

ADDENDUM 1

SENATE BILL NO. 174—SENATOR COPENING

FEBRUARY 17, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-105)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to common-interest communities; authorizing appeals to the Commission for Common-Interest Communities and Condominium Hotels after certain actions by the Real Estate Division of the Department of Business and Industry; revising provisions concerning the removal or abatement of a public nuisance on the exterior of a unit under certain circumstances; revising provisions relating to elections for members of an executive board; revising provisions concerning the removal of members of an executive board; revising provisions governing meetings of units' owners and meetings of an executive board; revising provisions governing the maintenance and repair of walls within a common-interest community; revising insurance and bond requirements for unit-owners' associations and community managers; revising provisions relating to the maintenance and investment of association funds; revising provisions concerning the assessment of certain common expenses against a unit's owner; revising provisions governing the withdrawal of money from the operating account of an association; revising provisions concerning liens on a unit for certain charges or fees; prohibiting a unit's owner from engaging in certain threatening conduct or retaliatory actions; revising provisions governing the award of punitive damages in certain circumstances; revising provisions governing management agreements and community



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managers; exempting certain associations from the requirement to obtain a state business license; making various other changes relating to common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill authorizes a person who is aggrieved by certain written decisions of the Real Estate Division of the Department of Business and Industry to appeal to the Commission for Common-Interest Communities and Condominium Hotels.

Section 3 of this bill revises the circumstances under which the employees or agents of a unit-owners' association may enter the grounds of a unit which is being foreclosed to abate a nuisance.

Existing law authorizes the declaration of a common-interest community to provide for cumulative voting for the purpose of electing members of the executive board of the association. (NRS 116.2107) **Sections 2 and 4** of this bill prohibit such use of cumulative voting. **Section 4** also revises the procedures for the election of members of the executive board when the number of nominations for such membership is equal to or less than the number of members to be elected.

Under existing law, a member of the executive board may be removed from the executive board if the number of votes cast equals at least 35 percent of the total number of voting members of the association and the majority of all votes cast are cast in favor of removal. (NRS 116.31036) **Section 5** of this bill requires the number of votes cast in favor of removal to be at least 35 percent of the total number of voting members of the association and a majority of the votes cast.

Section 6 of this bill revises provisions governing the responsibility to maintain or repair walls within a common-interest community.

Existing law requires notice of a meeting of the executive board to be provided to the units' owners, except in an emergency. (NRS 116.31083) Under **section 8** of this bill, if a meeting of the executive board will consist only of an executive session, the association is not required to provide notice of the meeting to the units' owners. **Section 8** also authorizes an association to comply with the requirement to include an agenda with a notice of an executive board meeting by stating on the notice that the agenda will be sent at the request of a unit's owner to the electronic mail address of the unit's owner.

Existing law requires the minutes of meetings of the units' owners and the executive board to be provided to any unit's owner upon request and at no charge if those minutes are provided in electronic format. **Sections 7 and 8** of this bill require those minutes to be provided at no charge if provided by electronic mail.

Section 9 of this bill authorizes an executive board to meet in executive session: (1) to discuss the alleged misconduct, professional competence, or physical or mental health of an association vendor; and (2) to discuss with the vendor the vendor's alleged misconduct, professional competence or failure to perform under a contract.

Existing law requires an applicant for a certificate as a community manager, or the employer of that applicant, to post a bond in a certain form and amount. (NRS 116A.410) **Sections 10 and 19** of this bill remove this requirement and require an association to provide crime insurance that includes coverage for dishonest acts by certain persons.

Section 11 of this bill: (1) authorizes an association to invest association funds in any instrument or investment authorized by the governing documents or the investment policy established by the executive board; and (2) exempts petty cash and change funds from the requirement to deposit all association funds in certain



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48 financial institutions. **Section 13** of this bill requires the executive board to make
49 available to each unit's owner the policy for the investment of association funds at
50 the same time and in the same manner as the budget is made available to the units'
51 owners.

52 **Section 12** of this bill authorizes an association to assess against a unit the legal
53 fees and costs incurred by an association to enforce a violation of the association's
54 governing documents by the unit's owner, a tenant or an invitee of the unit's owner
55 or tenant. **Section 12** also amends provisions concerning the imposition of interest
56 charges on late assessments to provide that: (1) interest may, but is not required to,
57 accrue; and (2) interest may accrue at a rate less than the rate specified in statute.

58 **Section 14** of this bill authorizes money in the operating account of an
59 association to be withdrawn without the required signatures to make certain
60 electronic transfers of money.

61 Existing law provides that an association has a lien on a unit for certain charges
62 imposed against a unit's owner. (NRS 116.3116) Existing law also allows an
63 association to charge reasonable fees to cover the costs of collecting past due
64 obligations. (NRS 116.310313) **Section 15** of this bill provides that the association
65 has a lien on a unit for any fees to cover the costs of collecting a past due obligation
66 which are imposed against the unit's owner and that the association has a lien on a
67 unit for any other amounts due the association. **Section 15** also provides that a lien
68 on a unit for any fees to cover the costs of collecting a past due obligation is
69 included within the super-priority lien for assessments for common expenses.

70 Existing law prohibits a member of the executive board of an association, a
71 community manager and officers, employees and agents of an association from
72 taking, or directing or encouraging, retaliatory action against a unit's owner under
73 certain circumstances. (NRS 116.31183) **Section 16** of this bill prohibits a unit's
74 owner from taking, or directing or encouraging, retaliatory action against a member
75 of the executive board, an officer, employee or agent of an association, or another
76 unit's owner under certain circumstances. **Section 16** also prohibits a unit's owner
77 from making certain threats against a member of the executive board, an officer,
78 agent or employee of the association or another unit's owner.

79 **Section 18** of this bill adds community managers to a prohibition against
80 punitive damages being awarded in certain circumstances.

81 **Section 20** of this bill revises the requirements for management agreements
82 entered into between an association and a community manager, including, without
83 limitation, removing the requirement that the management agreement include
84 provisions for dispute resolution. **Section 20** also requires a community manager to
85 transfer the electronic books, records and papers of a client in a certain manner.

86 **Section 21** of this bill revises the duty of a community manager to deposit,
87 maintain and invest association funds so that such activities must be performed at
88 the client's direction.

89 Existing law exempts nonprofit corporations from the requirement to obtain a
90 state business license. (NRS 76.020, 76.100) **Sections 22 and 23** of this bill exempt
91 from this requirement associations which are organized as certain other types of
92 nonprofit or cooperative organizations.



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1 *specified in the written agreement between the vendor or*
2 *community manager and the association, if:*

3 (1) *The electronic transfer of money is made pursuant to a*
4 *written agreement entered into between the association and the*
5 *financial institution where the operating account of the*
6 *association is maintained;*

7 (2) *The executive board has expressly authorized the*
8 *electronic transfer of money; and*

9 (3) *The association has established internal accounting*
10 *controls to safeguard the assets of the association which comply*
11 *with generally accepted accounting principles.*

12 4. *As used in this section, "electronic transfer of money" has*
13 *the meaning ascribed to it in NRS 353.1467.*

14 **Sec. 15.** NRS 116.3116 is hereby amended to read as follows:

15 116.3116 1. The association has a **statutory** lien on a unit for
16 any construction penalty that is imposed against the unit's owner
17 pursuant to NRS 116.310305, any assessment ~~levied against~~
18 **attributable to** that unit or any fines imposed against the unit's
19 owner from the time the construction penalty, assessment or fine
20 becomes due. Unless the declaration otherwise provides, **reasonable**
21 **attorney's fees and other fees to cover the cost of collecting a past**
22 **due obligation which are imposed pursuant to NRS 116.310313,**
23 ~~any penalties,~~ fees, charges, late charges, fines and interest
24 charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1
25 of NRS 116.3102 , **and any other amounts due the association**
26 **pursuant to the governing documents, this chapter or the decision**
27 **of an arbitrator, mediator, court or administrative body** are
28 enforceable **in the same manner** as **unpaid** assessments under this
29 section. If an assessment is payable in installments, the full amount
30 of the assessment is a lien from the time the first installment thereof
31 becomes due.

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

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

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

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

44 ➡ The lien is also prior to all security interests described in
45 paragraph (b) to the extent of any charges incurred by the



1 association on a unit pursuant to NRS 116.310312 , ~~and~~ to the
2 extent of the assessments for common expenses based on the
3 periodic budget adopted by the association pursuant to NRS
4 116.3115 which would have become due in the absence of
5 acceleration during the 9 months immediately preceding institution
6 of an action to enforce the lien ~~and~~ *and to the extent of any*
7 *reasonable attorney's fees and other fees to cover the cost of*
8 *collecting a past due obligation which are imposed pursuant to*
9 *NRS 116.310313*, unless federal regulations adopted by the Federal
10 Home Loan Mortgage Corporation or the Federal National
11 Mortgage Association require a shorter period of priority for the
12 lien. If federal regulations adopted by the Federal Home Loan
13 Mortgage Corporation or the Federal National Mortgage
14 Association require a shorter period of priority for the lien, the
15 period during which the lien is prior to all security interests
16 described in paragraph (b) must be determined in accordance with
17 those federal regulations, except that notwithstanding the provisions
18 of the federal regulations, the period of priority for the lien must not
19 be less than the 6 months immediately preceding institution of an
20 action to enforce the lien. This subsection does not affect the
21 priority of mechanics' or materialmen's liens, or the priority of liens
22 for other assessments made by the association.

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

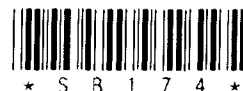
26 4. Recording of the declaration constitutes record notice and
27 perfection of the lien. No further recordation of any claim of lien for
28 assessment under this section is required.

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

32 6. This section does not prohibit actions *against a unit's owner*
33 to recover sums for which subsection 1 creates a lien or prohibit an
34 association from taking a deed in lieu of foreclosure.

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

38 8. The association, upon written request, shall furnish to a
39 unit's owner a statement setting forth the amount of unpaid
40 assessments against the unit. If the interest of the unit's owner is real
41 estate or if a lien for the unpaid assessments may be foreclosed
42 under NRS 116.31162 to 116.31168, inclusive, the statement must
43 be in recordable form. The statement must be furnished within 10
44 business days after receipt of the request and is binding on the
45 association, the executive board and every unit's owner.



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

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

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

10 (1) May be foreclosed as a security interest under NRS
11 104.9101 to 104.9709, inclusive; or

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

14 **Sec. 16.** NRS 116.31183 is hereby amended to read as
15 follows:

16 116.31183 1. An executive board, a member of an executive
17 board, a community manager or an officer, employee or agent of an
18 association shall not take, or direct or encourage another person to
19 take, any retaliatory action against a unit's owner because the unit's
20 owner has:

21 (a) Complained in good faith about any alleged violation of any
22 provision of this chapter or the governing documents of the
23 association;

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

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

28 2. *A unit's owner, a tenant or an invitee of a unit's owner or*
29 *tenant shall not knowingly threaten:*

30 (a) *To cause bodily injury to a member of the executive board,*
31 *an officer, employee or agent of the association, or another unit's*
32 *owner;*

33 (b) *To cause physical damage to the property of a member of*
34 *the executive board or an officer, employee or agent of the*
35 *association;*

36 (c) *To subject a member of the executive board, an officer,*
37 *employee or agent of the association, or another unit's owner to*
38 *physical confinement or constraint; or*

39 (d) *To do any act which is intended to substantially harm a*
40 *member of the executive board, an officer, employee or agent of*
41 *the association, or another unit's owner with respect to his or her*
42 *physical or mental health or safety,*

43 *if the person by words or conduct places the person receiving*
44 *the threat in reasonable fear that the threat will be carried out.*



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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to common-interest communities; revising provisions concerning the removal or abatement of a public nuisance on the exterior of a unit under certain circumstances; revising provisions relating to elections for members of an executive board; revising provisions concerning the removal of members of an executive board; revising provisions governing meetings of units' owners and meetings of an executive board; revising provisions governing the maintenance and repair of walls within a common-interest community; revising insurance and bond requirements for unit-owners' associations and community managers; revising provisions relating to the maintenance and investment of association funds; revising provisions concerning the assessment of certain common expenses against a unit's owner; revising provisions governing the withdrawal of money from the operating account of an association; revising provisions concerning liens on a unit for certain assessments, charges and fees; prohibiting a unit's owner from engaging in certain threatening conduct or retaliatory actions; revising provisions governing the award of punitive damages in certain circumstances; revising provisions governing management agreements and community managers; exempting certain associations from the requirement to obtain a state business license; making various other changes relating to common-interest communities;



requiring the Legislative Commission to appoint a subcommittee to study the laws and regulations governing common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill revises the circumstances under which the employees or agents of a unit-owners' association may enter the grounds of a unit which is being foreclosed to abate a nuisance.

Section 4 revises the procedures for the election of members of the executive board when the number of nominations for such membership is equal to or less than the number of members to be elected.

Under existing law, a member of the executive board may be removed from the executive board if the number of votes cast equals at least 35 percent of the total number of voting members of the association and the majority of all votes cast are cast in favor of removal. (NRS 116.31036) **Section 5** of this bill requires the number of votes cast in favor of removal to be at least 35 percent of the total number of voting members of the association and a majority of the votes cast.

Section 6 of this bill revises provisions governing the responsibility to maintain or repair walls within a common-interest community.

Existing law requires notice of a meeting of the executive board to be provided to the units' owners, except in an emergency. (NRS 116.31083) Under **section 8** of this bill, if a meeting of the executive board will consist only of an executive session, the association is not required to provide notice of the meeting to the units' owners. Such a meeting is subject to existing law governing executive sessions and, at its next regular meeting, the executive board must disclose that it met in executive session and must state the general subject matter of the meeting. **Section 8** also authorizes an association to comply with the requirement to include an agenda with a notice of an executive board meeting by stating on the notice that the agenda will be sent at the request of a unit's owner to the electronic mail address of the unit's owner.

Existing law requires the minutes of meetings of the units' owners and the executive board to be provided to any unit's owner upon request and at no charge if those minutes are provided in electronic format. **Sections 7 and 8** of this bill require those minutes to be provided at no charge if provided by electronic mail.

Section 9 of this bill authorizes an executive board to meet in executive session: (1) to discuss the alleged misconduct or professional competence of an association vendor; and (2) to discuss with the vendor the vendor's alleged misconduct, professional competence or failure to perform under a contract.

Existing law requires an applicant for a certificate as a community manager, or the employer of that applicant, to post a bond in a certain form and amount. (NRS 116A.410) **Sections 10 and 19** of this bill remove this requirement and require an association to provide crime insurance that includes coverage for dishonest acts by certain persons.

Section 11 of this bill: (1) revises provisions governing the deposit, maintenance and investment of association funds; and (2) exempts petty cash and change funds from the requirement to deposit all association funds in certain financial institutions. **Section 13** of this bill requires the executive board to make available to each unit's owner the policy for the investment of association funds at the same time and in the same manner as the budget is made available to the units' owners.

Section 12 of this bill amends provisions concerning the imposition of interest charges on late assessments to provide that: (1) interest may, but is not required to, accrue; and (2) interest may accrue at a rate less than the rate specified in statute.



49 **Section 14** of this bill authorizes money in the operating account of an
50 association to be withdrawn without the required signatures to make certain
51 electronic transfers of money.

52 Existing law provides that an association has a lien on a unit for certain charges
53 imposed against a unit's owner. (NRS 116.3116) **Section 15** of this bill revises
54 provisions governing the amount of the association's lien which is entitled to
55 priority over the first security interest on the unit.

56 Existing law prohibits a member of the executive board of an association, a
57 community manager and officers, employees and agents of an association from
58 taking, or directing or encouraging, retaliatory action against a unit's owner under
59 certain circumstances. (NRS 116.31183) **Section 16** of this bill prohibits a unit's
60 owner from taking, or directing or encouraging, retaliatory action against a member
61 of the executive board, an officer, employee or agent of an association, or another
62 unit's owner under certain circumstances. **Section 16** also prohibits a unit's owner
63 from making certain threats against a member of the executive board, an officer,
64 agent or employee of the association or another unit's owner.

65 **Section 18** of this bill adds community managers to a prohibition against
66 punitive damages being awarded in certain circumstances.

67 **Section 20** of this bill revises the requirements for management agreements
68 entered into between an association and a community manager, including, without
69 limitation, removing the requirement that the management agreement include
70 provisions for dispute resolution. **Section 20** also requires a community manager to
71 transfer the electronic books, records and papers of a client in a certain manner.

72 **Section 21** of this bill revises the duty of a community manager to deposit,
73 maintain and invest association funds so that such activities must be performed at
74 the client's direction.

75 Existing law exempts nonprofit corporations from the requirement to obtain a
76 state business license. (NRS 76.020, 76.100) **Sections 22 and 23** of this bill exempt
77 from this requirement associations which are organized as certain other types of
78 nonprofit or cooperative organizations.

79 **Section 24** of this bill requires the Legislative Commission to appoint a
80 subcommittee consisting of three members of the Senate and three members of the
81 Assembly to conduct a study during the 2011-2013 interim concerning the laws and
82 regulations governing common-interest communities.

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

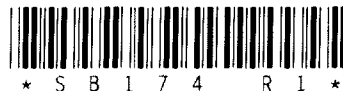
1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** (Deleted by amendment.)

3 **Sec. 3.** NRS 116.310312 is hereby amended to read as
4 follows:

5 116.310312 1. A person who holds a security interest in a
6 unit must provide the association with the person's contact
7 information as soon as reasonably practicable, but not later than 30
8 days after the person:

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



1 5. *As used in this section, "electronic transfer of money" has*
2 *the meaning ascribed to it in NRS 353.1467.*

3 **Sec. 15.** NRS 116.3116 is hereby amended to read as follows:

4 116.3116 1. The association has a lien on a unit for any
5 construction penalty that is imposed against the unit's owner
6 pursuant to NRS 116.310305, any assessment levied against that
7 unit or any fines imposed against the unit's owner from the time the
8 construction penalty, assessment or fine becomes due. Unless the
9 declaration otherwise provides, any penalties, fees, charges, late
10 charges, fines and interest charged pursuant to paragraphs (j) to (n),
11 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
12 assessments under this section. If an assessment is payable in
13 installments, the full amount of the assessment is a lien from the
14 time the first installment thereof becomes due.

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

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

20 (b) A first security interest on the unit recorded before the date
21 on which the assessment sought to be enforced became delinquent
22 or, in a cooperative, the first security interest encumbering only the
23 unit's owner's interest and perfected before the date on which the
24 assessment sought to be enforced became delinquent; and

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

27 ~~{→The}~~

28 3. *A lien under this section* is also prior to all security interests
29 described in paragraph (b) *of subsection 2* to the extent of ~~{any}~~ :

30 (a) *Any* charges incurred by the association on a unit pursuant to
31 NRS 116.310312 ; and ~~{to the extent of}~~

32 (b) *An amount equal to* the assessments for common expenses
33 based on the periodic budget adopted by the association pursuant to
34 NRS 116.3115 which would have become due in the absence of
35 acceleration during the 9 months immediately preceding ~~{institution~~
36 ~~of an action to enforce the lien,}~~ :

37 (1) *The association's mailing of a notice of delinquent*
38 *assessment in accordance with paragraph (a) of subsection 1 of*
39 *NRS 116.31162 with respect to the association's lien; or*

40 (2) *A trustee's sale of the unit under NRS 107.080 or a*
41 *foreclosure sale of the unit under NRS 40.430 to enforce the*
42 *security interest described in paragraph (b) of subsection 2,*

43 *↪ and fees not to exceed \$1,950 to cover the cost of collecting a*
44 *past due obligation which are imposed pursuant to NRS*
45 *116.310313, unless federal regulations adopted by the Federal*



1 Home Loan Mortgage Corporation or the Federal National
2 Mortgage Association require a shorter period of priority for the
3 lien. If federal regulations adopted by the Federal Home Loan
4 Mortgage Corporation or the Federal National Mortgage
5 Association require a shorter period of priority for the lien, the
6 period during which the lien is prior to all security interests
7 described in paragraph (b) *of subsection 2* must be determined in
8 accordance with those federal regulations, except that
9 notwithstanding the provisions of the federal regulations, the period
10 of priority for the lien must not be less than the 6 months
11 immediately preceding institution of an action to enforce the lien.
12 This subsection does not affect the priority of mechanics' or
13 materialmen's liens, or the priority of liens for other assessments
14 made by the association.

15 ~~{3-}~~ *This subsection supersedes any contrary provision in the*
16 *governing documents of the association.*

17 *4. After a trustee's sale of a unit under NRS 107.080 or a*
18 *foreclosure sale of a unit under NRS 40.430 to enforce a security*
19 *interest described in paragraph (b) of subsection 2, upon payment*
20 *to the association of the amounts described in subsection 3, any*
21 *unpaid amounts for which subsection 1 creates a lien and which*
22 *accrued before the trustee's sale or foreclosure sale are a personal*
23 *obligation of the person who owned the unit at the time the*
24 *amounts became due and the association does not have a lien on*
25 *the unit for those amounts.*

26 5. 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-}~~ 6. Recording of the declaration constitutes record notice
30 and perfection of the lien. No further recordation of any claim of
31 lien for assessment under this section is required.

32 ~~{5-}~~ 7. 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-}~~ 8. This section does not prohibit actions to recover sums
36 for which subsection 1 creates a lien or prohibit an association from
37 taking a deed in lieu of foreclosure.

38 ~~{7-}~~ 9. 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-}~~ 10. The association, upon written request, shall furnish to
42 a 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.}~~ **11.** In a cooperative, upon nonpayment of an assessment
5 on a 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. 16.** NRS 116.31183 is hereby amended to read as
18 follows:

19 116.31183 1. An executive board, a member of an executive
20 board, a community manager or an officer, employee or agent of an
21 association shall not take, or direct or encourage another person to
22 take, any retaliatory action against a unit's owner because the unit's
23 owner has:

24 (a) Complained in good faith about any alleged violation of any
25 provision of this chapter or the governing documents of the
26 association;

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

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

31 2. *A unit's owner shall not take, or direct or encourage*
32 *another person to take, any retaliatory action against a member of*
33 *the executive board, an officer, employee or agent of the*
34 *association, or another unit's owner because the member of the*
35 *executive board, the officer, employee or agent, or the unit's*
36 *owner has:*

37 (a) *Performed his or her duties under the governing*
38 *documents or the provisions of this chapter; or*

39 (b) *Exercised his or her rights under the governing documents*
40 *or the provisions of this chapter.*

41 3. In addition to any other remedy provided by law, upon a
42 violation of this section, a ~~{unit's owner}~~ *person aggrieved by the*
43 *violation* may bring a separate action to recover:

44 (a) Compensatory damages; and

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



SB174



Introduced in the Senate on Feb 17, 2011.

By: (**Bolded** name indicates primary sponsorship)

Copening

Revises provisions relating to common-interest communities. (BDR 10-105)

DECLARED EXEMPT

Fiscal Notes

Effect on Local Government: No.

Effect on State: No.

Most Recent History (No further action taken.)

Action:

(See full list below)

Upcoming Hearings

Past Hearings

Senate Judiciary	Feb 24, 2011 AM	08:00	Agenda	Minutes	No Action
Senate Judiciary	Feb 25, 2011 AM	08:00	Agenda	Minutes	No Action
Senate Judiciary	Mar 09, 2011 AM	08:00	Agenda	Minutes	Mentioned Not Agendized
Senate Judiciary	Mar 10, 2011 AM	08:00	Agenda	Minutes	Mentioned Not Agendized
Senate Judiciary	Mar 16, 2011 AM	08:00	Agenda	Minutes	Mentioned Not Agendized
Senate Judiciary	Mar 17, 2011 AM	08:00	Agenda	Minutes	Mentioned Not Agendized
Senate Judiciary	Apr 13, 2011 AM	08:00	Agenda	Minutes	No Action
Senate Judiciary	Apr 15, 2011 AM	07:00	Agenda	Minutes	Amend, and do pass as amended
Assembly Judiciary	May 06, 2011 AM	08:00	Agenda	Minutes	Mentioned, no jurisdiction
Assembly Judiciary	May 10, 2011 AM	08:00	Agenda	Minutes	Mentioned, no jurisdiction
Assembly Judiciary	May 13, 2011 AM	08:00	Agenda	Minutes	Mentioned, no jurisdiction
Assembly Judiciary	May 17, 2011 PM	04:30	Agenda	Minutes	Mentioned, no jurisdiction
Senate Finance	Jun 03, 2011 AM	09:00	Agenda	Minutes	Not Heard
	Jun 04, 2011	See	Agenda	Minutes	

Senate Finance	Agenda				No Action
Assembly	Jun 05, 2011	09:30	Agenda	Minutes	
Judiciary	AM				Mentioned, no jurisdiction
Senate Finance	Jun 05, 2011	02:00	Agenda	Minutes	
	PM				Not Heard
Assembly	Jun 06, 2011	09:00	Agenda	Minutes	
Judiciary	AM				Not heard

Final Passage Votes

Bill Text As Introduced 1st Reprint

Adopted Amendments Amend. No. 506

Bill History

Feb 17, 2011

- Read first time. Referred to Committee on Judiciary. To printer.

Feb 18, 2011

- From printer. To committee.

Apr 25, 2011

- From committee: Amend, and do pass as amended.

Apr 26, 2011

- Notice of eligibility for exemption.
- Read second time. Amended. (Amend. No. **506**.)
- Rereferred to Committee on Finance. To printer.

Apr 27, 2011

- From printer. To engrossment. Engrossed. **First reprint**.
- To committee.
- Exemption effective.

Jun 07, 2011

- (No further action taken.)

SENATE BILL NO. 204—SENATOR COPENING

FEBRUARY 28, 2011

Referred to Committee on Judiciary

SUMMARY—Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to common-interest communities; enacting certain amendments to the Uniform Common-Interest Ownership Act; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law relating to common-interest communities is based on the Uniform Common-Interest Ownership Act (UCIOA), which was proposed by the Uniform Law Commission (ULC). (Chapter 116 of NRS) This bill enacts certain amendments to the UCIOA which have been proposed by the ULC.

Sections 2, 40 and 41 of this bill prescribe the manner in which an association must provide notice of meetings of units' owners and of the executive board and any other notice required to be given by an association other than notices relating to the foreclosure of a lien on a unit held by the association.

Section 4 of this bill authorizes the executive board or any other interested person to commence an action in the district court for the termination of a common-interest community if: (1) substantially all the units in the common-interest community have been destroyed or are uninhabitable; and (2) the available methods for giving notice of a meeting of units' owners to consider termination are not likely to result in receipt of the notice.

Sections 5 and 6 of this bill reorganize and reenact certain provisions of existing law relating to the indemnification of members of executive boards and the provision of equal space to opposing views in official publications under certain circumstances.

Under existing law, the definitions applicable to laws relating to common-interest communities apply to the declarations and bylaws of associations. (NRS 116.003) **Section 7** of this bill provides that those definitions no longer apply to those declarations and bylaws.

Sections 8-16 of this bill change certain definitions set forth in existing law to conform to the language of the UCIOA.

Existing law provides that other principles of law, including, without limitation, the law of corporations and the law of unincorporated associations, supplement the existing law relating to common-interest communities. (NRS 116.1108) **Section 18**



* S B 2 0 4 *

of this bill provides that the laws governing other forms of organization supplement the existing law relating to common-interest communities.

Sections 20-22 of this bill adopt the language of certain amendments to the UCIOA relating to the applicability of existing law governing common-interest communities.

Sections 24-31 of this bill adopt the language of certain amendments to the UCIOA relating to the creation, alteration and termination of common-interest communities. **Section 29** grants units' owners the right to use the common elements for the purposes for which they were intended rather than granting an easement to use the common elements for all purposes. **Section 30** amends provisions relating to requirements for amending the declaration of a common-interest community and to the enforcement of certain amendments. **Section 31** amends the requirements for the termination of a common-interest community.

Sections 32-51 of this bill enact certain amendments to the UCIOA which relate to the governance of common-interest communities. **Section 32** requires the association to have an executive board and allows the association to be organized as any form of organization authorized by the law of this State. **Section 33** allows the executive board not to take enforcement action if it determines that: (1) the law does not support such action; (2) the violation is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or (3) it is not in the best interest of the association to pursue an enforcement action. **Section 34** provides that officers of the association and members of the executive board are subject to the conflict of interest rules which govern officers and directors of nonprofit corporations organized under the law of this State. **Section 36** authorizes a declarant to end the period of declarant's control by giving notice to units' owners and recording an instrument stating that the declarant surrenders all rights to control activities of the association. **Section 38** amends provisions relating to the termination of certain contracts entered into before the election of an executive board by units' owners. **Section 40** provides that the portion of a meeting of the units' owners devoted to comments by units' owners is limited to comments by units' owners regarding any matter affecting the common-interest community or the association. **Section 42** amends requirements for determining whether a quorum is present at a meeting of the executive board to provide that a majority of the votes on the executive board must be present at the time a vote is taken rather than at the beginning of the meeting. **Section 43** authorizes units' owners to vote by absentee ballot at a meeting of the units' owners. **Section 44** provides that a unit's owner is not liable, by reason of being a unit's owner, for injuries or damage arising out of the condition or use of the common elements. **Section 45** requires an association to obtain fidelity insurance and requires the association to maintain property, liability and fidelity insurance subject to reasonable deductibles. **Section 48** amends provisions relating to common expenses caused by a unit's owner, a tenant or an invitee of a unit's owner or tenant. **Section 49** amends provisions relating to liens for certain charges imposed by an association and authorizes a court to appoint a receiver when an association brings an action to foreclose a lien or collect assessments. **Sections 51 and 60** amend provisions relating to the books and records of an association and the inspection of such books and records by units' owners.

Sections 52-58 of this bill enact certain amendments to the UCIOA which relate to the disclosures provided to purchasers of real estate located in a common-interest community and the warranties applicable to real estate located in a common-interest community. **Section 52** exempts the disposition of a unit restricted to nonresidential purposes from the requirement to provide a public offering statement or certificate of resale. **Section 53** amends the information required to be included in the public offering statement provided to an initial purchaser of a unit. **Section 56** provides that a model or description of the physical



83 characteristics of a common-interest community does not create an express
84 warranty that the community will conform to the model or description if the model
85 or description clearly discloses that it is subject to change.

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 the provisions set forth as sections 2 to 6, inclusive, of this
3 act.

4 **Sec. 2. 1.** *Except as otherwise provided in subsection 3, an*
5 *association shall deliver any notice required to be given by the*
6 *association under this chapter to any mailing or electronic mail*
7 *address a unit's owner designates. Except as otherwise provided in*
8 *subsection 3, if a unit's owner has not designated a mailing or*
9 *electronic mail address to which a notice must be delivered, the*
10 *association may deliver notices by:*

11 (a) *Hand delivery to each unit's owner;*

12 (b) *Hand delivery, United States mail, postage paid, or*
13 *commercially reasonable delivery service to the mailing address of*
14 *each unit;*

15 (c) *Electronic means, if the unit's owner has given the*
16 *association an electronic mail address; or*

17 (d) *Any other method reasonably calculated to provide notice*
18 *to the unit's owner.*

19 **2.** *The ineffectiveness of a good faith effort to deliver notice*
20 *by an authorized means does not invalidate action taken at or*
21 *without a meeting.*

22 **3.** *The provisions of this section do not apply:*

23 (a) *To a notice required to be given pursuant to NRS 116.3116*
24 *to 116.31168, inclusive; or*

25 (b) *If any other provision of this chapter specifies the manner*
26 *in which a notice must be given by an association.*

27 **Sec. 3.** *This chapter modifies, limits and supersedes the*
28 *federal Electronic Signatures in Global and National Commerce*
29 *Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or*
30 *supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or*
31 *authorize electronic delivery of any of the notices described in*
32 *Section 103(b) of that Act, 15 U.S.C. § 7003(b).*

33 **Sec. 4.** *If substantially all the units in a common-interest*
34 *community have been destroyed or are uninhabitable and the*
35 *available methods for giving notice under NRS 116.3108 of a*
36 *meeting of units' owners to consider termination under NRS*
37 *116.2118 will not likely result in receipt of the notice, the executive*
38 *board or any other interested person may commence an action in*



1 **Sec. 49.** NRS 116.3116 is hereby amended to read as follows:

2 116.3116 1. The association has a *statutory* lien on a unit for
3 any construction penalty that is imposed against the unit's owner
4 pursuant to NRS 116.310305, any assessment ~~[levied against]~~
5 *attributable to* that unit or any fines imposed against the unit's
6 owner from the time the construction penalty, assessment or fine
7 becomes due. Unless the declaration otherwise provides, *reasonable*
8 *attorney's fees and costs*, any penalties, *other* fees, charges, late
9 charges, fines and interest charged pursuant to paragraphs (j) to (n),
10 inclusive, of subsection 1 of NRS 116.3102 , *and any other sums*
11 *due to the association under the declaration, this chapter, or as a*
12 *result of an administrative, arbitration, mediation or judicial*
13 *decision* are enforceable *in the same manner* as *unpaid*
14 assessments under this section. If an assessment is payable in
15 installments, the full amount of the assessment is a lien from the
16 time the first installment thereof becomes due.

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

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

22 (b) ~~{A}~~ *Except as otherwise provided in subsection 3*, a first
23 security interest on the unit recorded before the date on which the
24 assessment sought to be enforced became delinquent or, in a
25 cooperative, the first security interest encumbering only the unit's
26 owner's interest and perfected before the date on which the
27 assessment sought to be enforced became delinquent; and

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

30 ~~{→ The}~~

31 3. A lien *under this section* is also prior to all security interests
32 described in paragraph (b) *of subsection 2* to the extent of any
33 charges incurred by the association on a unit pursuant to NRS
34 116.310312 and to the extent of the assessments for common
35 expenses based on the periodic budget adopted by the association
36 pursuant to NRS 116.3115 which would have become due in the
37 absence of acceleration during the 9 months immediately preceding
38 institution of an action to enforce the lien, unless federal regulations
39 adopted by the Federal Home Loan Mortgage Corporation or the
40 Federal National Mortgage Association require a shorter period of
41 priority for the lien. If federal regulations adopted by the Federal
42 Home Loan Mortgage Corporation or the Federal National
43 Mortgage Association require a shorter period of priority for the
44 lien, the period during which the lien is prior to all security interests
45 described in paragraph (b) *of subsection 2* must be determined in



1 accordance with those federal regulations, except that
2 notwithstanding the provisions of the federal regulations, the period
3 of priority for the lien must not be less than the 6 months
4 immediately preceding institution of an action to enforce the lien.
5 This subsection does not affect the priority of mechanics' or
6 materialmen's liens, or the priority of liens for other assessments
7 made by the association.

8 ~~{3.}~~ 4. Unless the declaration otherwise provides, if two or
9 more associations have liens for assessments created at any time on
10 the same property, those liens have equal priority.

11 ~~{4.}~~ 5. Recording of the declaration constitutes record notice
12 and perfection of the lien. No further recordation of any claim of
13 lien for assessment under this section is required.

14 ~~{5.}~~ 6. A lien for unpaid assessments is extinguished unless
15 proceedings to enforce the lien are instituted within 3 years after the
16 full amount of the assessments becomes due.

17 ~~{6.}~~ 7. This section does not prohibit actions *against units'*
18 *owners* to recover sums for which subsection 1 creates a lien or
19 prohibit an association from taking a deed in lieu of foreclosure.

20 ~~{7.}~~ 8. A judgment or decree in any action brought under this
21 section must include costs and reasonable attorney's fees for the
22 prevailing party.

23 ~~{8.}~~ 9. The association, upon written request, shall furnish to a
24 unit's owner a statement setting forth the amount of unpaid
25 assessments against the unit. If the interest of the unit's owner is real
26 estate or if a lien for the unpaid assessments may be foreclosed
27 under NRS 116.31162 to 116.31168, inclusive, the statement must
28 be in recordable form. The statement must be furnished within 10
29 business days after receipt of the request and is binding on the
30 association, the executive board and every unit's owner.

31 ~~{9.}~~ 10. In a cooperative, upon nonpayment of an assessment
32 on a unit, the unit's owner may be evicted in the same manner as
33 provided by law in the case of an unlawful holdover by a
34 commercial tenant, and:

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

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

40 (1) May be foreclosed as a security interest under NRS
41 104.9101 to 104.9709, inclusive; or

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

44 11. *In an action by an association to collect assessments or to*
45 *foreclose a lien created under this section, the court may appoint a*



1 *receiver to collect all rents or other income from the unit alleged*
2 *to be due and owing to a unit's owner before commencement or*
3 *during pendency of the action. The receivership is governed by*
4 *chapter 32 of NRS. The court may order the receiver to pay any*
5 *sums held by the receiver to the association during pendency of*
6 *the action to the extent of the association's common expense*
7 *assessments based on a periodic budget adopted by the association*
8 *pursuant to NRS 116.3115.*

9 **Sec. 50.** NRS 116.3117 is hereby amended to read as follows:

10 116.3117 1. In a condominium or planned community:

11 (a) Except as otherwise provided in paragraph (b), a judgment
12 for money against the association, if a copy of the docket or an
13 abstract or copy of the judgment is recorded, is not a lien on the
14 common elements, but is a lien in favor of the judgment lienholder
15 against all of ***the other real property of the association and all of***
16 ***the units in the common-interest community at the time the***
17 ***judgment was entered. No other property of a unit's owner is subject***
18 ***to the claims of creditors of the association.***

19 (b) If the association has granted a security interest in the
20 common elements to a creditor of the association pursuant to NRS
21 116.3112, the holder of that security interest shall exercise its right
22 against the common elements before its judgment lien on any unit
23 may be enforced.

24 (c) Whether perfected before or after the creation of the
25 common-interest community, if a lien, other than a deed of trust or
26 mortgage, including a judgment lien or lien attributable to work
27 performed or materials supplied before creation of the common-
28 interest community, becomes effective against two or more units,
29 the owner of an affected unit may pay to the lienholder the amount
30 of the lien attributable to his or her unit, and the lienholder, upon
31 receipt of payment, promptly shall deliver a release of the lien
32 covering that unit. The amount of the payment must be
33 proportionate to the ratio which that owner's liability for common
34 expenses bears to the liabilities for common expenses of all owners
35 whose units are subject to the lien. After payment, the association
36 may not assess or have a lien against that owner's unit for any
37 portion of the common expenses incurred in connection with that
38 lien.

39 (d) A judgment against the association must be indexed in the
40 name of the common-interest community and the association and,
41 when so indexed, is notice of the lien against the units.

42 2. In a cooperative:

43 (a) If the association receives notice of an impending foreclosure
44 on all or any portion of the association's real estate, the association
45 shall promptly transmit a copy of that notice to each owner of a unit



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Senate Bill No. 204—Senator Copening

CHAPTER.....

AN ACT relating to common-interest communities; enacting certain amendments to the Uniform Common-Interest Ownership Act; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law relating to common-interest communities is based on the Uniform Common-Interest Ownership Act (UCIOA), which was proposed by the Uniform Law Commission (ULC). (Chapter 116 of NRS) This bill enacts certain amendments to the UCIOA which have been proposed by the ULC.

Sections 2, 40 and 41 of this bill prescribe the manner in which an association must provide notice of meetings of units' owners and of the executive board and any other notice required to be given by an association other than notices relating to the foreclosure of a lien on a unit held by the association.

Section 4 of this bill authorizes the executive board or any other person with an interest in the common-interest community to commence an action in the district court for the termination of a common-interest community if: (1) substantially all the units in the common-interest community have been destroyed or are uninhabitable; and (2) the available methods for giving notice of a meeting of units' owners to consider termination are not likely to result in receipt of the notice.

Sections 5 and 6 of this bill reorganize and reenact certain provisions of existing law relating to the indemnification of members of executive boards and the provision of equal space to opposing views in official publications under certain circumstances. Additionally, **section 6** enacts provisions providing for equal time for candidates and representatives of ballot questions on a closed-circuit television station maintained by an association.

Under existing law, the definitions applicable to laws relating to common-interest communities apply to the declarations and bylaws of associations. (NRS 116.003) **Section 7** of this bill clarifies that those definitions apply to those declarations and bylaws.

Sections 8-16 of this bill change certain definitions set forth in existing law to conform to the language of the UCIOA.

Existing law provides that other principles of law, including, without limitation, the law of corporations and the law of unincorporated associations, supplement the existing law relating to common-interest communities. (NRS 116.1108) **Section 18** of this bill provides that the laws governing other forms of organization supplement the existing law relating to common-interest communities.

Sections 20-22 of this bill adopt the language of certain amendments to the UCIOA relating to the applicability of existing law governing common-interest communities. **Section 21** also requires certain associations containing not more than 12 units to provide each unit with a copy of any changes made to the governing documents within 30 days after such changes are made.

Sections 24-31 of this bill adopt the language of certain amendments to the UCIOA relating to the creation, alteration and termination of common-interest communities. **Section 29** grants units' owners the right to use the common elements for the purposes for which they were intended rather than granting an easement to use the common elements for all purposes. **Section 30** amends provisions relating to requirements for amending the declaration of a common-interest community and to the enforcement of certain amendments. **Section 31** amends the requirements for the termination of a common-interest community.



Sections 32-51 of this bill enact certain amendments to the UCIOA which relate to the governance of common-interest communities. **Section 32** requires an association larger than 12 units to have an executive board and allows an association to be organized as any form of organization authorized by the law of this State. **Section 33** allows the executive board not to take enforcement action if it determines that: (1) the law does not support such action; (2) the violation is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or (3) it is not in the best interest of the association to pursue an enforcement action. **Section 34** provides that officers of the association and members of the executive board are subject to the conflict of interest rules which govern officers and directors of nonprofit corporations organized under the law of this State. **Section 34.5** provides that if an association seeks to impose and enforce a construction penalty, the association must provide notice of the maximum allowable penalty and schedule in the public offering statement or resale package. **Section 36** authorizes a declarant to end the period of declarant's control by giving notice to units' owners and recording an instrument stating that the declarant surrenders all rights to control activities of the association. **Section 37** amends provisions relating to the removal of members of the executive board. **Section 38** amends provisions relating to the termination of certain contracts entered into before the election of an executive board by units' owners. **Section 40** provides that the portion of a meeting of the units' owners devoted to comments by units' owners is limited to comments by units' owners regarding any matter affecting the common-interest community or the association. **Section 42** amends requirements for determining whether a quorum is present at a meeting of the executive board to provide that a majority of the votes on the executive board must be present at the time a vote is taken rather than at the beginning of the meeting. **Section 43** authorizes units' owners to vote by absentee ballot at a meeting of the units' owners. **Section 44** provides that a unit's owner is not liable, by reason of being a unit's owner, for injuries or damage arising out of the condition or use of the common elements. **Sections 45 and 59.5** of this bill require an association to obtain crime insurance and remove the requirement that a community manager post a bond. **Section 45** also requires the association to maintain property, liability and crime insurance subject to reasonable deductibles. **Section 48** amends provisions relating to common expenses caused by a unit's owner, a tenant or an invitee of a unit's owner or tenant. **Section 49** authorizes a court to appoint a receiver when an association brings an action to foreclose a lien or collect assessments. **Sections 51 and 60** amend provisions relating to the books and records of an association and the inspection of such books and records by units' owners.

Sections 52-58 of this bill enact certain amendments to the UCIOA which relate to the disclosures provided to purchasers of real estate located in a common-interest community and the warranties applicable to real estate located in a common-interest community. **Section 52** exempts the disposition of a unit restricted to nonresidential purposes from the requirement to provide a public offering statement or certificate of resale. **Section 53** amends the information required to be included in the public offering statement provided to an initial purchaser of a unit.



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

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

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Sec. 49. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, 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.

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 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. 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.

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

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

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

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

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

8. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

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



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

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

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

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

10. In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

Sec. 50. NRS 116.3117 is hereby amended to read as follows:

116.3117 1. In a condominium or planned community:

(a) Except as otherwise provided in paragraph (b), a judgment for money against the association, if a copy of the docket or an abstract or copy of the judgment is recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of ***the other real property of the association and all of*** the units in the common-interest community at the time the judgment was entered. No other property of a unit's owner is subject to the claims of creditors of the association.

(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to NRS 116.3112, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(c) Whether perfected before or after the creation of the common-interest community, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the common-interest community, becomes effective against two or more units, the owner of an affected unit may pay to the lienholder the amount of the lien attributable to his or her unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be





U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Santa Ana Homeownership Center
Santa Ana Federal Building
34 Civic Center Plaza, Room 7015
Santa Ana, CA 92701-4003
www.hud.gov & espanol.hud.gov

September 20, 2012

Gail Anderson
Administrator
Nevada Real Estate Division
2501 East Sahara Avenue, Suite 102
Las Vegas, Nevada 89104

Dear Ms. Anderson,

This letter is to inform you of certain business practices being conducted by Homeowner Associations (HOAs) and their associated collection agencies in the State of Nevada and to request clarification of Nevada law.

The United States Department of Housing and Urban Development (HUD) is the owner of various properties in the State, many of which are part of common-interest communities and HOAs. HUD receives these properties as a result of foreclosure of FHA-insured mortgages and is responsible for paying all fees and assessments associated with common-interest communities. In addition, HUD routinely pays uncollected assessments that were incurred in the 9-month period prior to the foreclosure of the property (the "super priority lien" or "super lien"). Pursuant to Nevada Revised Statutes chapter 116 and in accordance with the Commission on Common-Interest Communities and Condominium Hotels' Advisory Opinion 2010-01, HUD also pays the fees and costs associated with the collection of the 9-month super lien. However, HUD has not paid any assessments outside of this 9-month period or any fees and costs associated with the collection of such assessments.

In the past several months, several HOAs, through their collection agencies (most notoriously, Hampton & Hampton Attorneys, PC, Nevada Association Services, Silver State Trustee Services, LLC, and Alessi & Koenig, LLC), have requested that HUD pay fees and costs associated with pre-super lien assessments dating back several years (although they have not requested payment of pre-super lien assessments). Because HUD does not pay costs and fees associated with years-old assessments, HOAs have not released the liens on the properties and HUD has not been able to sell the properties. This results in a significant dilemma for the Department, as HUD is forced to choose between either holding on to properties indefinitely or paying thousands of dollars in fees and costs that are imposed in a manner not in accordance with Nevada law. In either case, the practices of the HOAs are negatively impacting taxpayer resources and the FHA Insurance Fund. This dilemma also stands in the way of HUD's mission to resell HUD-owned properties quickly in order to reduce vacancies and reinvigorate communities.

Advisory Opinion 2010-01 states that "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." (Emphasis added).

This Advisory Opinion makes no mention of collection costs that are incurred prior to the 9-month super lien period. In fact, the demand for the fees and costs prior to the 9-month super lien period is inconsistent with the statutorily-imposed balance between helping HOAs remain solvent and not penalizing new owners of properties for the failure of previous owners to keep up with their assessments. Should HUD be required to pay these fees, the money would not inure to the benefit of HOAs, as it would merely go directly to the collection agencies. In addition, it is inconsistent with the statutory scheme to claim that costs and fees not included in NRS chapter 116 are permitted, as the statute is very clear about what charges may be assessed. Imposition of additional fees and costs would amount to adding a new statutory category of permissible charges.

HUD respectfully requests that the Real Estate Division address the issue of fees and costs associated with the collection of assessments outside of the 9-month super lien period. The Department requests that this determination be made in accordance with the plain language of the statute and in a spirit consistent with its purpose.

If you have additional questions or need further assistance, please contact the undersigned or Judy Wasmuth, Branch Chief, Real Estate Owned Division in the Santa Ana Home Ownership Center at 714-796-1200, extension 3510.

Sincerely,



Thomas A. Rose, REO Director
U.S. Department of Housing and Urban Development
34 Civic Center Plaza
Santa Ana, CA. 92701
(714) 955-0837

Cc: Terry Johnson, Director, Nevada Department of Business and Industry
Catherine Cortez Masto, Attorney General, Nevada Office of the Attorney General

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I. AMICUS CURIAE STATEMENT

The Department of Business and Industry, Real Estate Division (the “Division”), is a political subdivision of the State of Nevada and may file an amicus curiae brief without the consent of the parties or leave of the Court.¹ In December of 2012, the Division issued an advisory opinion regarding its interpretation of NRS 116.3116 pursuant to its authority in NRS 116.623 (Division Advisory Opinion 13-01, “Division Opinion”).² Collection companies, acting as agents for homeowners’ associations, are not complying with the Division Opinion. The Division and the Department of Business and Industry, Financial Institutions Division (“FID”) brought a statutory enforcement claim to force compliance with NRS 116.3116 against certain collection companies.³ The Division has an interest in how this Court interprets the provisions of NRS 116.3116. This case is of great importance to the Division. We therefore respectfully submit this amicus curiae brief.

II. INTRODUCTION

In 2010, FID issued an advisory opinion and declaratory order regarding the limits of the super priority lien under NRS 116.3116. Collection companies sued FID to prevent enforcement of its opinion and order. This Court ultimately decided that FID does not have authority to issue advisory opinions concerning NRS 116.⁴ After this Court’s decision, the Division issued the Division Opinion pursuant to NRS 116.623 regarding the meaning of NRS 116.3116.⁵ Collection companies are not following the Division Opinion. This situation creates a gap in the regulation of collection companies

¹ NRAP 29(a).

² RA0225-0245.

³ *State Dep’t of Bus. and Indus., Real Estate Div. v. Account Recovery Solutions, LLC, et. al.*, Case No. A-13-688795-B; Dept. XXIX.

⁴ *State Dep’t of Bus. and Indus., Fin. Inst. Div. v. Nevada Ass’n Services, Inc., et. al.*, 128 Nev. ___, 294 P. 3d 1223 (Adv. Op. 34, August 2, 2012).

⁵ RA0225-0245.

in their dealings with homeowner's associations and unit owners within associations. As such this is a matter of great public concern.

The Division supports Respondent's position and the district court's finding that the super priority lien defined by NRS 116.3116(2)(c) is limited. But the Division takes the analysis of the statutory language farther than required by the facts of this case. The Division Opinion concludes that not only is the super priority lien limited to a dollar amount, it is expressly limited to 9 months of assessments and costs under NRS 116.310312 and no other charge.⁶ The Division Opinion also concludes that the association's lien, defined by NRS 116.3116(1), does not include "costs of collecting" defined by NRS 116.310313.⁷

The district court found that the super priority lien can consist of components of the association lien other than assessments, but this was not a disputed issue in the underlying case.⁸ The Respondent would not care what the super priority lien consists of, because it pays the same amount regardless, but the Division believes this is an issue of public concern. The Division is concerned about the district court's statement of the law that was not fully analyzed and considered by the court. The Division believes the law is explicit and clear and should be interpreted as it is worded. But even if an argument could be made that any particular language is unclear, a look at the legislative intent and the origins of the law also support the Division's position. The Division respectfully requests that to the extent this Honorable Court makes any conclusions about what any portion of the association's lien *consists of* that a thorough reading of NRS 116.3116(1) and (2) be considered.

III. ARGUMENT

A. THE PLAIN LANGUAGE OF NRS 116.3116 DOES NOT ALLOW FOR COSTS OF

⁶ RA0235-0242.

⁷ RA0226-0033.

⁸ AA0973, 1-7.

COLLECTING TO BE PART OF THE ASSOCIATION'S LIEN.

At issue in this case is not what constitutes the super priority lien under NRS 116.3116, but rather what amount the super priority lien is limited to.⁹ Appellant's Opening Brief seems to state as a matter of law that the super priority lien includes fees and costs of collection in the first Statement of the Issues Presented for Review.¹⁰ This is very much not a settled issue. The Appellant's first Statement of the Issues states:

1. NRS 116.3116(2) provides a statutory "super-priority" lien in favor of homeowners' associations in the event of a foreclosure by the holder of a first security interest on a common interest unit. **This "super-priority" lien includes unpaid assessments, as well as fees and costs of collection.** Is the statutory "super-priority" lien numerically limited to so-called "nine times monthly assessments" and no more?¹¹ [Emphasis added.]

The lower court did not find that *costs of collection* are part of the super priority lien. As a cursory issue, the district court found that the super priority lien can consist of something other than assessments, but refers to "fees, charges, fines and interest" as taken from NRS 116.3116(1).¹² Therefore, the district court found that the super priority lien could consist of any part of the association's lien, but that amount is limited. The issue of what the super priority lien *consists of* was not part of the contested issues before the lower court. Respondent's objective would be to define the amount of the super priority lien, not to say what it consists of. But this issue is of great importance to the Division and to the citizens of this State having dealings with HOA debt collectors.

The Division Opinion concludes that the association's lien does not include costs of collecting and further that the super priority lien consists solely of 9 months of assessments and abatement costs under NRS 116.310312. The Division believes the

⁹ Appellant's Opening Brief at 1 (Statement of the Issues Presented for Review No. 1).

¹⁰ See id.

¹¹ Id.

¹² AA0973, 1-7.

language of the relevant statutes is clear and unambiguous precluding any need to apply rules of statutory construction.¹³ In such case, this Court is not permitted to look beyond the statutes themselves to determine their meaning.¹⁴ To the extent statutory construction principles apply, the Division's conclusion is supported, not only by the language of the statutes, but the statutory construction principle of *expressio unius est exclusio alterius* (the mention of one thing implies the exclusion of another) which has been adopted by this Court.¹⁵

NRS Chapter 116 is divided into 4 Articles. Within Article 3, labeled Management of Common-Interest Communities, there are 6 subsections. One of the 6 subsections in Article 3 is titled, Liens. The Liens subsection consists of NRS 116.3116 through NRS 116.3117, inclusive. NRS 116.3116(1) and (2) provide as follows:

NRS 116.3116 Liens against units for assessments.

1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, 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.

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

¹³ See *Hamm v. Arrowcreek Homeowners' Assoc.*, 124 Nev. 290, 295, 183 P.3d 895, 899 (2008) (finding that where the language of a statute is "clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself") (quoting *State v. Jepsen*, 46 Nev. 193, 196, 209 P. 501, 502 (1922)); see also, *Torres v. Goodyear Tire & Rubber Co.*, 130 Nev. ___, ___, 317 P.3d 828, 830 (2014) (Adv. Op. 3, Jan. 30, 2014).

¹⁴ *Hamm*, 124 Nev. at 295, 183 P.3d at 899.

¹⁵ *State v. Wyatt*, 84 Nev. 731, 448 P.2d 827 (1968) (in dissent) (citing *State v. Baker*, 8 Nev. 141 (1872); *In Re Bailey's Estate*, 31 Nev. 377, 103 P. 232 (1909); *Ex Parte Arascada*, 44 Nev. 30, 189 P. 619 (1920)).

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 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. 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.]

As is clear from this statutory language, the association's lien is defined by those provisions of subsection 1. Subsection 2 of the statute establishes the lien's priority status and provides that a portion of the lien is entitled to super priority status. Subsection 1 clearly states that construction penalties, assessments, and fines are part of the lien. That is the first sentence of subsection 1. The second sentence of subsection 1 provides that other charges are also "enforceable as assessments." The Division interprets "enforceable as assessments" to mean that those charges are enforceable as a lien on the unit, just like assessments. The second sentence provides that those charges allowed pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are also part of the association's lien. There are no other provisions

of NRS 116 defining the association's lien.

"Costs of collecting," defined by NRS 116.310313(3)(a), may be charged to unit owners pursuant to that statute. Collection company charges are permitted to be charged to unit owners by NRS 116.310313. NRS 116.310313 is not within the Lien section of NRS 116 and does not say the charges permissible under that section of law constitute a lien on the unit. Therefore, in order for "costs of collecting" to be part of the association's lien, they would have to be included in NRS 116.3102(1)(j) to (n). They are not.

B. NRS 116.3102(1)(J) THROUGH (N), INCLUSIVE, DOES NOT INCLUDE COSTS OF COLLECTING.

NRS 116.3116(1) defines the lien for the association. The language is clear and undeniable. The lien consists of the items listed: construction penalties pursuant to NRS 116.310305, assessments levied against a unit, and fines. The statute goes on to say – unless the association's declaration provides otherwise – certain items that may be charged pursuant to NRS 116.3102(1) (j) through (n) are also enforceable as assessments. This would mean those charges permitted by NRS 116.3102(1) (j) through (n) are also part of the association's lien. Applying the statutory construction principle of *expressio unius est exclusio alterius* it is assumed that the failure of the Nevada Legislature to include all charges that an association may impose means not all charges can be part of the lien.

The Ninth Circuit Court of Appeals described the principle as follows:

The doctrine of *expressio unius est exclusio alterius* 'as applied to statutory interpretation creates a presumption that when a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions.'¹⁶

The only way "costs of collecting" which are defined by NRS 116.310313, can be

¹⁶ *Silvers v. Sony Pictures Entm't, Inc.*, 402 F.3d 881, 885 (9th Cir. 2005) (quoting *Boudett v. Barnette*, 923 F.2d 754, 756-57 (9th Cir. 1991)).

part of the association's lien is if they are included in NRS 116.3102(1) (j) through (n) which provides:

1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association: ...
 - (j) May 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) May impose charges for late payment of assessments pursuant to NRS 116.3115.
 - (l) May impose construction penalties when authorized pursuant to NRS 116.310305.
 - (m) May 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) May 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.

None of these subsections refer to NRS 116.310313 and none of them could be interpreted to mean the definition of costs of collecting as defined by NRS 116.310313. NRS 116.3102(1)(j) allows charges for use of common elements and services provided. This is clearly not "costs of collecting" under NRS 116.310313. As stated above, subsection (k) allows an association to charge a late fee pursuant to NRS 116.3115. NRS 116.3115(3) allows interest to be charged when an assessment is no less than 60 days delinquent. A charge for late payments could not be used to incorporate all that is allowed to be charged by NRS 116.310313, which provides:

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. [Emphasis added.]

As is evident by the language of the statute, "costs of collecting" includes not just costs incurred for the late payment of assessments, but any sort of fee for the "investigation, enforcement or collection of a past due **obligation**." "Obligation" is separately defined to include *anything* the association may charge or impose upon the unit owner, not just assessments. It is contrary to the express language of the statute to say "costs of collecting" are included in NRS 116.3102(1)(k) as a charge for a late payment of assessments. Costs of collecting are much more than a late fee.

Subsections (l) and (m) concern construction penalties and fines, neither of which are costs of collecting. Subsection (n) also clearly does not include costs of collecting. It references charges pursuant to NRS 116.4109 which is for resale packages and for charges to record an amendment to the declaration or provide a statement of unpaid assessments. None of these charges are "costs of collecting." The legislative history further supports this conclusion.

C. THE LEGISLATIVE HISTORY SUPPORTS THE DIVISION'S CONCLUSIONS.

In 2009 the Nevada Legislature adopted NRS 116.310312 ("Abatement Costs") and NRS 116.310313 (allowing for costs of collecting). The new statutory charges are clearly treated differently in NRS 116. NRS 116.310312 allows an association to remove or abate a public nuisance on the exterior of a unit. These Abatement Costs are a lien on the unit according to the express language of NRS 116.310312. The Abatement Costs were also added to NRS 116.3102(1)(j) to make them part of the association's lien under NRS 116.3116(1), and they were made part of the association's

super priority lien by being included in NRS 116.3116(2)(c).

On the other hand, NRS 116.310313 which allows for costs of collecting to be charged to a unit owner does not say the charges are a lien on the unit and NRS 116.310313 does not appear in NRS 116.3116 or NRS 116.3102(1)(j) through (n).

NRS 116 came from the Uniform Common Interest Ownership Act (“Uniform Act”) when it was adopted in Nevada in 1991.¹⁷ Section 3-116 is substantially similar to NRS 116.3116. The Uniform Act was amended in 2008.¹⁸ The 2008 amendments to Section 3-116 included expansion of the association’s lien and expansion of the super priority lien to include reasonable attorneys’ fees and costs foreclosing the lien.¹⁹ The comments to the Uniform Act amendments from 2008 state:

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).²⁰

Subsection (a) from the Uniform Act corresponds to NRS 116.3116(1). In other words, the comment to the Uniform Act states that the association’s lien was expanded to make attorneys’ fees and costs of foreclosure part of the super priority lien which is in Subsection (c). There is no question that the Uniform Act was amended in 2008 and that as part of those amendments the lien was expanded and the super priority lien was expanded.²¹ But those Uniform Act amendments were not adopted by the Nevada Legislature in 2009, or since.

In 2011, the Nevada Legislature considered Senate Bill 174 which proposed

¹⁷ NRS 116.001.

¹⁸ RA0030-0047.

¹⁹ RA0037-0038.

²⁰ RA0046.

²¹ RA0030-0047.

changes to NRS 116.3116 to expand the priority lien to include collection costs.²² First it added the costs allowed under NRS 116.310313 to be part of the lien and super priority lien and included some language from the 2008 Uniform Act changes.²³ It was amended to set a dollar amount for the collection costs as part of the super priority lien.²⁴ Ultimately, the bill died in committee.²⁵

Also in the 2011 legislative session, Senate Bill 204, as originally introduced, included an expansion to the association's lien to include attorney's fees and costs and "any other sums due to the association."²⁶ It would have amended NRS 116.3116(1) which defines the association's lien. The changes to NRS 116.3116 were removed from the bill. The bill ultimately passed without any change to NRS 116.3116(1).²⁷

After the 2011 legislative session, the Nevada Legislature still had not passed the Uniform Act changes from 2008 concerning the association's lien and the super priority lien. The association's lien does not include costs of collecting. The lien only includes what is expressly provided in NRS 116.3116(1). By failing to include costs of collecting from the items comprising the lien, they are deemed excluded. Therefore, the costs of collecting cannot be part of the super priority lien.

D. THE SUPER PRIORITY LIEN CONSISTS OF REGULAR ASSESSMENTS AND ABATEMENT COSTS AND NOTHING MORE.

²² See Portion of Senate Bill 174 as originally introduced during the 2011 legislative session, attached hereto as Addendum 1 at NRED 0001-0006 (for a full copy of SB 174 go to: <http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=423>).

²³ See *id.* at NRED0004 (As Introduced; Sec.15).

²⁴ See *id.* at NRED0010 (1st Reprint; Sec. 15).

²⁵ See *id.* at NRED0013-0014 (SB 174 (2011) was passed as amended by the Senate Judiciary, but did not pass out of the Assembly Judiciary).

²⁶ See Portion of Senate Bill 204, attached as Addendum 1 at NRED0015-0020 (As Introduced; Sec. 49) (for a full copy of SB 204 go to: <http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=488>).

²⁷ See *id.* (As Enrolled; Sec. 49).

The super priority lien is provided at NRS 116.3116(2)(c) and lists two components: 1) charges incurred by the association pursuant to NRS 116.310312 (“Abatement Costs”); and 2) assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115.²⁸ The assessment portion of the super priority lien is limited to nine months of assessments. Both components are part of the association lien described in NRS 116.3116(1). The district court decision treats the assessment language like a mathematical calculation as if the reference to nine months of assessments in the statute is only to establish a dollar amount.²⁹ The Division agrees that the limit is nine months of assessments, but disagrees that something other than assessments can be included. There is no denying that the express language describing the super priority lien does not include costs of collecting pursuant to NRS 116.310313. And by the Nevada Legislature listing two very specific portions of the association’s lien as having priority status over the first deed of trust, it is presumed that any other portion of the lien is excluded. This conclusion is reasonable and it avoids unreasonable results.

The district court’s mathematical calculation concept could mean that even when assessments are not delinquent, some other portion of the lien could survive a foreclosure by the first deed of trust. To say *any* portion of the association’s lien can survive foreclosure of the first deed of trust is to say that the prior owner’s fines or construction penalties survive a foreclosure by the first deed of trust. Fines and construction penalties are not part of the monies needed by an association to meet their obligations. Such a result would be absurd. Consider what would happen if a lender set up an impound account as contemplated by NRS 116.3116(3) for assessments. If that lender ultimately foreclosed its lien all the while keeping the assessments paid

²⁸ NRS 116.3116(2)(c).

²⁹ AA0973, 1-7.

current, could the association using the language from NRS 116.3116(2)(c) maintain a super priority lien for fines charged to the owner? The Division believes this would be an absurd result of interpreting the super priority lien to consist of something other than what it says it consists of: Abatement Costs and 9 months of assessments. The Abatement Costs permitted by NRS 116.310312 are allowed to give an association the right to make modifications to a property falling into disrepair – not to set a dollar amount. The association is guaranteed the right to be reimbursed for this expense if it is incurred. Just the same, associations are guaranteed the right to receive delinquent assessments for a period of nine months. The super priority lien consists of what the statute says it consists of and nothing more. There is no other way to interpret the plain language of the statute.

Moreover, the comments to the Uniform Act – from which the super priority lien originates – make it clear that the super priority lien was intended to help associations meet their obligations and to include only assessments. Section 3-116, Comment 2 states:

[A]s to prior first security interests the association's lien does have priority for six months' assessments based on the periodic budget. A significant departure from existing practice, ***the six 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 six months' assessments demanded by the association rather than having the association foreclose on the unit. [Emphasis added.]³⁰

From this comment it is clear that the super priority lien consists solely of assessments. The comment to this section after the 2008 amendment further reiterates this meaning by saying the existing super lien is “6 months of regular common assessments.”³¹ To say the language in NRS 116.3116(2)(c) includes anything other

³⁰ RA0043.

³¹ RA0046.

than what is expressly provided, one would have to infer language into the statute that is not there.

E. THE DIVISION’S ADVISORY OPINION IS ENTITLED TO DEFERENCE.

The Division is charged with administering the provisions of NRS 116.³² The Division issued its advisory opinion regarding NRS 116.3116 at the request of the Director of the Department of Business and Industry (the “Department”) after this Court ruled in 2012 that the Financial Institutions Division (FID) could not interpret the provisions of NRS 116.³³ The Department originally provided the 2010 petition for an advisory opinion to FID.³⁴ But after FID issued its advisory opinion and declaratory order, collection companies sued to enjoin enforcement. This Court ultimately ruled that FID exceeded its authority by interpreting the provisions of NRS 116.3116.³⁵ This Court noted that FID can rely on the interpretations of the Division concerning NRS Chapter 116.³⁶ After this Court’s decision, the Director of the Department referred the original 2010 petition to the Division. The Division had also received a request from the Department of Housing and Urban Development (HUD) for clarity on NRS 116.3116.³⁷ The Division Opinion answers three questions: 1. Whether costs of collecting under NRS 116.310313 are part of the super priority lien; 2. Whether the assessment portion of the super priority lien can exceed 9 months of regular assessments; and 3. Whether the association must institute a “civil action” in order for the super priority lien to exist.³⁸

The Division has statutory authority to administer NRS 116 under NRS

³² See NRS 116.615(1).

³³ *Nevada Ass’n Services*, 294 P. 3d at 1227-28.

³⁴ RA0050-0069.

³⁵ *Nevada Ass’n Services*, 294 P. 3d at 1227-28.

³⁶ *Nevada Ass’n Services*, 294 P. 3d at 1228 n.4.

³⁷ September 20, 2012, letter from U.S. Department of Housing and Urban Development, attached hereto as Addendum 1 at NRED0026-0027.

³⁸ RA0226.

116.615(1). The Division has the exclusive authority to interpret the provisions of NRS 116 under NRS 116.623 through the issuance of advisory opinions and declaratory orders.³⁹ Under its statutory authority, the Division issued the Division Opinion interpreting NRS 116.3116 and other relevant statutes. The Nevada Supreme Court has “repeatedly recognized the authority of agencies... to interpret the language of a statute that they are charged with administering; as long as that interpretation is reasonably consistent with the language of the statute, it is entitled to deference in the courts.”⁴⁰

Moreover, the U.S. Supreme Court has “long recognized that considerable weight should be accorded to an executive department’s construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations.”⁴¹ Explaining the deference afforded to administrative agencies, the U.S. Supreme Court in *Chevron v. National Resources Defense Council*⁴² noted that “the court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding.”⁴³ The Division’s Opinion is more than *reasonably consistent* with the language of the law.

³⁹ NRS 116.623; see also RA0496-0499.

⁴⁰ *International Game Tech., Inc. v. Second Jud. Dist. Ct.*, 122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006) (citing *Meridian Gold v. State, Dep’t of Taxation*, 119 Nev. 630, 636-37, 81 P.3d 516, 520 (2003); *Malecon Tobacco v. State, Dep’t of Taxation*, 118 Nev. 837, 841 & 842 n.15, 59 P.3d 474, 477 & n.15 (2002)) (accord *United States v. State Engineer*, 117 Nev. 585, 589, 27 P.3d 51, 53 (2001); *Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002); *Sierra Pac Power v. Dep’t Taxation*, 96 Nev. 295, 297, 607 P.2d 1147, 1148 (1980)).

⁴¹ *Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837, 844 (1984) (cited by *Thomas v. City of North Las Vegas*, 122 Nev. 82, 101, 127 P.3d 1057, 1070 (2006)).

⁴² *Chevron*, 467 U.S. at 844.

⁴³ *Chevron*, 467 U.S. at 843 n.11.

When a court interprets a statute, it “should consider multiple legislative provisions as a whole.”⁴⁴ Furthermore, the “language of a statute should be given its plain meaning unless, in so doing, the spirit of the act is violated.”⁴⁵ Only if the statute is ambiguous – reasonably susceptible to more than one meaning – should the court examine the statute “through reason and considerations of public policy to determine the legislature’s intent.”⁴⁶ The Division applied these same principles interpreting NRS 116 in the Division Opinion. Therefore, the Division Opinion is entitled to deference by this Court.

IV. CONCLUSION

Based on the foregoing, the Division respectfully requests that this Honorable Court find that: (1) “Costs of collecting” defined by NRS 116.310313 are not part of the association’s lien under NRS 116.3116(1); and (2) The super priority lien under NRS 116.3116(2)(c) is limited to Abatement Costs (under NRS 116.310312) and 9 months of assessments.

DATED this 6th day of March, 2014.

Respectfully submitted,

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⁴⁴ *Int’l Game Tech.*, 122 Nev. at 152, 127 P.3d at 1102 (citing *University Sys. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 731, 100 P.3d 179, 193 (2004)).

⁴⁵ Id.

⁴⁶ Id. (citing *Clark County v. Sun State Properties*, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003); *Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 514 (2000)).

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NEV. R. APP. P. 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☐ This brief has been prepared in a proportionally spaced typeface [state name and version of word-processing program] with [state number of characters per inch and name of type style]; or

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2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NEV. R. APP. P. (a)(7)(C), it is either:

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NEV. R. APP. P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter

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relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 6th day of March, 2014.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that, on the 6 day of March, 2014, service of **AMICUS CURIAE BRIEF BY THE STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION IN SUPPORT OF RESPONDENT** was made this date by depositing a true and correct copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

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