the unreasonable and absurd results  
11 created by “fashioning a bow without a string or arrows.” The Connecticut Supreme Court  
12 stated:

13 In construing a statute, we assume that “the legislature  
14 intended to accomplish a reasonable and rational result.”  
15 Section 47-258(a) creates a statutory lien for delinquent  
16 common expense assessments. Section 47-258(j) authorizes  
17 the foreclosure of the lien thus created. Section 47-258(b)  
18 provides for a limited priority over other secured interests for  
19 a portion of the assessment accruing during the six month  
20 period preceding the institution of the action. Section 47-  
21 258(g) specifically authorizes the inclusion of the costs of  
22 collection as part of the lien.

23 *Since the amount of monthly assessments are, in most*  
24 *instances, small, and since the statute limits the priority*  
25 *status to only a six month period, and since in most*  
26 *instances, it is going to be only the priority debt that in fact*  
27 *is collectible, it seems highly unlikely that the legislature*  
28 *would have authorized such foreclosure proceedings*  
*without including the costs of collection in the sum entitled*  
*to a priority.*

*To conclude that the legislature intended otherwise would*  
*have that body fashioning a bow without a string or arrows.*

611 A.2d at 866 (emphasis added) (citations omitted).

From a purely logical standpoint, it is absurd to imagine the Nevada Legislature granted

<sup>5</sup> If the Court did not give *Hudson House* weight because it involved a judicial foreclosure, this is a distinction without a difference.

1 HOAs a super-priority lien with no practical ability to enforce it. The numerical maximum set  
2 forth in the Order, however, comes to just that conclusion. Indeed, if an HOA bills \$40 per  
3 month<sup>6</sup> to each homeowner, according to the Order, the maximum of assessments, which may  
4 include collection costs and fees, that the HOA could recover is \$360.<sup>7</sup> Notwithstanding the  
5 blatant unfairness the numerical maximum concept imparts on HOAs with smaller assessments,  
6 it is simply not possible to complete (or even begin) the collection process for a mere \$360.

7 Indeed, the out of pocket costs to publish and post prior to foreclosure exceed the  
8 recoverable amount under such a scenario. Therefore, should that HOA decide to pursue  
9 collection, it would be forced to pay more in collection costs than it would ever recover, and  
10 pursuit of that collection would be cost prohibitive. The Nevada Legislature simply could not  
11 have meant to give HOAs a lien with no means to enforce it—i.e., a bow without a string or  
12 arrows. Indeed, if that was the intent of the Legislature, why did it bother establishing a super-  
13 priority lien in the first place?

14 Thus, the numerical maximum simply is not logical from a practical standpoint. Instead,  
15 to be able to actually recover assessments owed by a delinquent homeowner to the HOA, the  
16 HOA must also have the ability to recover its reasonable collection costs. In making this  
17 decision, the Court failed to take into account the practical results of the interpretation of NRS  
18 116.3116, even though those results were effectively undisputed by Plaintiff during briefing.  
19 Accordingly, Horizons requests the Court to consider whether the Order's interpretation of NRS  
20 116.3116 creates unreasonable or absurd results, or contradicts the spirit of the act, as required  
21 by *Las Vegas Police Protective Ass'n*, 122 Nev. at 242, 130 P.3d at 191.

22 ///

23 ///

24 <sup>6</sup> Another problem with setting a numerical maximum based on a multiple of 9 times *the* "monthly assessment  
25 amount" is the Arbitrator fails to define what is "the monthly assessment amount." NRS 116.3115 provides many  
26 different manners in which a homeowner is assessed for common expenses. NRS 116.3115(1) mandates all HOAs  
to create an "annual assessment," but the manner in which this "annual assessment" is collected is determined by the  
HOA. Some associations collect this "annual assessment" yearly or quarterly.

27 <sup>7</sup> The blatant unfairness of this numerical cap is readily apparent when one considers Regulation No. R199-09  
28 recently adopted by the Commission, which establishes the amount of reasonable collection costs. *See Exhibit "C"*,  
which is a true and correct copy of Regulation R199-09.



1 *C. The Super-Priority Lien Must Be Read In Context, Including the Broad Reference to*  
2 *NRS 116.3115.*

3 In the Order, the Court does not consider a significant difference between the UCIOA  
4 and NRS Chapter 116. The relevant super-priority lien language in Nevada states the lien has a  
5 priority “to the extent of the assessments for common expenses based on the periodic budget  
6 adopted by the association pursuant to NRS 116.3115 . . . .” NRS 116.3116(2). In stark contrast,  
7 the Uniform Acts (the 2008 version *and* prior versions) limit the super-priority lien to the extent  
8 of common expenses adopted “pursuant to Section 3-115(a).” The Nevada statute is broader,  
9 however, and limits the super-priority lien only to common expenses adopted pursuant to all of  
10 NRS 116.3115, with no subsection limitation. *In other words, “common expenses” include*  
11 *assessments imposed under all of NRS 116.3115, not just NRS 116.3115(1), which means that*  
12 *assessments are not merely limited to the equivalent of nine monthly assessment payments by a*  
13 *prototypical homeowner.*

14 However, contrary to the Order’s conclusion that the language “to the extent of” means  
15 there is a numerical maximum to the super-priority lien, NRS 116.3115, broad as it is,  
16 demonstrates the statute contains no such maximum. The key question in the super-priority lien  
17 analysis is “to the extent of” what? The answer is to the extent of assessments for common  
18 expenses based on all of NRS 116.3115, not just NRS 116.3115(1).

19 Notably, the UCIOA, upon which Plaintiff relies so heavily, is much more limited than  
20 the version that was actually adopted by Nevada. The super-priority lien in all three (3) versions  
21 of the UCIOA (1982, 1994, 2008) is stated as to the extent of “common expense assessments  
22 based on the periodic budget adopted by the association pursuant to Section 3-115(a).”  
23 (emphasis added). Nevada, however, specifically removed the reference to subsection (a) (which  
24 would be subsection (1) as set forth in Nevada’s statute). Thus, while common expenses for  
25 purposes of the super-priority lien under the UCIOA are limited to the extent of 3-115(a),  
26 common expenses for purposes of the super-priority amount in Nevada include *all* of NRS  
27 116.3115. In other words, the calculation of “assessments” within the super-priority period is  
28 much broader under the Nevada statute than it is under the Uniform Act and includes specific

1 amounts assessed against a specific unit during that time period, such as unit specific utility costs  
2 pursuant to NRS 116.3115(4)(c) and specific costs of misconduct pursuant to NRS 116.3115(6).  
3 The Nevada super-priority lien therefore exists to the extent of such common expenses, including  
4 those costs and fees caused from a unit owner's misconduct.

5 NRS 116.3115 has a rather broad formulation of assessments for common expenses.  
6 Generally, other than those "assessments under subsections 4 to 7," common expenses must be  
7 assessed against all units and the association must establish adequate reserves. NRS  
8 116.3115(2). Those "assessments under subsections 4 to 7" include, e.g., amounts assessed for  
9 maintenance and restoration under subsection (4)(a), common expenses benefiting fewer than all  
10 units under subsection 4(b), and costs of insurance and utilities under subsection 4(c).  
11 Significantly, NRS 116.3115(6) states "[i]f any common expense is caused by the misconduct of  
12 any unit's owner, the association may assess that expense exclusively against his or her unit."  
13 NRS 116.3115(6). Undoubtedly, a failure to pay amounts due and owing to the HOA is  
14 considered misconduct on the part of a homeowner and therefore costs and fees accrued due to  
15 this misconduct are chargeable to that particular unit.

16 Therefore, because the super-priority lien under NRS 116.3116 exists "*to the extent of*  
17 *the assessments for common expenses* based on the periodic budget adopted by the association  
18 *pursuant to NRS 116.3115*," the super-priority lien exists to the extent of those common  
19 expenses included in **ALL** of NRS 116.3115. The limitation "to the extent of" does not specify  
20 or refer to some arbitrary numerical limitation based upon one subsection of NRS 116.3115.  
21 Instead, "to the extent" of must be read in the context and language of the whole sentence, *i.e.*,  
22 "to the extent" of those assessments for common expenses defined in NRS 116.3115 that would  
23 have become due in the relevant nine-month period.<sup>8</sup> *See Karcher Firestopping v. Meadow*  
24 *Valley Contractors, Inc.*, --- Nev. ---, 204 P.3d 1262, 1263 (2009) ("Plain meaning may be

25  
26 <sup>8</sup> By way of another example, HOAs at high-rise condominium developments typically have one electrical meter,  
27 the charges from which are paid by the HOA. Such a charge is unquestionably a common expense. Indeed, under  
28 NRS 116.3115(4)(c), the HOA must assess the costs of this utility proportionally based on usage, in which these  
HOAs do in fact bill, on a monthly basis, the specific utility costs to the specific owner. Because this utility charge  
is yet another common expense that is assessed under NRS 116.3115, it too would be included in the super-priority  
lien.

1 ascertained by examining the context and language of the statute as a whole.”).

2 Given the foregoing, the broad Nevada super-priority lien exists “to the extent” of  
3 common expenses as listed in all of NRS 116.3115. The plain language of the super-priority lien  
4 does not set forth a numerical maximum but, instead, a limitation as set forth in NRS 116.3115.  
5 Because Nevada’s super-priority lien broadly relates to all of NRS 116.3115, as opposed to only  
6 the first subsection in the Uniform Acts, the Nevada Legislature adopted a broad super-priority  
7 lien that includes all costs of collection. Horizons therefore requests the Court to reconsider the  
8 Order as to a numerical maximum to Nevada’s super-priority lien, so that amounts arising under  
9 NRS 116.3115 during the relevant nine month period (which would include reasonable  
10 collection costs) are included in the super-priority lien.

11 ***D. Legislative History Does Not Support a Decision by the Legislature to Exclude***  
12 ***Collection Fees and Costs.***

13 Plaintiff noted there have been several proposed amendments to NRS 116 that have not  
14 passed. Plaintiff argued the fact that these amendments have not passed is evidence that the  
15 Legislature does not intend fees and costs of collection to be included in the super-priority lien. This  
16 is a flawed argument, however, foremost because the Legislature’s decision not to pass a bill is not  
17 controlling here. Furthermore, and along those same lines, the proposed amendments made multiple  
18 changes to the statute and there is no indication in the record that the failure to enact these  
19 changes was in any way related to the issues before this Court. In fact, when the Legislature  
20 was considering the most recently proposed amendment to this statute, AB 174, it was  
21 undoubtedly aware of the *Korbel* decision and the fact that at least some district court judges have  
22 held the fees and costs of collection are included in the super-priority lien. For example, in the  
23 April 15, 2011 Senate Committee on Judiciary, Michael Buckley stated, “There is a decision  
24 in the Eighth Judicial District Court that attorney's fees and collection costs are part of the  
25 super priority.” *See Exhibit “D”*, p. 16, which is a true and correct copy of the Minutes of the  
26 Senate Committee on Judiciary.

27 Similarly, with regard to AB 174, Plaintiff contends that Senator Allison Copenig  
28 proposed this bill to change the current law to allow for inclusion of fees and costs of collection

1 in the super-priority lien. This is simply not the case. In discussing AB 174, Senator Copenig  
2 states, "These are the costs a collection company can charge. A homeowners' association can  
3 retain an attorney to foreclose on a home, for example, and it is part of the super-priority lien. *We*  
4 *are not changing law.*" See Exhibit D, p.8 (emphasis added).

5 In addition to the proposed amendments cited by Plaintiff, AB 448 proposed amending the  
6 statutory super priority language to read:

7 The lien is also prior to all security interests described in paragraph  
8 (b) but only in an amount not to exceed charges incurred by the  
9 association on a unit pursuant to NRS 116.310312 plus an amount  
10 not to exceed *nine times the monthly assessment* for common  
expenses based on the periodic budget adopted by the association  
pursuant to NRS 116.3115 which is in effect at the time of the  
commencement of a *civil action* to enforce the association's lien . . .

11 See Exhibit D, p.43-44. This amendment appears to have been designed to change NRS 116.3116  
12 to more closely match Plaintiff's proposed interpretation of that statute. Significantly, AB 448  
13 was not passed.

14  
15 *E. The Commission Recently Adopted an Advisory Opinion Supporting Horizon's*  
16 *Interpretation of the Super-Priority Lien.*

17 On December 8, 2010, the CCIC issued its advisory opinion ("Advisory Opinion") that  
18 specifically concludes that all reasonable costs of collecting are part of the super-priority lien.  
19 The Advisory Opinion explicitly rejected a numerical maximum for the super-priority lien:

20 The argument has been advanced that limiting the super priority to  
21 a finite amount . . . is necessary in order to preserve this  
22 compromise and the willingness of lenders to continue to lend in  
common interest communities. The State of Connecticut, in 1991,  
NCCUSL, in 2008, as well as "Fannie Mae and local lenders" have  
all concluded otherwise.

23 Accordingly, both a plain reading of the applicable provisions of  
24 NRS §116.3116 and the policy determinations of commentators,  
25 the state of Connecticut, and lenders themselves support the  
26 conclusion that associations should be able to include specified  
costs of collecting as part of the association's super priority lien."

27 See Exhibit "E", which is a true and correct copy of the Advisory Opinion. The Nevada  
28 Supreme Court has made it clear that courts are to give "great deference" to administrative

1 interpretation. *Imperial Palace*, 108 Nev. at 1067, 843 P.2d at 818; *DaimlerChrysler Services*,  
2 121 Nev. 541, 119 P.3d 135; *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 101 127 P.3d 1057  
3 (1070) (2006) (citing *Chevron U.S.A. v. Not. Res. Def. Council*, 467 U.S. 837 (1984)). Indeed,  
4 particularly for pure questions of statutory interpretation, courts should defer to agency  
5 interpretations. *See, e.g., Human Soc’y of U.S. v. Locke*, \_\_\_ F.3d \_\_\_, 2010 WL 4723195, at 9  
6 (9<sup>th</sup> Cir. 2010) (“If a statute is ambiguous, and if the implementing agency’s construction is  
7 reasonable, *Chevron* requires a federal court to accept the agency’s construction of the statute,  
8 even if the agency’s reading differs from what the court believes is the best statutory  
9 interpretation.” (quoting *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S.  
10 967, 980 (2005))).

11 The conclusion reached by the CCIC in issuing its Advisory Opinion clearly  
12 demonstrates the intent of the CCIC to allow recovery of fees and collection costs where all other  
13 assessments accruing during the relevant time period remain unpaid. Accordingly, the following  
14 amounts may be included as part of the super-priority lien amount, to the extent the same relate  
15 to the unpaid 6 or 9 months of super priority assessments: (a) interest permitted by NRS  
16 116.3115, (b) late fees or charges authorized by the declaration in accordance with NRS  
17 116.3102(1)(k), (c) charges for preparing any statements of unpaid assessments pursuant  
18 to NRS 116.3102(1)(n) and (d) the “costs of collecting” authorized by NRS 116.310313. Exhibit  
19 E, CCIC Advisory Opinion, p.14. Thus, when the CCIC wrote that the “costs of collecting”  
20 may be included as part of the super-priority lien, the CCIC did so with the express  
21 contemplation that such “costs of collecting” would be part of the SPL, even where there are “6 or  
22 9 months of super priority assessments” that are unpaid.

23 Moreover, the CCIC Advisory Opinion explicitly rejected the position this Court adopted  
24 in the Order, stating “... both a plain reading of the applicable provisions of NRS §116.3116 and  
25 the policy determinations of commentators, the state of Connecticut, and lenders themselves  
26 support the conclusion that associations should be able to include specified costs of collecting  
27 as part of the association’s SPL.” *Id.*, p.12. Indeed, the CCIC Advisory Opinion contemplates  
28 only a temporal limitation on the amount of the HOA’s lien that is entitled to super priority:

1 [A]lthough the assessment portion of the SPL is limited to a finite  
2 number of months, because the assessment lien itself includes 'fees,  
3 charges, late charges, attorney fees, fines, and interest,' these  
4 charges may be included as part of the SPL amount.

5 Thus, the super-priority lien is that portion of the HOA lien that accrues during the finite number  
6 of months (nine months) preceding an action to enforce the lien. The super-priority lien itself is  
7 the only limitation on that portion of the HOA's lien entitled to super priority, and the super-  
8 priority lien is defined temporally, not numerically.

9 Because there is a reasonable opinion as to the statutory interpretation of NRS  
10 116.3116(2) that was issued by the agency tasked with enforcing NRS Chapter 116, the  
11 Nevada Real Estate Division, this opinion should be considered highly persuasive authority.  
12 The Nevada Supreme Court has made it clear that courts are to "give deference to  
13 administrative interpretations." *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 101, 127 P.3d  
14 1057, 1070 (2006) (citing *Chevron U.S.A. v. Nat. Res. Def. Council*, 467 U.S. 837 (1984)).

15 Finally, the Nevada Real Estate Division's Winter 2010 Publication referenced AB 204,  
16 which became effective 2009 and increased the time period of the SPL from six months to nine  
17 months. *See Exhibit "F"*, which is a true and correct copy of the Nevada Real Estate Division  
18 Winter 2010 Publication. In that publication, the division specifically characterized AB 204 as  
19 allowing for the collection of "related costs" in addition to assessments. *Id.* at 2. While not  
20 binding, it is extremely telling that the agency's own characterization of NRS 116.3116 indicates  
21 that collection costs are part of the super-priority lien.

22 Accordingly, Horizons respectfully requests the Court reconsider the CCIC's Advisory  
23 Opinion. Because this is a reasonable opinion as to the statutory interpretation of NRS  
24 116.3116(2) that was issued by the Nevada Real Estate Division, the same agency that  
25 administers the procedures for CC&R's and HOA's, this opinion should be considered highly  
26 persuasive authority. Indeed, the Nevada Supreme Court has explicitly stated deference must  
27 be given to agency interpretations. As such, Horizons requests reconsideration of the Order,  
28 namely that the super-priority lien contains no numerical cap.

///

1 ***F. The Reasoning of and Full Story Behind the Korbel Decision Should Be Reconsidered.***

2 Horizons respectfully request the Court reconsider the *Korbel* case for two (2) important  
3 reasons. First, while the *Korbel* order is short, it is undisputed that the arguments resulting in  
4 that order were detailed, fully argued, and regarding the same issues as occurring in this  
5 arbitration. Second, Ikon's counsel has involvement in *Korbel* and has initiated myriad lawsuits  
6 and arbitrations in an attempt to create some authority contrary to *Korbel*.

7 **1. The *Korbel* Ruling Was Fully Analyzed and Is The Industry Standard.**

8 Like here, the principal issue in *Korbel* was whether HOA collection fees  
9 survived foreclosure based upon the so-called "super priority" lien of NRS 116.3116. Indeed, in  
10 a hearing on September 18, 2006, Judge Glass noted the legal dispute over the interpretation of  
11 NRS 116 and specifically directed the parties submit additional briefing on the super-priority lien  
12 issue. *See* Minutes of September 18, 2006 Hearing, attached hereto as **Exhibit "G"**. The parties  
13 thereafter submitted detailed briefs, focusing solely on interpreting the super-priority lien in NRS  
14 116.3116(2). *See* Plaintiff's Brief, attached hereto as **Exhibit "H"** (stating the legal issue  
15 presented was what is the correct application of NRS 116.3116(2)); Defendant's Brief, attached  
16 hereto as **Exhibit "I"** (stating its brief supported its position regarding judicial interpretation of  
17 NRS 116.3116).

18 The court thereafter held a hearing on the matter on November 20, 2006,  
19 which was memorialized in an order dated December 22, 2006. *See* Minutes of November 20,  
20 2006 Hearing, attached hereto as **Exhibit "J"**; Order, attached hereto as **Exhibit "K"**. While the  
21 prevailing counsel who prepared the order did not prepare specific findings, it is clear from the  
22 ruling, after specific briefing as to a discrete issue, that Judge Glass held that collection fees and  
23 costs were recoverable as part of the super-priority lien, and that Mr. Korbel's legal challenge  
24 under NRS 116.3116 could not prevail. As a result, Judge Glass concluded the HOA was  
25 entitled to recover assessments for common expenses, late fees, interest, costs of collection, and  
26 a transfer fee. *See* Exhibit J. Mr. Korbel did not appeal Judge Glass's decision. Moreover,  
27 *Korbel* has become the recognized law in the industry, with acceptance of this precedent by the  
28 Federal Home Loan Mortgage Corporation ("Freddie Mac"). *See* **Exhibit "L"**.

1                   Therefore, the *Korbel* order's lack of specific reasoning for the judge's  
2 decision in no way detracts from the fact that Judge Glass actually and thoroughly considered the  
3 Nevada super-priority lien, obtained thorough briefing, analyzed the competing readings of the  
4 statute, heard oral argument and, only then, did she make a ruling that the super-priority lien did  
5 indeed contain collection costs, with no numerical maximum. Horizon therefore respectfully  
6 requests the Court reconsider the importance of this opinion, the only known district court  
7 decision involving Nevada's super-priority lien.

8                   **2. A Scheme of Forum and Plaintiff Shopping Ongoing Since *Korbel*.**

9                   Most frustrating about the current state of this case is that it has ruled based  
10 on an incomplete picture presented to this Court. In short, Plaintiff has engaged in a litigation  
11 strategy that has been specifically designed to keep this Court from considering all relevant legal  
12 arguments.

13                   Plaintiff is part of a group of real estate speculators who have bought  
14 numerous homes at foreclosure auctions with the intent of selling those parcels for a quick profit.  
15 This group of investors disagrees with the interpretation of NRS 116.3116 set forth in *Korbel* and  
16 has initiated a myriad of lawsuits and arbitrations in an attempt to create some authority contrary  
17 to *Korbel*. These lawsuits and arbitrations include federal debt collection practices lawsuits,  
18 state court lawsuits, and arbitrations against various HOAs, debt collection agencies, and law  
19 firms. Indeed, there has been a scheme of forum and plaintiff shopping ongoing since the *Korbel*  
20 decision was entered.

21                   Importantly, originally, and for years, the real estate investors named HOA  
22 collection companies as defendants in these matters, but just recently, they have changed their  
23 strategy and started pursuing claims against smaller, less solvent HOAs, like Horizons, to obtain  
24 favorable interpretations, or reach the Supreme Court with these opponents, while filibustering  
25 the parties—the HOA collection companies—that have been subject to multiple suits and have  
26 spent years litigating this issue. This legal maneuver allows these Plaintiffs to provide Courts,  
27 like here, with only a partial view of the issue and hide the entire intricate, sophisticated  
28 argument that has been developed over the last few years.



1 For instance, in January 2010, Plaintiffs' counsel, on behalf of these real  
2 estate investors, commenced a lawsuit in the Eighth Judicial District Court, Clark County,  
3 Nevada, Case No. A-10-609031-C (the "Higher Ground Lawsuit"), in which multiple HOA  
4 collection agencies were named as defendants. In that lawsuit, the issue revolved around this  
5 same central issue, which is whether HOAs were prohibited by NRS §116.3116 from collecting  
6 certain collection fees and costs as part of the super priority lien. The HOA collection companies  
7 filed a motion to dismiss pursuant to NRS §38.310 and NRCP 12(b)(1) that was granted and  
8 those real estate investors filed a Complaint with the State of Nevada Department of Business  
9 and Industry Real Estate Division on or about May 5, 2010, entitled *Higher Ground, LLC, et al.*  
10 *v. Nevada Association Services, Inc. et al.*, Nevada Real Estate Division Arbitration Case No.  
11 10-87 (the "Higher Ground Arbitration"). The Higher Ground Arbitration is a non-binding  
12 arbitration currently being heard by Arbitrator Persi Mishel (the "Arbitrator") under the  
13 procedures set forth by the Nevada Real Estate Division.

14 On March 21, 2011, the Arbitrator issued an "Interim Award Regarding  
15 Order Granting in Part and Denying in Part Motion for Summary Judgment on Claim of  
16 Declaratory Relief" (the "Interim Award"). Due to the important legal implications of the  
17 interpretation of the super-priority lien, the Arbitrator issued the Interim Order, *which was*  
18 *unopposed*, so that the parties could appeal to the District Court and then to the Nevada Supreme  
19 Court the following legal issues: (1) the extent collection costs are enforceable under Nevada's  
20 super-priority lien; and (2) whether an HOA is required to file a "civil action" before it may  
21 recover on its super-priority lien. The decision to issue the Interim Order had been desired by *all*  
22 the parties involved to ensure the Supreme Court could rule on this seminal issue, which would  
23 not only resolve the controversy between the parties, but also resolve the issue for the parties in  
24 the countless other lawsuits and arbitrations. *See* the Affidavit of Patrick Reilly, Esq. ("Reilly  
25 Affidavit") attached hereto as **Exhibit "M"**. The Higher Ground Arbitration included eighteen  
26 Claimants and eight Respondents, which were all represented by attorneys that had developed an  
27 expertise on this subject and developed sophisticated, developed, and nuanced arguments.

28 As the Reilly Affidavit states, *all* the parties in the Higher Ground

1 Arbitration—including the real estate investors—agreed to the issuance of an interim award and  
2 felt it was proper. However, once the real estate investors were before the district court against  
3 their long time adversaries—the HOA collection agencies—they had a sudden change of heart  
4 and fought to have the district court deny jurisdiction. *Id.* This new strategy coincided with its  
5 success against smaller HOAs like Horizons. After fighting HOA collection agencies for over  
6 two years, and without any notice to the HOA collection agencies, Plaintiff's counsel changed  
7 strategy and decided to just name HOAs, which lack resources in this economy and offer  
8 minimal resistance against them, to obtain favorable rulings on these seminal issues. For  
9 example, since this Order was issued in open court, the Higher Ground Defendants have been  
10 waving around the minute order as a ruling in their favor on these seminal issues. Meanwhile,  
11 these real estate investors continue to filibuster a ruling on the merits in the Higher Ground  
12 matter. It is apparent that these real estate investors, who have made hefty sums of money by  
13 flipping distressed foreclosure properties, are willing to engage in any conduct, be it lawful or  
14 not, to obtain rulings that will fatten their checkbooks.

15 Still, because the Nevada Supreme Court will ultimately rule on these two  
16 issues of law that are currently unsettled in Nevada, Horizons requests that the Court clarify or  
17 reconsider the Order so the Court has the opportunity to review a full and complete record that  
18 includes all arguments. Due to the important legal implications of the interpretation of the super-  
19 priority lien, this Court should hear all arguments on these two questions of statutory  
20 interpretation, especially since the matter will be appealed to the Nevada Supreme Court.

21 / / /

22 / / /

IV.

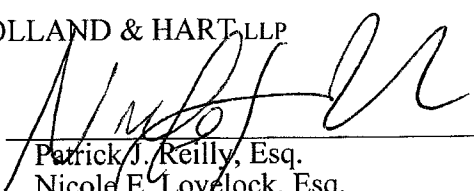
CONCLUSION

For these reasons, Horizons requests the Court reconsider that holding and, instead, rule that the super-priority lien, based on its plain language and public policy, must include costs of collection with no numerical limit. The current Order contradicts the broad language of the Nevada super-priority lien, particularly as related to NRS 116.3115, and causes absurd results, including granting an HOA a lien with absolutely no practical means of enforcement.

DATED this 6th day of February, 2012.

HOLLAND & HART LLP

By

  
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 27<sup>th</sup> day of February, 2012, I served a true and correct copy of the foregoing **MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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CLERK OF THE COURT

1 **APEN**  
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7 *Attorneys for Plaintiffs Nevada Association*  
8 *Services, Inc., RMI Management, LLC,*  
9 *and Angius & Terry Collections, LLC*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **IKON HOLDINGS, LLC, a Nevada limited**  
liability company,

13 Plaintiff,

14 vs.

15 **HORIZONS AT SEVEN HILLS**  
16 **HOMEOWNERS ASSOCIATION; and DOES**  
17 **1 through 10; and ROE ENTITIES 1 through**  
10 inclusive,

18 Defendants.

Case No. : A-11-647850-B  
Dept. No.: XIII

**APPENDIX OF EXHIBITS TO MOTION  
FOR CLARIFICATION OR, IN THE  
ALTERNATIVE, FOR  
RECONSIDERATION OF ORDER  
GRANTING SUMMARY JUDGMENT  
ON CLAIM OF DECLARATORY  
RELIEF**

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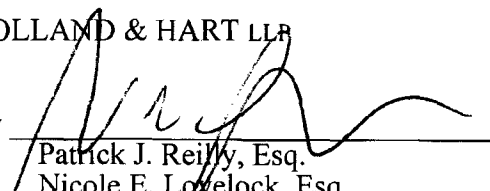
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10 DATED this 6 day of February, 2012.

12 HOLLAND & HART LLP

13 By

  
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Las Vegas, Nevada 89134

*Attorneys for Defendants  
Horizons At Seven Hills Homeowners  
Association*

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 6<sup>th</sup> day of February, 2012, I served a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James R. Adams, Esq.  
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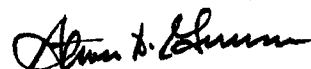
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# **EXHIBIT "A"**





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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

13 IKON HOLDINGS, LLC, )  
14 a Nevada limited liability company, )

15 Plaintiff,

16 vs.

17 HORIZONS AT SEVEN HILLS )  
18 HOMEOWNERS ASSOCIATION, )  
19 and DOES 1 through 10 and ROE )  
20 ENTITIES 1 through 10 inclusive, )


21 Defendant.

Case No. A-11-647850-C  
Dept No. 13

**NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that on the 1st day, January 2012, the attached  
23 Order was entered in the above referenced matter.

24 Dated this 20<sup>th</sup> day of January, 2012.

25   
26 ADAMS LAW GROUP, LTD.  
27 JAMES R. ADAMS, ESQ.  
28 Nevada Bar No. 6874  
ASSLY SAYYAR, ESQ.  
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**CERTIFICATE OF SERVICE**

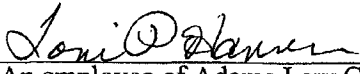
Pursuant to NRCP 5(b), I certify that I am an employee of the Adams Law Group, Ltd., and that on this date, I served the following **NOTICE OF ENTRY OF ORDER** upon all parties to this action by:

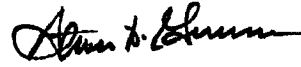
<input checked="" type="checkbox"/>	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Overnight Delivery
<input type="checkbox"/>	Certified Mail, Return Receipt Requested.

addressed as follows:

Eric Hinckley, Esq.  
Alverson Taylor  
Mortensen and Sanders  
7401 W Charleston Blvd.  
Las Vegas, NV 89117-1401

Dated the 20th day of January, 2012.

  
An employee of Adams Law Group, Ltd.

  
CLERK OF THE COURT

**ORD**  
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Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

IKON HOLDINGS, LLC, a Nevada limited liability  
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS  
ASSOCIATION, and DOES 1 through 10 and ROE  
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C  
Dept: No. 13

**ORDER**

This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as  
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)  
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy  
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief  
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in  
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the  
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and  
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether  
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS  
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which  
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a  
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is  
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the  
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the  
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and  
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,  
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have  
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and  
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the  
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)  
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position  
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super  
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as  
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in  
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted  
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'  
9 associations a general statutory lien against a homeowner's unit for (a) any  
10 construction penalty that is imposed against the unit's owner pursuant to NRS  
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed  
12 against the unit's owner from the time the construction penalty, assessment or fine  
13 becomes due (the "General Statutory Lien"). The homeowners' associations'  
14 General Statutory Lien is noticed and perfected by the recording of the associations'  
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim  
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory  
18 Lien is junior to a first security interest on the unit recorded before the date on which  
19 the assessment sought to be enforced became delinquent ("First Security Interest")  
20 except for a portion of the homeowners' association's General Statutory Lien which  
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,  
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),  
24 inclusive, are enforceable in the same manner as assessments are enforceable under  
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and  
26 interest are not actual "assessments," they may be enforced in the same manner as  
27  
28

1 assessments are enforced, i.e., by inclusion in the association's General Statutory  
2 Lien against the unit.

- 3 5. Homeowners' associations, therefore, have a Super Priority Lien which has priority  
4 over the First Security Interest on a homeowners' unit. However, the Super Priority  
5 Lien amount is not without limits and NRS §116.3116 is clear that the amount of the  
6 Super Priority Lien (which is that portion of a homeowners' associations' General  
7 Statutory Lien which retains priority status over the First Security Interest) is limited  
8 "to the extent" of those assessments for common expenses based upon the  
9 association's adopted periodic budget that would have become due in the 9 month  
10 period immediately preceding an association's institution of an action to enforce its  
11 General Statutory Lien (which is 9 months of regular assessments) and "to the extent  
12 of" external repair costs pursuant to NRS §116.310312.

- 13 6. The base assessment figure used in the calculation of the Super Priority Lien is the  
14 unit's un-accelerated, monthly assessment figure for association common expenses  
15 which is wholly determined by the homeowners association's "periodic budget," as  
16 adopted by the association, and not determined by any other document or statute.  
17 Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the  
18 assessments for common expenses based on the periodic budget adopted by the  
19 association pursuant to NRS 116.3115 which would have become due in the absence  
20 of acceleration during the 9 months immediately preceding institution of an action  
21 to enforce the lien..." means a maximum figure equaling 9 times the association's  
22 regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3  
23 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus  
24 external repair costs pursuant to NRS §116.310312.

- 25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"  
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which  
27 cannot be exceeded.  
28

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may  
2 be included within the Super Priority Lien, in no event can the total amount of the  
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'  
4 association's regular monthly assessment amount to unit owners for common  
5 expenses based on the periodic budget which would have become due immediately  
6 preceding the association's institution of an action to enforce the lien, plus external  
7 repair costs pursuant to NRS 116.310312.

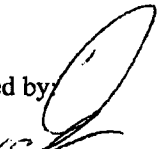
8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or  
9 the Federal National Mortgage Association require a shorter period of priority for the  
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be  
11 used in the calculation of the Super Priority Lien, except that notwithstanding the  
12 provisions of the regulations, that shorter period used in the calculation of the Super  
13 Priority Lien must not be less than the 6 months immediately preceding institution  
14 of an action to enforce the lien.

15 10. Moreover, <sup>the need for the institution of an actual civil action</sup> the Super Priority Lien can exist only if an "action" is instituted by the  
16 association to enforce its General Statutory Lien. The term "action" as used in NRS  
17 §116.3116(2) (as opposed the term "action" as contained in NRS §116.3116(7)), does  
18 not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,  
19 "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with  
20 the court).

21 IT IS SO ORDERED.

22   
23 DISTRICT COURT JUDGE

24 Date 

25 Submitted by 

26 JAMES R. ADAMS, ESQ.  
27 Nevada Bar No. 6874  
28 ASSLY SAYYAR, ESQ.

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11 Approved:  
12 NOT APPROVED

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## **EXHIBIT “B”**

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 PLAINTIFF HOLDINGS, LLC, a Nevada  
limited liability company,

12 Plaintiff,

13 vs.

14 HORIZONS AT SEVEN HILLS  
15 HOMEOWNERS ASSOCIATION; and  
16 DOES 1 through 10; and ROE ENTITIES 1  
through 10 inclusive,

17 Defendants.  
18

Case No. : A-11-647850-B  
Dept. No.: XIII

**DECLARATION IN SUPPORT OF  
MOTION FOR CLARIFICATION OR,  
IN THE ALTERNATIVE, FOR  
RECONSIDERATION OF ORDER  
GRANTING SUMMARY JUDGMENT  
ON CLAIM OF DECLARATORY  
RELIEF**

19  
20 I, DEBBIE KLUSKA, do hereby declare:

21 1. I am over eighteen years old and make this declaration on my own behalf and in  
22 support of Horizons At Seven Hills Homeowners Association's Motion for Clarification or, In  
23 the Alternative, For Reconsideration of order Granting Summary Judgment On Claim of  
24 Declaratory Relief.

25 2. I am the Office Supervisor of Nevada Association Services ("NAS"). If called  
26 upon as a witness, I could and would competently testify as to all of the matters stated herein.

27 3. NAS is a collection agency that works on behalf of several homeowners'  
28 associations ("HOAs") in the State of Nevada, including Defendant At Seven Hills

1 Homeowners Association ("Horizons"). Defendant Horizons, along with most other HOAs in  
2 Nevada, lack the resources, staff, and ability to pursue collections on its own.

3 4. Among other things, NAS pursues past due charges due to HOAs from  
4 delinquent homeowners, a task of particular importance in the foreclosure crisis currently  
5 overwhelming the Nevada housing market.

6 5. Without collection agencies to pursue these past due charges, HOAs would have  
7 little or no ability to enforce their rights to collect said charges from homeowners who do not  
8 pay voluntarily, thereby significantly increasing the costs to those homeowners who are not  
9 delinquent.

10 6. Collecting interest, late fees, and costs of collection as part of Nevada's super  
11 priority lien ("SPL") is and has been common practice in the industry for years.

12 7. Almost without exception, borrowers who are in default with their lenders  
13 simultaneously default on their HOA obligations. This results in unpaid assessments and  
14 neglected properties. By giving priority to the HOA ahead of a lender's deed of trust, HOAs  
15 are able to pay bills, abandoned properties do not become blighted, and neighboring "good"  
16 homeowners who pay their bills are not subject to increased HOA fees.

17 8. While Horizons possesses a statutory lien pursuant to NRS Chapter 116 on such  
18 assessments, it must take active steps to collect if it has any chance of recovering amounts that  
19 are past due. As a result, without collection agencies to pursue these past due charges, HOAs  
20 would have little or no ability to enforce their rights to collect said charges from homeowners  
21 who do not pay voluntarily, thereby significantly increasing the costs to those homeowners  
22 who are not delinquent.

23 9. As a result, Horizons has engaged NAS to pursue collections of unpaid  
24 assessments and penalties. Collecting interest, late fees, and costs of collection as part of  
25 Nevada's super-priority lien is and has been common practice in the industry for years. An  
26 integral part of the collection process is the recording of a notice of lien with the Clark County  
27 Assessor. Such recordation provides notice of the super-priority lien to subsequent purchasers  
28 after foreclosure.

1           10.     The types of charges HOAs retain their collection agencies to collect often  
2 include many different categories of assessments for common expenses. These assessments for  
3 common expenses can include special assessments for repairs to common areas, charges for  
4 late payment of assessments, and fees or charges for the use, rental or operation of the common  
5 elements.

6           11.     In addition, to pursue collection, HOAs and their collection agencies are forced  
7 to incur out of pocket costs, such as publication costs in advance of a foreclosure sale. The out  
8 of pocket costs for publication and posting in advance of a foreclosure in Las Vegas are  
9 approximately \$500.00. Depending on the monthly amount due from the homeowner, the  
10 publication costs alone often exceed the “nine times” super-priority lien calculation proposed  
11 by Plaintiff in this case. As a result, using the calculation proposed by the Plaintiff in this case,  
12 a HOA would never bother to pursue collection through a collection agency, as the out-of  
13 pocket costs alone would exceed the amount recoverable.

14           12.     Given the foregoing, if HOAs cannot recover reasonable collection costs, they  
15 will be effectively unable to pursue and collect from property owners who are in violation of  
16 the CC&Rs when there is a lender foreclosure.

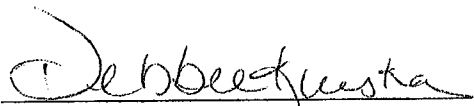
17           13.     Instead, the only alternative for a HOA would be to file a judicial foreclosure  
18 action in accordance with NRS 116.3116(7), which specifically allows for “costs and  
19 reasonable attorney’s fees” as part of the recovery. However, this would necessarily require  
20 (1) the hiring of an attorney; (2) the filing of a civil action; and (3) a race to the courthouse  
21 between the HOA and the trust deed holder for the borrower which is in default. The obvious  
22 result would be a flood of civil lawsuits and a flood of foreclosures—results that are plainly  
23 contrary to the public purpose of the statute itself—that might otherwise be avoided.

24           14.     Horizons’ concerns are particularly important and significantly impact the role  
25 of HOAs during these difficult economic times. With more foreclosures in Nevada than in any  
26 other state, HOAs have stepped up to maintain homes that have fallen into disrepair. Dead or  
27 overgrown landscaping is a common problem, as are unattended pools rife with algae. Poorly  
28 kept residences create neighborhood blight that depresses surrounding property values – values

1 that have already been devastated by the worst housing market downturn in Nevada history. If  
2 HOAs are unable to recover the costs of collection, in addition to the delinquent assessments  
3 themselves, then HOAs have no ability to collect the delinquent assessments, and their task of  
4 maintaining these communities becomes much more daunting.

5 I declare under the penalty of perjury under the laws of the State of Nevada that the  
6 foregoing is true and correct.

7 EXECUTED this 6th day of February, 2012, in Las Vegas, Nevada.

8  
9 By:   
10 DEBBIE KLUSKA

Holland & Hart LLP  
9555 Hillwood Drive, Second Floor  
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# **EXHIBIT “C”**

**ADOPTED REGULATION OF THE  
COMMISSION FOR COMMON-INTEREST  
COMMUNITIES AND CONDOMINIUM HOTELS**

**LCB File No. R199-09**

Effective May 5, 2011

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted-matter)~~ is material to be omitted.

AUTHORITY: §1, NRS 116.310313.

A REGULATION relating to common-interest communities; establishing provisions concerning fees charged by an association or a person acting on behalf of an association to cover the costs of collecting a past due obligation of a unit's owner; and providing other matters properly relating thereto.

**Section 1.** Chapter 116 of NAC is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in subsection 5, to cover the costs of collecting any past due obligation of a unit's owner, an association or a person acting on behalf of an association to collect a past due obligation of a unit's owner may not charge the unit's owner fees in connection with a notice of delinquent assessment pursuant to paragraph (a) of subsection 1 of NRS 116.31162 which exceed a total of \$1,950, plus the costs and fees described in subsections 3 and 4.*

*2. An association or a person acting on behalf of an association to collect a past due obligation of a unit's owner may not charge the unit's owner fees in connection with a notice*

--1--

Adopted Regulation R199-09

*of delinquent assessment pursuant to paragraph (a) of subsection 1 of NRS 116.31162 which exceed the following amounts:*

<i>(a) Demand or intent to lien letter .....</i>	<i>\$150</i>
<i>(b) Notice of delinquent assessment lien .....</i>	<i>325</i>
<i>(c) Intent to notice of default letter .....</i>	<i>90</i>
<i>(d) Notice of default.....</i>	<i>400</i>
<i>(e) Intent to notice of sale letter .....</i>	<i>90</i>
<i>(f) Notice of sale.....</i>	<i>275</i>
<i>(g) Intent to conduct foreclosure sale.....</i>	<i>25</i>
<i>(h) Conduct foreclosure sale.....</i>	<i>125</i>
<i>(i) Prepare and record transfer deed.....</i>	<i>125</i>
<i>(j) Payment plan agreement - One-time set-up fee.....</i>	<i>30</i>
<i>(k) Payment plan breach letter.....</i>	<i>25</i>
<i>(l) Release of notice of delinquent assessment lien.....</i>	<i>30</i>
<i>(m) Notice of rescission fee .....</i>	<i>30</i>
<i>(n) Bankruptcy package preparation and monitoring .....</i>	<i>100</i>
<i>(o) Mailing fee per piece for demand or intent to lien letter, notice of delinquent assessment lien, notice of default and notice of sale.....</i>	<i>2</i>
<i>(p) Insufficient funds fee.....</i>	<i>20</i>
<i>(q) Escrow payoff demand fee.....</i>	<i>150</i>
<i>(r) Substitution of agent document fee .....</i>	<i>25</i>



(s) Postponement fee.....	75
(t) Foreclosure fee .....	150

3. *If, in connection with an activity described in subsection 2, any costs are charged to an association or a person acting on behalf of an association to collect a past due obligation by a person who is not an officer, director, agent or affiliate of the community manager of the association or of an agent of the association, including, without limitation, the cost of a trustee's sale guarantee and other title costs, recording costs, posting and publishing costs, sale costs, mailing costs, express delivery costs and skip trace fees, the association or person acting on behalf of an association may recover from the unit's owner the actual costs incurred without any increase or markup.*

4. *If an association or a person acting on behalf of an association is attempting to collect a past due obligation from a unit's owner, the association or person acting on behalf of an association may recover from the unit's owner:*

- (a) Reasonable management company fees which may not exceed a total of \$200; and*
- (b) Reasonable attorney's fees and actual costs, without any increase or markup, incurred by the association for any legal services which do not include an activity described in subsection 2.*

5. *If an association or a person acting on behalf of an association to collect a past due obligation of a unit's owner is engaging in the activities set forth in NRS 116.31162 to 116.31168, inclusive, with respect to more than 25 units owned by the same unit's owner, the association or person acting on behalf of an association may not charge the unit's owner fees*

*to cover the costs of collecting a past due obligation which exceed a total of \$1,950 multiplied by the number of units for which such activities are occurring, as reduced by an amount set forth in a resolution adopted by the executive board, plus the costs and fees described in subsections 3 and 4.*

*6. For a one-time period of 15 business days immediately following a request for a payoff amount from the unit's owner or his or her agent, no fee to cover the cost of collecting a past due obligation may be charged to the unit's owner, except for the fee described in paragraph (q) of subsection 2 and any other fee to cover any cost of collecting a past due obligation which is imposed because of an action required by statute to be taken within that 15-day period.*

*7. As used in this section, "affiliate of the community manager of the association or of an agent of the association" means any person who controls, is controlled by or is under common control with a community manager or such agent. For the purposes of this subsection:*

*(a) A person "controls" a community manager or agent if the person:*

*(1) Is a general partner, officer, director or employer of the community manager or agent;*

*(2) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the community manager or agent;*

*(3) Controls in any manner the election of a majority of the directors of the community manager or agent; or*

*(4) Has contributed more than 20 percent of the capital of the community manager or its agent.*

*(b) A person "is controlled by" a community manager or agent if the community manager or agent:*

*(1) Is a general partner, officer, director or employer of the person;*

*(2) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the person;*

*(3) Controls in any manner the election of a majority of the directors of the person; or*

*(4) Has contributed more than 20 percent of the capital of the person.*

*(c) Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.*

# **EXHIBIT “D”**

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session  
April 15, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 7:10 a.m. on Friday, April 15, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Valerie Wiener, Chair  
Senator Allison Copenig, Vice Chair  
Senator Shirley A. Breeden  
Senator Ruben J. Kihuen  
Senator Mike McGinness  
Senator Don Gustavson  
Senator Michael Roberson

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Policy Analyst  
Bradley A. Wilkinson, Counsel  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

Orrin J. H. Johnson, Washoe County Public Defender's Office  
Keith Lee, Lawyers Title Insurance Corporation; First American Title Company  
Michael Buckley, Commission for Common-Interest Communities and  
Condominium Hotels  
Pamela Scott, Howard Hughes Corporation  
Renny Ashleman, City of Henderson

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CHAIR WIENER:

We will begin this work session with Senate Bill (S.B.) 103. The State Gaming Control Board brought S.B. 218 as the regulatory agency bill. Senate Bill 103 was brought, and everything from S.B. 103 was moved into S.B. 218, which was passed out of this Committee. One portion of legislation was moved from S.B. 218 into S.B. 103 that dealt with the Live Entertainment Tax. That is what we have before us today.

SENATE BILL 103: Authorizes a licensed interactive gaming service provider to perform certain actions on behalf of an establishment licensed to operate interactive gaming. (BDR 41-828)

SENATE BILL 218: Revises provisions governing the regulation of gaming. (BDR 41-991)

LINDA J. EISSMANN (Policy Analyst):

The amendment you received this morning (Exhibit C) is identical to the amendment in the work session document (Exhibit D), pages 2 through 8.

CHAIR WIENER:

Senate Bill 103 clarifies the Live Entertainment Tax.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 103 AND REREFER TO THE SENATE COMMITTEE ON FINANCE.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR ROBERSON VOTED NO.)

\*\*\*\*\*

CHAIR WIENER:

We will address S.B. 150, which deals with public storage facilities. I am concerned about protected property and how to ensure that property is kept safe. This includes medical, insurance and financial records. People store their records in boxes, and we want to ensure those records are secure and treated with respect. This will be a model bill for the Country in terms of steps taken to hold people accountable for this important information. Bradley Wilkinson will go over the amendment.

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**SENATE BILL 150:** Revises certain provisions governing liens of owners of facilities for storage. (BDR 9-907)

BRADLEY A. WILKINSON (Counsel):

The amendment changes the definition of "electronic mailing" in conjunction with the definition of "verified mail" (Exhibit E), page 3. To be an electronic mailing, there must be an electronic confirmation of receipt of the message. The reference to electronic mail is removed from the definition of "verified mail," which would include actual mailing for which evidence is provided, such as certified, return receipt requested or registered mail.

The next change relates to some of the definitions of "rental agreement" and "occupant," page 4, Exhibit E. This conveys that the law will continue to apply. These rental agreements will apply to one space at a time rather than multiple spaces.

Section 14 contains changes to protected property, page 4, Exhibit E. As part of the rental agreement when occupants store protected property, section 14 requires they clearly and prominently label that property as protected property. The general type of protected property must be identified, such as medical records or legal records, etc. If the occupant is subject to regulation by a licensing board—a doctor, for example—he or she is required to provide the licensing board with written notice that protected property is being stored at the facility. The occupant must provide contact information for the facility and for a secondary contact.

Section 16, Exhibit E, page 5, includes provisions relating to protected property and a specific priority for disposition when the owner of a storage facility finds protected property. It provides the owner can first contact the occupant and return the protected property to the occupant. If that does not work, the owner would try to return the property to the secondary contact listed in the rental agreement. If that fails, the owner would contact the appropriate state or federal authorities, which might include a licensing board, and ascertain whether it will accept the protected property. If so, the owner would deliver the property to the authority. If those attempts fail, the owner would destroy the protected property in a manner that ensures it is completely destroyed and cannot be accessed by the public.

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Section 19, Exhibit E, page 7, relates to protected property and states that if protected property is found and subject to a sale, the person who purchased the property in good faith has a duty to return it to the occupant. If that fails, the purchaser would return the property to the owner of the facility who would dispose of it in the priority just discussed.

CHAIR WIENER:

By notifying a licensing board that protected property is stored at a facility, it is on notice that a license holder is possibly violating a requirement of licensure because he or she is not securing the documents of his or her clients or customers by being in arrears or abandoning the storage unit where protected documents are stored. We wanted to hold the occupant accountable because he or she is not being responsible for the records. We have done everything we can to protect records for people who do not know they are in jeopardy.

SENATOR GUSTAVSON:

I am concerned with section 14 of the bill where a person must disclose to the owner what he or she is storing or clearly mark the boxes as protected property. An occupant must clearly mark the boxes as containing medical, legal or financial records; pharmaceuticals; alcoholic beverages or firearms. I would not want to label my boxes with their contents. People break into storage units quite often, and this will make it easier for them to locate what they might steal. We should not be going in this direction. I cannot support the bill.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 150.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

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CHAIR WIENER:

We will address S.B. 283, which relates to postconviction petitions for habeas corpus where the petitioner has been sentenced to death.



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SENATE BILL 283: Revises provisions governing the appointment of counsel for a postconviction petition for habeas corpus in which the petitioner has been sentenced to death. (BDR 3-1059).

MS. EISSMANN:

I have a work session document (Exhibit F). Two amendments were offered and are included in Exhibit F. I have received nothing else.

SENATOR GUSTAVSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 283, INCLUDING AMENDMENT 6215.

SENATOR ROBERSON SECONDED THE MOTION.

CHAIR WIENER:

This will retain law stating there must be an appointment. However, it will include the education requirements.

THE MOTION CARRIED UNANIMOUSLY.

\*\*\*\*\*

CHAIR WIENER:

We will address S.B. 347. We have a conceptual amendment I worked on with the sponsor of the bill. This relates to allowing the Aging and Disability Services Division of the Department of Health and Human Services to use a subpoena to access financial records to determine whether it has probable cause to go after other information it needs. The sponsor agrees with this amendment.

SENATE BILL 347: Authorizes the issuance of a subpoena to compel the production of certain financial records as part of an investigation of the exploitation of an older person. (BDR 15-1075)

MS. EISSMANN:

I have a work session document (Exhibit G).

SENATOR ROBERSON:

This bill is unconstitutional.

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MR. WILKINSON:

This amendment might eliminate concerns about constitutionality because there would be no administrative subpoenas. This person would be law enforcement and would have to seek a warrant with probable cause like any other law enforcement officer.

ORRIN J. H. JOHNSON (Washoe County Public Defender's Office):

When we talked with the people in the Aging and Disability Services Division who are trying to get this information, their problem was not that they did not want to get a warrant. The problem was they could not get a warrant because no one in the office had the power to apply for it. There was an administrative hurdle to get to the judge. I wanted a magistrate to look at it before a search or seizure was conducted. This bill allows that to happen, and everyone is happy with that. We have no problem with the amendment.

CHAIR WIENER:

Does this amendment address everything you suggested?

MR. JOHNSON:

Yes.

SENATOR ROBERSON:

This amendment does require a warrant?

MR. JOHNSON:

Yes.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 347.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will address S.B. 356. I moved this bill forward to add the word "monetary." We have a work session document (Exhibit H).

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SENATE BILL 356: Establishes the crime of stolen valor. (BDR 15-999)

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 356.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will address S.B. 174. We received a mock-up of what we have discussed and paperwork we received (Exhibit I), and we have a work session document (Exhibit J).

SENATE BILL 174: Revises provisions relating to common-interest communities.  
(BDR 10-105)

SENATOR COPENING:

I want to bring your attention to page 25 of Exhibit I. I worked with people for many hours going over this bill to ensure there were no misunderstandings about what the bill does. One of the comments was to make sure we included an amount in the collections portion. The cap of \$1,950 appears on page 25 of Exhibit I, line 16, which is the wrong place. This was added to mirror what the Commission on Common-Interest Communities and Condominium Hotels adopted to cap the collection fees. It should be on page 26 of Exhibit I at line 4 in the subsection relating to collection costs, which says this is the maximum that can be collected. Other than that, we reviewed all these things.

CHAIR WIENER:

I sent a letter to Michael Buckley and met with the Chair of the Legislative Commission regarding my concerns about this issue. In my letter, I requested to start at the difference between the measures we considered, which would be \$1,500. My intention was to make it lower. I have received a response from Mr. Buckley that will be presented for consideration.

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SENATOR KIHUEN:

For the record, under this bill the fees cannot exceed \$1,950. We will not have bills of \$40,000 and \$50,000 for late charges, etc. I want to confirm costs will not exceed \$1,950. I would prefer a lower amount, but inserting a cap solves the problem for now because there is no cap.

SENATOR COPENING:

These are the costs a collection company can charge. A homeowners' association (HOA) can retain an attorney to foreclose on a home, for example, and it is part of the superpriority lien. We are not changing law. However, a board of directors of an association can charge whatever they want for attorney fees. Therefore, we included "reasonable" attorney fees. "Reasonable" is defined in statute. The court goes by a median price for attorney's fees, depending on the kind of work the attorney is doing. We wanted to make sure we included the word "reasonable."

SENATOR KIHUEN:

Aside from reasonable attorney fees, will \$1,950 be the absolute cap on any other fees?

SENATOR COPENING:

I believe so, but I am not an expert in this area.

KEITH LEE (Lawyers Title Insurance Corporation; First American Title Company):

When a decision is made to issue a notice of default and go forward with a sale, *Nevada Revised Statute* (NRS) 116 requires notice be given to everyone in the chain of title and everyone who has requested special notice of any proceeding against that particular title. We issue a trustee sale guarantee (TSG) that ranges in fees from \$290 to \$400, depending upon several factors. My understanding was we would be carved out of this cap. In reviewing this, I am not sure we are carved out.

In direct answer to Senator Kihuen's question, the intent was the fee would be capped at \$1,950, but the TSG and other items necessary to ensure clear title would be in addition to that. That is what the regulation says. The title fees are capped by the rate schedule filed with the Division of Insurance, Department of Business and Industry.

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That would be additional cost if we go forward with the intent during our negotiations and the pending regulation.

SENATOR KIHUEN:

Aside from the \$1,950, there would be these additional charges you are discussing, the \$290 to \$400?

MR. LEE:

Yes. That was the understanding. I do not know if that is still the intent because I do not see that carveout in this mock-up.

MR. WILKINSON:

I was trying to ascertain exactly what the intent was. We are talking specifically about the items included in the superpriority lien, not necessarily the cap on fees set forth in NRS 116.310313. Presumably, those could be different. I have not studied this language carefully enough to determine that. We can do whatever the Committee desires. We can draft this in a manner that would include those costs or not include them.

SENATOR KIHUEN:

I would prefer we cap it at \$1,950 with all the fees included. This has been my concern. People are struggling, and these management and collection companies have been abusing people. I want to make sure there is an absolute cap aside from the reasonable attorney fees.

SENATOR COPENING:

Our intent was to mirror the Commission's regulations. The Commission's regulations say collection fees are capped at \$1,950. Those are the fees a collection company can charge. The foreclosure process includes other fees, such as title company fees, the collection company is not privy to. Those are costs of doing business the HOA must pay if it is going through the title process. The money does not go into the pockets of the collection companies. I realize now by including what we did in this bill, we are creating an unintended consequence because NRS 116.310313 is the regulation. We thought by making it well known that we did not want collection companies getting more than \$1,950, we may be doing the wrong thing regarding other charges that may come with a foreclosure.

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If we can pass this, we will fix it on the Senate Floor with whatever you need, Senator Kihuen, to make sure we know collection costs are capped. Anything a collection company can get is capped at \$1,950.

MR. LEE:

If it is any solace to you, the way the regulation is written and everyone involved in the collection process agreed, the title company charges—\$290 to \$350—are absolute charges. No surcharge can be placed on that. Neither the collection agency nor the HOA can bump that amount so as to realize something. The HOA or debt collection agency could do a title search and come up with the names, but title searching is not easy. Title companies have been doing this for years and have a system that works. Most important, they give a guarantee, the TSG, that the information they have is correct. They insure that up to a certain amount, usually in the range of \$50,000. There is recourse if a mistake is made so there is no cloud on title. There is no risk that sometime down the road there might be a break in the chain of title causing difficulty with the way the title goes forward.

MR. WILKINSON:

This provision in Exhibit J, page 25, line 10 refers to the "cost of collecting a past due obligation which are imposed pursuant to NRS 116.310313." *Nevada Revised Statute* 116.310313 states:

"Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation . . . .

This type of fee would be included in that definition and would therefore be included within the \$1,950 cap.

SENATOR ROBERSON:

It is unclear to me where this language should be. If we are being asked to vote on this now, it would help to see where the language should be.

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I received an e-mail the day before yesterday regarding a friend who lives in Anthem. We have a serious problem with collection agencies. This person bought an existing home in Anthem nine years ago. The original owner lived in the home and had landscaping installed. When my friend moved in, he received a notice from the HOA requiring a landscaping plan. He said he did not have one because he bought an existing home with landscaping. He was assessed a fine of \$400. That is the only documentation he received from the HOA or management company for nine years. He went to pay off the loan on his home and received a letter from Associated Community Management wherein that \$400 is now \$27,827. This is a problem.

The proposed language does nothing to prevent this problem because it appears the \$1,950 cap does not include reasonable attorney fees. The word "reasonable" does not give me a lot of comfort. I do not see where management or collection companies would be prevented from continuing to charge large amounts of money for attorney's fees, whether they are attorneys or they hire an attorney. I do not see how this closes that hole allowing management and collection companies to charge outrageous fees.

I asked the other day if S.B. 195 was going to be heard for a vote. I was told no, we are not going to institute caps because the regulators are going to handle that. I am confused because we have a cap of sorts in S.B. 174. In this case, we are not waiting for the regulators to make this decision. I do not understand that.

SENATE BILL 195: Revises provisions relating to the costs of collecting past due financial obligations in common-interest communities. (BDR 10-832)

SENATOR COPENING:

You are right. We did say we were not going to do that. I am open to removing it. I was working with some of my colleagues who wanted that. We wanted to make sure it could not be raised, but our intent was to lower it. That was important to Senator Kihuen. We can take it out, but I do not want to do that without Senator Kihuen. That was where his comfort level was.

SENATOR ROBERSON:

The point is, we are not being consistent. When it comes to Senator Elizabeth Halseth's bill, we want to wait for the regulators to decide. When it comes to your bill, it is okay to put in the cap. I have a problem with this.

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SENATOR KIHUEN:

Page 26, lines 3 and 4 of the mock-up, Exhibit I, say, "... any reasonable attorney's fees and other fees to cover the cost of collecting a past due obligation ... ." If we were to put in this cap of \$1,950, would it cover those fees?

MR. WILKINSON:

As Senator Copening pointed out, that language would fit better on line 5, page 26 of Exhibit I. If the cap was there, it would include attorney's fees and other fees to cover the cost of collecting. We would have to be careful of the wording and make it clear on the record. It refers specifically to NRS 116.310313. I would read those things together to mean everything authorized under NRS 116.310313 would be capped at \$1,950.

SENATOR KIHUEN:

That is my concern. We agreed on the reasonable attorney's fees. Many attorneys have abused the word "reasonable." I am not comfortable with the other fees. If the \$1,950 cap would cover these other fees, it would make me feel better. It would not please me 100 percent, but I just want to make sure the cap will cover those fees.

MR. WILKINSON:

It is important to make it clear on the record regarding the amount of the superpriority with respect to attorney's fees and all costs if the intent is to cap it at \$1,950. We can draft that in a manner to make it clear.

CHAIR WIENER:

Are the other fees concerning you because the bill says reasonable attorney's fees and other fees? It is the other fees you want addressed in the \$1,950?

SENATOR KIHUEN:

Yes.

CHAIR WIENER:

Reasonable attorney's fees would be separate?

SENATOR KIHUEN:

Other fees are not defined.



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MICHAEL BUCKLEY (Commission for Common-Interest Communities and Condominium Hotels):

Mr. Wilkinson is clear that if the \$1,950 is moved to page 26 of Exhibit 1, it would be everything. It would include title costs, attorney's fees and everything within the \$1,950. It would be an absolute cap. That is not the same as the Commission. As Mr. Lee pointed out, the Commission distinguished between out-of-pocket amounts—the recorder's fees, title fees, etc. We included those as separate costs because of the concern that anything not recovered comes back to the other owners who are paying their dues and would be picking up the slack for those who are delinquent.

SENATOR COPENING:

We have established we are okay with keeping the reasonable attorney's fees separate. We are concerned about the other fees that are undefined. Since we know the other fees could be passed along to all the homeowners, what are they?

PAMELA SCOTT (Howard Hughes Corporation):

The other fees were probably included to address the \$200 that can go to a management company for preparing a file to turn over to collection. That would come under the \$1,950. I understand Mr. Lee's concerns, and the associations should have the same concerns because it does cost to record and send registered mail. That is a hard cost. It does not go to the collection company. The association will have to eat that cost if it is included in the \$1,950.

SENATOR ROBERSON:

Mr. Buckley is under the impression the \$1,950 would include reasonable attorney's fees, or it would include attorney's fees generally. Senator Copening is saying it would not; that would be outside of the \$1,950. We are not all comfortable with that. We need to get a handle on who is correct in the interpretation of this amendment.

CHAIR WIENER:

That is what we are deciding. They will take their lead from whatever we decide to include in this amount. Based on the conversation we just had regarding Senator Kihuen's concern about other add-on fees, reasonable attorney's fees would be outside that. As we discussed in Committee, the word "reasonable" is not addressed. That is where some of the egregious charges come from. There are legal standards for "reasonable." Courts have evaluated what "reasonable"

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should be. We added "reasonable," which we have not had before. Is your concern the hard cap of collection and other fees and "reasonable" attorney's fees being outside the cap?

SENATOR KIHUEN:

Yes. Ideally, I would want to cap 100 percent of everything, but I understand a definition for "reasonable" attorney's fees is in statute. I am not happy with the \$1,950. I would prefer a lower amount. Some fees in the regulation—\$150 for a lien letter and \$400 for a notice of default—could be lower. There is no cap now. I would rather have something than nothing in this bill.

SENATOR ROBERSON:

I hear the argument that if these fees are charged and a collection company is not able to collect on them, all the other homeowners who are paying their dues would have to absorb those costs. That misses the point. We should be looking at the HOA management companies and boards. The boards have a fiduciary duty to the residents of their communities. They need to do a better job in negotiating agreements with collection companies so the law-abiding homeowners are not stuck with the bill. We are looking at the wrong issue when we say bills like this will protect the homeowners who pay their dues. That makes no sense.

A judge will decide whether attorney's fees are reasonable. If a homeowner gets stuck with a \$27,000 lien, does he or she have to hire an attorney and go to court to argue with the collection company over whether its attorney's fees are reasonable? For practical purposes, how often will a homeowner be able to do that? Will the homeowner have to take it because he or she does not have the money to argue their position in court? I can assure you, the collection company attorneys have the money. They can tie this up in court forever. It is more and more put on the backs of homeowners. The word "reasonable" attorney's fees does not give me a lot of comfort because the homeowners will ultimately have to fight that in court.

The superpriority question seems to be the big issue. It is being proposed we codify that the fees, potentially the attorney's fees, have a superpriority lien. It is my understanding this issue is being debated in the courts. I am concerned because the collection companies want this bill. I would like Chris Ferrari's comments about this new language we have just seen.

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CHAIR WIENER:

We have had debate on this issue. This is probably the only new language putting in a cap, and there are often caps in statute. I do not want to rehear a bill. We need to move forward. We have had two days of hearings on this and a day of hearing on each other bill.

SENATOR ROBERSON:

Senator Copening, how do you see this working if a homeowner gets a bill for \$27,000 or \$2,700, and it includes attorney's fees? How is that homeowner supposed to dispute whether those attorney's fees are reasonable? Must they hire an attorney and spend more in legal fees to argue with other attorneys about whether those attorney's fees are reasonable?

SENATOR COPENING:

We wanted to make sure the word "reasonable" was included regarding attorney's fees so HOAs, boards and management companies could not go crazy with attorney's fees. Including "reasonable" attorney's fees is a protection for homeowners.

The Commission adopted caps that must be approved by the Legislative Commission. Those caps will preclude costs of collection from being more than \$1,950. Our Chair sent a letter to the Commission saying this Committee is not satisfied with that and would like a lower cap. I expect the Chair of the Commission will take that into consideration and probably hold additional hearings. *Nevada Revised Statute 116* allows aggrieved homeowners to go before the Commission, and it includes many steps—mediation and arbitration—at no or very low cost. We are trying to include these caps so egregious fees do not occur.

Originally in this bill, we struck the first section. The first section included an extra step of due process by allowing a homeowner to appeal to the Commission if he or she received an unfavorable ruling from the Ombudsman's Office. We received approximately 15 e-mails from people who did not like section 1. We tried to do what the homeowners wanted, and we struck section 1. Administrator Gail J. Anderson from the Real Estate Division created a bill allowing that extra due process because it is good for homeowners. Attorney's fees are part of the superpriority. People do not like it, and it is being disputed in court.

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SENATOR ROBERSON:  
Where are attorney's fees already part of the superpriority in this statute?

SENATOR COPENING:  
It is not in my bill. It is already in the law.

SENATOR ROBERSON:  
Where, other than new language, does it say attorney's fees?

MR. BUCKLEY:  
There is a decision in the Eighth Judicial District Court that attorney's fees and collection costs are part of the superpriority. There are a number of lawsuits dealing with this issue. There are decisions on both sides. It will not be settled until the Nevada Supreme Court makes a decision or this legislation addresses it. We are only talking about the superpriority. In cases of a delinquency, the association will most likely be paid when the lender forecloses. Senator Roberson's issue of the fine is not addressed in this bill; it is a separate issue. It cannot be foreclosed. It is a lien but cannot be foreclosed.

To put this into context, S.B. 254, which would create mediation at a reduced cost and speedy arbitration, would create a forum where people could use the Real Estate Division or speedy arbitration to resolve an issue on attorney's fees. But remember, fines cannot be imposed unless a hearing is held with due process. If there was not a hearing, a fine would not be right. This bill only deals with the superpriority amount, and it would include everything capped at \$1,950.

SENATOR ROBERSON:  
This is about superpriority. Attorney's fees are not included in superpriority in statute. As Mr. Buckley pointed out, this issue is being litigated in the courts. What we are doing today is fundamentally changing statutory law to allow attorney's fees in the superpriority lien. For those of you on this Committee who are concerned about homeowners being stuck with attorney's fees in the superpriority, this does not help. This statutorily blows a hole wide open to allow attorney's fees whether reasonable or not. We can debate that. But for the first time, we are allowing attorney's fees to be included in the superpriority lien by statute. That is my problem with this bill.

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SENATOR COPENING:

It is law that they are awarded. I will point to the e-mail sent about Paradise Spa in Senator Roberson and Senator Breeden's district. The HOA was raided. An investor bought the majority of the units. He foreclosed on them. He stopped paying his assessments before foreclosing approximately two years ago. Paradise Spa, which is mostly senior citizens, is nearly broke. On April 18, the gas, which is on one meter owned by this investor, will be shut off. The residents got an extension. It was supposed to be shut off on April 8 in 261 units where mostly senior citizens live.

I have stayed on top of this to ensure these senior citizens are not out on the street. The unpaid assessments are nearly \$1 million. This facility has gone downhill. In a few days, the gas will be turned off. I do not know when these people will be evicted. They have accumulated significant fees. They are chasing past due amounts of nearly \$1 million, and their collection costs are way beyond \$1,950. They had to enlist the help of an attorney to get this investor out of their unit. He has been arrested. These people do not have the money to come up with \$1 million and pay the gas bill of \$41,000. The gas will be turned off unless people help them. If you take this away, they are done. These are your constituents, Senator Roberson.

SENATOR ROBERSON:

That is a complete red herring. There is allegedly criminal activity going on. We do not need this statute to deal with that. I do not see how this statute helps that situation. They are my constituents, but that is a false argument.

RENNY ASHLEMAN (City of Henderson):

The mock-up includes language never discussed that is contrary to my agreement with the working committee. The working committee agreed to the language, "unless a person has accepted the responsibility." On page 11 of Exhibit 1, section 6, subsection 1 says, "... unless a governmental entity has accepted responsibility ... ." This is a concern to the City of Henderson. It should say "person" rather than "governmental entity." These walls are not on our property. They are not our responsibility. We were only interested in the issue because they were a safety concern on our right-of-way.

CHAIR WIENER:

That was agreed to.

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MR. ASHLEMAN:

It was agreed to. The language in lines 24 through 27 on page 11 of Exhibit I was not agreed upon by anyone and does not appropriately describe the relationship between the people. There are thousands of these walls. You can imagine us having to accept or deny responsibility for interior walls. We did not build them. They are not on our property. We did not ask anyone to do anything about them. Please remove that language.

CHAIR WIENER:

You want the word "person" at line 14 on page 11 of Exhibit I?

MR. ASHLEMAN:

Yes. I do not want the new language on page 11 of Exhibit I, lines 24 through 27.

MR. WILKINSON:

This is an important distinction, and it is a drafting issue. It needs to be clear. The term "person" as used in NRS does not include a governmental entity unless we specifically state that it does. If the desire is to exclude "governmental entity," the effect of using the term "person" would be to entirely exclude "governmental entities" unless we said "person," and then we further said as used in the statute that a "person" includes a "governmental entity."

CHAIR WIENER:

My understanding was that sometimes a municipality does need to get involved. Sometimes, it is the complex itself. I do not remember entirely excluding a municipality. It would be if it is appropriate to bring in the municipality; if it is appropriate, it is the complex. It was not just one or the other.

MR. ASHLEMAN:

I have no objection to using the word "person or other entity." Would that pick up the municipalities?

SENATOR COPENING:

You are right. This is wrong. We took all the amendments we went through the other day and asked our legal staff to include them in a mock-up. They misunderstood, and we got it this morning. I can see there are things missing in the portion saying, "not the responsibility of the unit owner." It is not in here.

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There are mistakes. I apologize. Did you review the amendments we went through?

MR. ASHLEMAN:  
Yes.

SENATOR COPENING:  
Were they good?

MR. ASHLEMAN:  
I had agreed to the one Mr. Buckley presented.

SENATOR COPENING:  
That is what was supposed to be in Exhibit I. We will fix this section. If Exhibit I does not match up to the amendments we reviewed two days ago, we need to match them so we do not include something incorrect.

CHAIR WIENER:  
In the work session, we went through item by item what the parties agreed to.

SENATOR MCGINNESS:  
You recognize the problem, but everyone who has a part in this has not been able to come to the table. We got this amendment this morning just like Mr. Ashleman. I am concerned we will try to fix it on the Senate Floor or fix it in the other House. That makes me nervous.

CHAIR WIENER:  
I am ready for a motion on the bill with the amendments as we discussed in our work session document, Exhibit J. We walked through each one two days ago with the addition of the cap. We need clarity on the \$1,950 cap on page 26 of Exhibit I, "any reasonable attorney's fees" and capping all other fees at \$1,950. Is that the intention?

SENATOR BREEDEN:  
There is nothing in statute; it is just status quo. We have heard from many constituents who have been affected by these escalated fees. We need a starting place to help our constituents. This is a good start.

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SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 174.

SENATOR COPENING SECONDED THE MOTION.

SENATOR KIHUEN:

For the record, I will support this bill now because it puts a cap on the fees. I am not 100 percent comfortable with the cap, but it is better than the status quo. I reserve my right to change my vote on the floor. I want to consult further with my constituents who will be directly impacted by this bill before I vote on the Senate Floor.

SENATOR ROBERSON:

This is not a good start. It is a step backward because under the statute, there is no provision allowing attorney's fees to be included within the superpriority lien. Today, we are taking a step in the wrong direction by allowing attorney's fees, for the first time in statute, to be part of the superpriority lien.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND  
ROBERSON VOTED NO.)

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CHAIR WIENER:

We will address S.B. 185. We have a work session document (Exhibit K). I am requesting a one-week waiver.

SENATE BILL 185: Makes various changes relating to real property. (BDR 10-23)

SENATOR COPENING MOVED TO REQUEST A ONE-WEEK WAIVER  
FROM SENATE LEADERSHIP ON S.B. 185.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will address S.B. 204. We have a work session document (Exhibit L). This bill enacts amendments to the Uniform Common-Interest Ownership Act. We have had other uniform acts before the Committee. We have not updated our uniform acts since 1991. Most of this bill consists of technical changes and updates to the Uniform Act.

SENATE BILL 204: Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

MR. WILKINSON:

Most of the changes are technical in nature, and they are not substantive. They are changes in internal references and include drafting issues and minor changes the Uniform Law Commission made to the Uniform Act to update it.

CHAIR WIENER:

Has the 1991 law been worked on since then? We have not joined the other states?

MR. WILKINSON:

Some efforts were made last Session, in particular, to include some of the changes from the Uniform Act. This is the first time those things have been carefully looked at. The Uniform Law Commissioners approved the final version in 2008. This is the most comprehensive review of that.

MR. BUCKLEY:

Mr. Wilkinson is correct.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 204.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

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A.B. 448

ASSEMBLY BILL NO. 448—ASSEMBLYMAN MUNFORD

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property.  
(BDR 10-513)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

EXPLANATION—Matter in *bolded italics* is new; matter between brackets [*omitted material*] is material to be omitted.

AN ACT relating to real property; providing for the issuance of cease and desist orders by the Administrator of the Real Estate Division of the Department of Business and Industry under certain circumstances; revising provisions governing access to a unit in a common-interest community; prohibiting an association of a common-interest community from charging certain fees; prohibiting an association from enacting certain restrictions on antennae and certain other devices for receiving broadcast signals; revising provisions governing the powers of an association; revising provisions governing the filling of vacancies on an executive board; revising provisions governing the powers and duties of the executive board; revising provisions governing construction penalties; revising provisions governing sanctions for violations of the governing documents; revising provisions governing the collection of certain past due financial obligations; revising provisions governing eligibility to be a member of the executive board or an officer of the association; requiring members of the executive board to complete certain courses of education; revising provisions governing meetings of the units' owners and of the executive board; revising provisions governing surplus funds of an association; revising provisions governing the budget of an association; revising provisions governing certain expenditures by an association; revising provisions governing assessments to fund the reserves of an association; revising provisions governing studies of the reserves of an association; revising provisions governing liens of an association; revising provisions governing the books, records and papers of an association; revising provisions governing parking in a common-interest community; revising provisions governing claims based on alleged violations of certain laws and the interpretation, application and enforcement of the governing documents; revising various other provisions relating to common-interest communities; and providing other matters properly relating thereto.



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**Legislative Counsel's Digest:**

Section 1 of this bill provides for the issuance of orders to cease and desist by the Administrator of the Real Estate Division of the Department of Business and Industry under certain circumstances.

Existing law prohibits an association of a common-interest community from unreasonably restricting, prohibiting or otherwise impeding the right of a unit's owner to have access to his or her unit. (NRS 116.2111) Section 2 of this bill prohibits the association from restricting, prohibiting or otherwise impeding the access to the unit of the parents and children of the unit's owner. Section 2 also prohibits the association from: (1) charging a fee to a unit's owner for obtaining permission to change the exterior appearance of a unit or the landscaping; and (2) restricting in a manner which violates certain federal regulations the installation, maintenance or use of an antenna or other device for receiving certain broadcast signals.

Existing law requires an association to provide certain notice at least 48 hours before directing the removal of a vehicle which is improperly parked on property owned or leased by the association unless the vehicle is blocking a fire hydrant, fire lane or handicapped parking space or poses a threat to the health, safety and welfare of residents. (NRS 116.3102) Section 3 of this bill requires the association to provide the 48-hour notice before removing a vehicle which is blocking a handicapped parking space.

Section 4 of this bill provides for an emergency election to fill certain vacancies on the executive board if the executive board is unable to obtain a quorum because of such vacancies and requires the Division to apply for the appointment of a receiver for the association if the units' owners are unable to fill such vacancies. Section 4 also: (1) requires the association to make available to members of the executive board, at no charge, certain books, records and papers; and (2) requires the executive board to notify the units' owners if the executive board has been found to have violated the provisions of existing law governing common-interest communities or the governing documents.

Existing law authorizes an association to impose a construction penalty against a unit's owner who fails to adhere to a schedule. (NRS 116.310305) Section 5 of this bill prohibits the imposition of a construction penalty if the failure to adhere to the schedule is caused by circumstances beyond the control of the unit's owner.

Existing law authorizes an association to prohibit a unit's owner or a tenant or an invitee of a unit's owner or a tenant from using the common elements as a sanction for a violation of the governing documents. (NRS 116.31031) Section 6 of this bill provides that the association may prohibit only the use of a common element to which the violation relates, unless the violation is failure to pay an assessment. Section 6 also revises provisions relating to fines for violations of the governing documents by: (1) providing a lifetime cap of \$2,500 on the amount of fines which may be imposed on a unit's owner and his or her spouse; (2) prohibiting an association from imposing a fine if another association has imposed a fine for the same conduct; (3) authorizing the postponement of a hearing on a violation for medical reasons; and (4) requiring a hearing before the imposition of a fine for a continuing violation.

Existing law authorizes, but does not require, an association to enter the grounds of a unit to maintain the exterior of the unit under certain circumstances. (NRS 116.310312) Section 7 of this bill provides that this authorization expires if the unit's owner or the agent of the unit's owner performs the maintenance necessary for the unit to meet the community standards.

Section 8 of this bill limits the type of collection fees which an association may charge to a unit's owner and establishes a cap on the amount of such fees which is based on the amount of the outstanding balance.



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54 Section 9 of this bill requires a member of the executive board to successfully  
 55 complete 2 hours of education concerning the duties of members of an executive  
 56 board each year. Section 9 also provides that: (1) unless the governing documents  
 57 provide otherwise, officers of the association are required to be units' owners; and  
 58 (2) a person who resides with, or is related within the first degree of consanguinity  
 59 to, an officer of the association or member of the executive board may not become  
 60 an officer of the association or a member of the executive board.

61 Section 11 of this bill revises various provisions relating to meetings of the  
 62 units' owners by: (1) authorizing a unit's owner to request that an item be included  
 63 on the agenda for the meeting; (2) authorizing a guest of a unit's owner to attend  
 64 the meeting; and (3) authorizing a unit's owner to record the meeting on videotape  
 65 as well as audiotape.

66 Section 12 of this bill revises various provisions relating to meetings of the  
 67 executive board by: (1) requiring the meetings which are held at a time other than  
 68 standard business hours to start no earlier than 6 p.m.; (2) requiring the agenda to  
 69 be available not later than 5 days before the meeting; (3) requiring a copy of certain  
 70 financial information required to be reviewed at an executive board meeting to be  
 71 made available at no charge to each person present at the meeting and to be  
 72 provided in electronic format at no charge to a unit's owner who requests the  
 73 information; and (4) providing that a page limit on materials, remarks or other  
 74 information to be included in the minutes of the meeting must not be less than two  
 75 double-sided pages.

76 Section 13 of this bill revises provisions governing the right of a unit's owner  
 77 to speak at a meeting of the units' owners or the executive board by: (1) requiring a  
 78 limitation of not less than 3 minutes on the time a unit's owner may speak; (2)  
 79 requiring the association to comply with the Americans with Disabilities Act in  
 80 providing access to the meeting; (3) requiring the executive board to provide a  
 81 period of comments by the units' owners before voting on a matter; and (4)  
 82 authorizing a person to be represented by a person of his or her choosing at a  
 83 hearing concerning an alleged violation of the governing documents.

84 Section 14 of this bill requires bids for the provision of durable goods to the  
 85 association to be opened during a meeting of the executive board.

86 Existing law requires an executive board which receives a complaint from a  
 87 unit's owner alleging that the executive board has violated existing law or the  
 88 governing documents to place the subject of the complaint on the agenda for its  
 89 next meeting if the unit's owner requests that action. (NRS 116.31087) Section 15  
 90 of this bill requires the executive board to discuss the complaint fully and  
 91 completely and attempt to resolve the complaint at the meeting.

92 Existing law creates certain crimes related to voting by units' owners. (NRS  
 93 116.31107) Section 16 of this bill requires these provisions to be printed on each  
 94 ballot provided to the units' owners.

95 Section 17 of this bill defines "surplus funds" for the purpose of determining  
 96 whether the association is required to pay the surplus funds to units' owners.

97 Existing law requires a review or audit of the financial statement of an  
 98 association at certain times. (NRS 116.31144) Section 18 of this bill requires the  
 99 association to provide a copy of the review or audit to a unit's owner in either paper  
 100 or electronic format at no charge to the unit's owner if the unit's owner requests  
 101 such a copy.

102 Under existing law, the proposed budget of an association takes effect unless  
 103 the units' owners reject the proposed budget. (NRS 116.3115, 116.31151) Sections  
 104 19 and 20 of this bill provide that the proposed budget does not take effect unless  
 105 the units' owners ratify the proposed budget. If the proposed budget is not ratified,  
 106 the most recently ratified budget continues in effect.

107 Section 19 also revises provisions governing special assessments by: (1)  
 108 removing provisions which specifically authorize the executive board to impose



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necessary and reasonable assessments to carry out a plan to adequately fund the reserves of the association without seeking or obtaining the approval of the units' owners; (2) providing that an assessment to fund the reserves of the association may not exceed \$35 per unit per month; and (3) requiring the approval of the units' owners for capital expenditures exceeding a certain amount and for any visible changes to the interior or exterior of a common element.

Section 20 requires the collections policy of the association to establish a certain period after which a delinquent fee, fine, assessment or cost may be referred for collection.

Existing law requires an association to conduct a study of the reserves required to repair, replace and restore the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain. (NRS 116.31152) Section 21 of this bill prohibits the executive board from taking any action based on the study of the reserves, including, without limitation, establishing a funding plan to provide adequate funding for the required reserves, unless and until the executive board approves the study of the reserves at a meeting of the executive board. Section 21 also: (1) requires the reserve study to be made available to a unit's owner in electronic format at no charge; and (2) provides for notice of the meeting to a unit's owner.

Section 22 of this bill revises provisions governing the amount of the association's lien which is prior to a first security interest on a unit.

Section 23 of this bill prohibits the foreclosure of an association's lien and the filing of a civil action to obtain a judgment for the amount due if: (1) the foreclosure sale does not occur within 120 days after mailing the notice of default and election to sell; or (2) an agreement extending that period is not reached.

Section 24 of this bill revises provisions governing the access of a unit's owner to the books, records and papers of an association and requires the publication of the views or opinions of a unit's owner in the association's official newsletter under certain circumstances.

Existing law provides for a civil action if the executive board, a member of the executive board, a community manager or an officer, employee or agent of the association take, direct or encourage certain retaliatory action against a unit's owner. (NRS 116.31183) Section 25 of this bill specifies certain actions which constitute retaliatory action.

Section 26 of this bill prohibits an association from charging a fee to a unit's owner to obtain approval for the installation of drought tolerant landscaping.

Section 27 of this bill replaces the authorization of an executive board to approve the renting or leasing of a unit under certain circumstances with a provision requiring the executive board to grant such approval under certain circumstances.

Section 28 of this bill: (1) prohibits the executive board and the governing documents from interfering with the parking of an automobile, privately owned standard pickup truck, motorcycle or certain other vehicles; and (2) requires the association of a common-interest community which is not gated or enclosed to display signs on or near any property on which parking is prohibited or restricted.

Sections 29 and 33 of this bill revise provisions governing mediation and arbitration of claims relating to the interpretation, application or enforcement of certain governing documents by authorizing a civil action concerning certain claims to be commenced without submitting the claims to mediation or arbitration. Section 29 also authorizes a civil action concerning a violation of existing law governing common-interest communities to be brought by a tenant or an invitee of a unit's owner or a tenant.

Sections 31 and 32 of this bill require the sharing of information by the parties to an affidavit filed with the Division alleging a violation of existing law governing common-interest communities.

