

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 Supreme Court No.:
3 District Case Court No. 07A542616

4 HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION,
5 Nevada non-profit corporation,

6 Petitioner,

7 v.

8 EIGHTH JUDICIAL DISTRICT COURT
9 of the State of Nevada, in and for the COUNTY OF CLARK;
10 and the HONORABLE SUSAN JOHNSON, District Judge,

11 Respondent,

12 D.R. HORTON, INC.

13 Real Party in Interest.

14
15 **PETITIONER, HIGH NOON AT ARLINGTON RANCH HOMEOWNERS**
16 **ASSOCIATION'S PETITION FOR WRIT OF PROHIBITION OR**
17 **MANDAMUS**

18 Paul P. Terry Jr., Esq. (SBN 7192)
19 John J. Stander, Esq. (SBN 9198)
20 Scott P. Kelsey, Esq. (SBN 7770)
21 ANGIUS & TERRY, LLP
22 1120 N. Town Center Drive, Ste. 260
23 Las Vegas, NV 89144
24 Telephone: (702) 990-2017
25 Facsimile: (702) 990-2018
26 pterry@angius-terry.com
27 jstander@angius-terry.com
28 skelsey@angius-terry.com

Attorneys for Petitioner, HIGH NOON AT ARLINGTON RANCH
 HOMEOWNERS ASSOCIATION

Electronically Filed
App 18-2014 No. 38 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

High Noon at Arlington Ranch Homeowners Association has no parent corporation and there is no publicly held corporation that owns 10% or more of High Noon at Arlington Ranch Homeowners Association's stock:

Dated: April 18, 2014

By:

i

1 **AFFIDAVIT OF JOHN J. STANDER, ESQ. IN SUPPORT OF**
2 **HIGH NOON AT ARLINGTON RANCH HOMEOWNERS**
3 **ASSOCIATION'S PETITION FOR WRIT OF PROHIBITION OR**
4 **MANDAMUS**

5 STATE OF NEVADA)
6) ss:
7 COUNTY OF CLARK)

8 I, John J. Stander, being first duly sworn on oath, deposes and states under
9 penalty of perjury that the following is true and correct, and of my own personal
10 knowledge:

11 1. I am an attorney licensed to practice in the State of Nevada, and am a
12 Partner of the law firm of Angius & Terry, LLP, attorneys for Petitioner High Noon
13 at Arlington Ranch Homeowners Association, in support of its PETITION FOR
14 WRIT OF PROHIBITION OR MANDAMUS.
15

16 2. I certify that I have read this petition, and to the best of my knowledge,
17 information and belief, this Petition complies with the form requirements of Rule
18 21(d), and that it is not frivolous or interposed for any improper purpose such as to
19 harass or to cause unnecessary delay or needless increase in the cost of litigation.
20

21 3. I further certify that this brief complies with all applicable Nevada
22 Rules of Appellate Procedure, including the requirement of Rule 28(e) that every
23 assertion in the brief regarding matters in the record to be supported by a reference
24 to the appendix where the matter relied upon is to be found. I understand that I may
25 to the appendix where the matter relied upon is to be found. I understand that I may
26
27
28

1 be subject to sanctions in the event that the accompanying brief is not in conformity
2 with the requirements of the Nevada Rules of Appellate Procedure.

3
4 4. I have discussed the PETITION FOR WRIT OF PROHIBITION OR
5 MANDAMUS with the Board of Directors of the High Noon at Arlington Ranch
6 Homeowners Association and have obtained authorization to file this writ petition.

7
8 5. The High Noon at Arlington Ranch common-interest community
9 consists of 342 attached residential units and common areas located in Clark County,
10 Nevada. There are 114 residential buildings, with three units per building. The
11 development was constructed and sold by D.R. Horton, Inc. in or about 2005.

12
13 6. On January 24, 2014, Defendant D.R. Horton, Inc. filed a Motion for
14 Partial Summary Judgment contending that since the initiation of the action in 2007,
15 many of the Association's members have sold their units and thus its current
16 members are not the original owners of the units. Specifically, only 112 out of 342
17 of the Association's members were owners of the units at the time the Complaint
18 was filed in 2007. As such, D.R Horton, Inc. asserted that the Association's standing
19 must be reduced by that same amount. Moreover, the subclass of 192 units for
20 interior claims was reduced to 62 homes for the same reason.

21
22
23
24 7. On March 18, 2014, the Court granted D.R. Horton, Inc. Motion for
25 Partial Summary Judgment, affecting reducing Plaintiff's claims by more than two-
26 thirds.

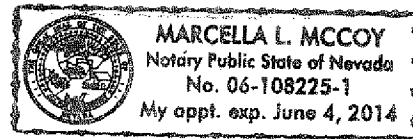
8. On March 24, 2014, Plaintiff, believing that the Court erred in its Order granting D.R. Horton's Motion for Partial Summary Judgment, filed a Motion to Stay the Proceedings on Order Shortening Time. On March 31, 2014, the Order granted Plaintiff's Motion to Stay the Proceedings was filed.

9. Plaintiff filed the instant petition so that this Honorable Court may provide guidance to the Respondent Court by clarifying the critical issue of the standing as it relates to Plaintiff's claims for exterior building envelope claims as well as interior unit claims such that the erroneous ruling granting the Motion for Partial Summary judgment can be reversed.

Further, Affiant sayeth not.

John J. Stander, Esq.

SUBSCRIBED AND SWORN to before
me this 18th day of April, 2014 by



NOTARY PUBLIC in and for said County and State

TABLE OF CONTENTS

I.	SUMMARY OF THE ISSUES AND CONCLUSIONS.....	3
II.	STATEMENT OF RELIEF SOUGHT	5
III.	REASONS WHY THE WRIT SHOULD ISSUE	6
IV.	STATEMENT OF FACTS	11
	A. Summary of D.R. Horton's Motion for Partial Summary Judgment and Reply	11
	B. Summary of High Noon at Arlington Ranch Homeowners Association's Opposition to Partial Summary Judgment.....	13
	C. Summary of Transcript of Proceedings at hearing on Motion for Partial Summary Judgment	15
	D. Summary of District Court's Order granting Motion for Partial Summary Judgment	16
V.	STANDARD OF REVIEW	19
VI.	ARGUMENT	19
	A. Under The Uniform Common-Interest Ownership Act, NRS 116.3102(1)(d), Homeowner Associations Are The Real Party In Interest For Claims Affecting Two Or More Units In A Common- Interest Community – NRCP 17(a) Is Thus Satisfied In The Instant Action	19
	B. Homeowner Associations' Statutory Grant Of Standing Pursuant To The Uniform Common-Interest Ownership Act Comports With The Purpose And Intent Of NRCP 17(a) – To Ensure That Homeowners Associations Are Empowered To Dispositively Prosecute, Settle Or Adjudicate Claims In Its Own Name As The Real Party In Interest	22

1	C. Homeowner Associations Exercising Their NRS 116.3102(1)(d)	
2	Standing Rights Are <i>Bona Fide</i> Real Parties In Interest, And Are Not	
3	Merely An Alter-Ego Of Their Individual Members Or Members'	
4	Claims – Hence A Federal District Court Has Ruled That Members	
5	Do Not Need To Be Joined As Indispensable Parties Under	
6	NRCP 19	24
7	D. It Is Presumed That The Legislature Intended A Logical Result In The	
8	Adoption Of Statutes Yet The District Court's Interpretation Of NRS	
9	116.3102(1)(d) Results In An Artificial Distinction And Illogical	
10	Consequences, In Addition To Violating <i>ANSE, Inc. v. District</i>	
11	<i>Court's</i> Prohibition Against Reading Limitations Into A Statute That	
12	Do Not Exist In Its Plain Language.....	26
13	E. The Measure Of An Association's NRS 116.3102(1)(d) Standing	
14	Derives From The Existence Of Issues Affecting Two Or More <i>Units</i>	
15	Owned By An Association's <i>Members</i> , And The Specific Identity Of	
16	Owners Of Units Is Irrelevant In The Determination Of Association	
17	Standing Pursuant to NRS 116.3102(1)(d).....	30
18	F. The District Court Abused Its Discretion And Applied An Incorrect	
19	Legal Standard By Relying On Its Rationale And Ruling In A Single	
20	Family Home Action That Did Not Involve	
21	NRS 116.3102(1)(d)	33
22	G. The District Court's Reliance On Its Ruling In <i>Balle v. Carina Corp.</i>	
23	To Grant Partial Summary Judgment Violated NRCP 56 Because	
24	Granting Of Summary Judgment On Independent Grounds Is	
25	Prohibited.....	34
26	H. The District Court's Order Granting Partial Summary Judgment	
27	Contradicted And Is Inconsistent With Its Prior Orders Finding That	
28	The Association's Claims Satisfied NRS 116.3102(1)(d) Standing	
	Requirements	35
	VII. CONCLUSION	38

TABLE OF AUTHORITIES

CASES:

<i>Angoff v. M & M Management Corp.</i> , 897 S.W.2d 649 (Mo. Ct. App. W.D. 1995).....	27
<i>ANSE, Inc. v. District Court</i> , 124 Nev. 862 (2008)	14, 26, 28-30
<i>Balle v. Carina Corp.</i> , Case No. A557753.....	passim
<i>Beazer Homes Holding Corp. v. District Court</i> , 291 P.3d 128 (2012).....	passim
<i>Clark County Sch. Dist. v. Clark County Classroom Teachers Ass'n</i> , 115 Nev. 98, 103 (1999)	27, 30
<i>D.R. Horton, Inc. v. District Court</i> , 123 Nev. 468, 474-75 (2007).....	8
<i>D.R. Horton, Inc. v. District Court</i> , 125 Nev. 449, 444 (2009).....	passim
<i>Greystone Nev., LLC v. Anthem Highlands Cmty. Ass'n</i> , 2012 U.S. Dist. LEXIS 187826, 16-17 (2012).....	24-26
<i>Int'l Game Tech., Inc. v. District Court</i> , 124 Nev. 193, 197-198 (2008).....	19
<i>Jasmine Networks, Inc. v. Superior Court</i> , 180 Cal.App.4th 980 (2009).....	14
<i>Krusi v. S.J. Amoroso Const. Co.</i> , 81 Cal.App.4th 995 (2000).....	11, 14, 15
<i>Lum v. Stinnett</i> , 87 Nev. 402, 408 (1971)	22
<i>Marshall v. District Court</i> , 108 Nev. 459, 466 (1992)	6
<i>McKay v. Bd. of Supervisors</i> , 102 Nev. 644, 648 (1986).....	29

1	<i>Millen v. District Court</i> , 122 Nev. 1245, 1250-51 (2006)	8
2	<i>Short v. Celestino</i> , 1996 Ohio App. LEXIS 2564, at 7-8 (1996)	34, 35
3		
4	<i>Smith, et al. v. Central Park, LLC, et al.</i> , Case No. A605954	12
5	<i>St. James Village, Inc. v. Cunningham</i> , 125 Nev. 211, 216 (2009)	19
6	<i>Standard Fire Ins. Co. v. Spectrum Community Assn.</i> , 141 Cal.App.4th 1117	
7	(2006)	15
8		
9	<i>State Dep't of Bus. & Indus. v. Nev. Ass'n. Servs.</i> , 294 P.3d 1223, 1226	
10	(2012)	19, 33
11		
12	<i>Szilagyi v. Testa</i> , 99 Nev. 834, 838 (1983)	20
13	<i>Vaughn v. Dame Const. Co.</i> , 223 Cal.App.3d 144 (1990)	11, 14, 15
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

STATUTES AND RULES:

F. R. C. P. 17(a).....	22
FRCP 56	34
FRCP 56(f)	34
Nev. Const. Art. 6, §4.....	1
NRAP 21.....	1
NRCP 17.....	19
NRCP 17(a)	passim
NRCP 17(b).....	23
NRCP 19.....	7, 23
NRCP 19(a)	23
NRCP 23.....	37
NRCP 56.....	4, 6, 34, 35
NRS 34.160	1
NRS 40.600, <i>et seq.</i>	36
NRS 40.610	6, 25, 26, 29
NRS 116.3102	2, 6, 10
NRS 116.3102(1)(d).....	passim

OTHER:

3 <i>Moore's Federal Practice</i> , par. 17.02 at page 1305 (2nd ed. 1964).....	9, 22
---	-------

1 **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS**

2 COMES NOW Petitioner, High Noon at Arlington Ranch Homeowners
3 Association (“the Association”), by and through its attorneys of record, Angius &
4 Terry, LLP, and hereby petitions the Court, pursuant to Nev. Const. Art. 6, §4, NRS
5 34.160, and NRAP 21, for issuance of a writ of mandamus, commanding
6 Respondents, the Eighth Judicial District Court and the Honorable Susan H. Johnson
7 (“the District Court”), to amend its Order dated March 18, 2014¹, to provide that
8 Defendant/Real Party in Interest D.R. Horton’s (“DRH”) Motion for Partial
9 Summary Judgment is denied with prejudice.
10

11 The District Court erred in limiting the Association’s standing pursuant to
12 NRS 116.3102(1)(d), finding that the Association can only maintain an action
13 pursuant to that section on behalf of homeowners who have owned their homes
14 continuously since the time the Complaint was filed, in 2007. The District Court
15 erroneously ruled that the Association cannot assert claims in units in which there
16 was a change in ownership of the unit since the Complaint was filed.
17

18 In arriving at that legally untenable conclusion, the District Court
19 erroneously relied on its ruling in an unrelated single family home Chapter 40
20
21
22
23
24
25

26 ¹ District Court Order dated March 18, 2014, at Petitioner’s Appendix, Vol. IV,
27 Tab 19, pp. 0985-0995.
28

1 action brought by individual homeowners, *Balle v. Carina Corp.* The District
2 Court failed to recognize that representative actions brought by homeowner
3 associations pursuant to the Uniform Common-Interest Ownership Act involve a
4 body of case law and statutes that are not implicated in a single family home case
5 brought by individual homeowners concerning their own homes.
6

7
8 The District Court failed to recognize that in representative actions pursuant
9 to NRS 116.3102(1)(d), it is the Association that is the “claimant” and the “real
10 party in interest” by an express statutory grant of authority. That express statutory
11 authority does not depend upon the identity of the homeowner that owns the units
12 in the association. Contrary to the ruling of the District Court, that express
13 statutory authority is not divested from the association when a homeowner sells his
14 or her unit to another.
15

16
17 The Association requests that the Court find that the Association has standing,
18 pursuant to NRS 116.3102 and NRCP 17, to assert in its own name all claims of two
19 or more unit owners that affect the common-interest community, regardless of
20 whether the homes have been sold to subsequent purchasers or not. This is true
21 because pursuant to NRS 116.3102, the Association is the claimant and real party
22 for these claims.
23

24
25 The present controversy raises urgent matters of both private and public
26 interest. If the interlocutory relief requested is not granted, the Association will be
27
28

1 required to try a case with regard to only a small portion of the development, and
2 then try the same case again with regard to the entire development after the District
3 Court's clearly erroneous ruling is reversed on appeal.
4

5 Public interest is affected as this erroneous ruling radically affects homeowner
6 association standing under the Uniform Common-Interest Ownership Act, and
7 countless Nevada residents who are members of common-interest communities.
8 Communities will be divided between homes with long time owners, whose homes
9 are protected by the statutorily conferred standing of their association, and homes
10 owned by subsequent purchasers, who are simply out of luck. Moreover, granting
11 this petition would further the interests of judicial economy and administration of
12 justice since the District Court's ruling, if allowed to stand, would invite a flood of
13 similar motions throughout the lower courts in similarly situated actions.
14
15
16

17 **I. SUMMARY OF THE ISSUES AND CONCLUSIONS**

18
19 **A. ISSUE ONE: Whether the Association is a Real Party In Interest**
20 **pursuant to NRCP 17(a) and the Uniform Common-Interest**
21 **Ownership Act?**

22 **B. ISSUE ONE CONCLUSION: Yes. The Uniform Common-**
23 **Interest Ownership Act, and specifically NRS 116.3102(1)(d), is a**
24 **Legislative grant of Real Party In Interest status to the Association**
25 **– the Association is not merely an “alter ego” or proxy of its**
26 **members but rather, is authorized to prosecute, settle and**
27 **adjudicate claims as the Real Party In Interest asserted in its**
28 **representative capacity.**

C. ISSUE TWO: Whether the Association's standing, Real Party In
Interest status and claims are affected, reduced or limited by its

1 members' sales of units to new members subsequent to the filing of
2 the Original Complaint?

3 **D. ISSUE TWO CONCLUSION:** No. As the Real Party In Interest
4 to claims falling under the jurisdiction of the Uniform Common-
5 Interest Ownership Act, the claims belong to the Association and
6 subsequent transfers of ownership of the units in the common-
7 interest community cannot divest an Association of its right to the
8 causes of action asserted.

9 **E. ISSUE THREE:** Whether the District Court erred in concluding
10 that the Association can only assert claims for units that have not
11 changed ownership since the date that the initial Complaint was
12 filed?

13 **F. ISSUE THREE CONCLUSION:** Yes. The District Court did err
14 in its Order Granting Partial Summary Judgment because it: (1)
15 created a previously non-existent limitation on the application of
16 NRS 116.3102(1)(d) in the form of a theory that changes in
17 ownership of units limit an Association's representative action; (2)
18 applied the wrong legal standard by relying on its prior ruling in a
19 single family home case brought by individual homeowners and
20 where NRS 116.3102(1)(d) was not applicable; and (3) failed to
21 recognize that NRS 116.3102(1)(d) standing is triggered by issues
22 affecting units, not the ownership of the units themselves.

23 **G. ISSUE FOUR:** Whether the District Court erred in relying on its
24 ruling in the single family home case brought by individual
25 homeowners – *Balle v. Carina Corp.*?

26 **H. ISSUE FOUR CONCLUSION:** Yes. The District Court did err
27 because NRCP 56 prohibits granting summary judgment on
28 independent grounds not raised by the parties and it is undisputed
that the District Court referenced its ruling in *Balle v. Carina Corp.* for the first time at oral argument and offered a brief recess to allow the Association's counsel to attempt to respond to this new authority.

1 **I. ISSUE FIVE: Whether the District Court's Order Granting**
2 **Partial Summary Judgment conflicted with, contradicted and is**
3 **inconsistent with the District Court's prior rulings finding that the**
4 **Association's claims had met the requirements for NRS**
5 **116.3102(1)(d).**

6 **J. ISSUE FIVE CONCLUSION: Yes. The District Court did err**
7 **because its prior orders, including a ruling in favor of the**
8 **Association on a motion for reconsideration, uniformly held that**
9 **the Association's claims sufficiently met the requirements for NRS**
10 **116.3102(1)(d) and that the Association could pursue those claims**
11 **at trial, and the District Court's Order Granting Partial Summary**
12 **Judgment is wholly inconsistent with those prior rulings leading to**
13 **unfair prejudice on the eve of trial².**

14 **II. STATEMENT OF RELIEF SOUGHT**

15 The Association seeks a writ of mandamus directing the District Court to
16 vacate its Order of March 18, 2014, and to order that D.R. Horton's Motion for
17 Partial Summary Judgment be denied with prejudice. Further, the Association seeks
18 a writ of mandamus ordering that *in addition* to the Association's valid and proper
19 standing pursuant to NRS 116.3102(1)(d) to pursue claims for defects in the
20 residential buildings at High Noon at Arlington:

- 21 (1) The Association has standing, by virtue of operation of the
22 Uniform Common-Interest Ownership Act and specifically NRS
23 116.3102(1)(d), to pursue all constructional defect claims affecting
24 two or more units, and affecting the common-interest community;

25
26 ² The District Court has now stayed the action pending various writs of mandamus
27 that are anticipated from multiple parties.
28

- 1 (2) The Association's standing, by virtue of operation of the Uniform
2 Common-Interest Ownership Act and specifically NRS
3 116.3102(1)(d), is not affected or limited by subsequent changes in
4 ownership of the units in the development subsequent to the filing
5 of the original Complaint in 2007; and
- 6 (3) The Association's standing, pursuant to NRS 116.3102(1)(d), to
7 maintain constructional defect claims in a representative capacity is
8 not limited by NRCP 17(a) because the Association, by operation
9 of the Uniform Common-Interest Ownership Act, is the real party
10 in interest for the claims asserted and is a "claimant" as defined by
11 NRS 40.610.

12 **III. REASONS WHY THE WRIT SHOULD ISSUE**

13 **A. The Importance Of The Issues, The Need For Immediate Relief, And** 14 **The Association's Lack Of Any Other Adequate Remedy Warrant** 15 **This Court's Exercise Of Original Jurisdiction**

16 **1. Mandamus review is appropriate to consider a District Court's** 17 **order that does not conform to Nevada law and applied an** 18 **inappropriate legal standard**

19 The Court has the authority to issue writs of mandamus to control arbitrary or
20 capricious abuses of discretion by District Courts. *See Marshall v. District Court*,
21 108 Nev. 459, 466 (1992). Here, the District Court abused its discretion in granting
22 DRH's Motion for Partial Summary Judgment by accepting the legally untenable
23 claim that subsequent changes in ownership of units reduces and limits the
24 Association's NRS 116.3102 standing and/or claims under Chapter 40. The District
25 Court's Order granting DRH's Motion for Partial Summary Judgment is contrary to
26 Nevada law, and is the result of a misinterpretation of the confluence and application
27 of NRS Chapter 40, the Uniform Common-Interest Ownership Act, NRCP 17,
28

1 NRCF 19 and this Court's guidance in *D.R. Horton v. District Court* and *Beazer*
2 *Homes Holding Corp. v. District Court, infra.*

3
4 **2. Mandamus review is appropriate to consider a District Court's**
5 **order that threatens to inundate the District Courts with a**
6 **deluge of motions challenging standing under the Uniform**
7 **Common-Interest Ownership Act, resulting in waste of**
8 **precious judicial resources**

9 The situation here is identical to the concerns of this Court when it granted
10 writ relief in *Beazer Homes Holding Corp. v. District Court*, 291 P.3d 128 (2012).
11 Specifically, a "significant number of similar cases raising these issues are pending
12 throughout Nevada's courts." *Id.* at 133. The District Court's ruling, if allowed to
13 stand, would serve as a siren's call to all defendants in NRS Chapter 40 actions in
14 the lower courts to file similar motions – resulting in significant chaos, confusion,
15 and expenditure of limited judicial resources within the lower courts. Without
16 immediate clarification from the Nevada Supreme Court, parties in other cases
17 would bring similar motions, and irrespective of how those District Courts rule,
18 further writs of mandamus will be forthcoming. The issue of standing is essential
19 and basic, and the District Court's ruling is so powerful a weapon against association
20 standing that trial dates throughout Nevada would be compromised by such motions.

21 The District Court's ruling will undoubtedly be cited as persuasive authority
22 in other motions for partial summary judgment. Furthermore, any settlement
23 negotiations or mediation sessions in similarly situated cases will also grind to a halt
24
25
26
27
28

1 since the issue of whether an association can assert claims of a large percentage of
2 its members has now been called into question. Extraordinary writ relief is
3 appropriate where summary judgment results in the need for clarification of an
4 important issue of law, and the issues raised by this writ constitute a seismic shift in
5 the interpretation of NRS 116.3102(1)(d) that threatens to affect and grind to a halt
6 every NRS Chapter 40 case in Nevada. *D.R. Horton, Inc. v. District Court*, 125 Nev.
7 449, 444 (2009).

10
11 **3. Writ relief is appropriate and necessary to prevent the**
12 **negative and adverse consequences of the District Court's**
13 **interpretation of the law, and where significant issues of law**
14 **and public policy are involved**

15 Writ relief is warranted where the petition does not have a plain, speedy, and
16 adequate remedy at law. *Millen v. District Court*, 122 Nev. 1245, 1250-51 (2006).
17 Several factors that favor writ relief include the status of underlying proceedings,
18 the types of issues raised by the writ petition, and whether a future appeal will permit
19 this court to meaningfully review the issues presented. *D.R. Horton, Inc. v. District*
20 *Court*, 123 Nev. 468, 474-75 (2007). Moreover, where the issues raised by the writ
21 petition raise important issues of law and public policy concerning the ability of
22 common-interest community associations to litigate claims on behalf of their
23 members in a representative capacity, writ relief is appropriate. *Beazer Homes*
24 *Holding Corp. v. District Court*, 291 P.3d 128, 133 (2012).

1 The instant writ is necessary because the District Court's ruling has essentially
2 "gutted" the Association's case by eliminating 2/3rds of its claims, and limiting the
3 presentation of evidence to the remaining units. Should the ruling be reversed after
4 final judgment, the entire case must be retried because evidence of the excluded units
5 would then be admissible. This would constitute an egregious waste of judicial
6 recourses.
7

8
9 Further, the District Court's ruling operates as an irresistible invitation to
10 defendants in scores of actions in Nevada to bring similar motions and thereby
11 inundating the already over-burdened District Courts. Valuable and limited judicial
12 resources would be wasted throughout Nevada's District Courts should immediate
13 resolution of this issue not be forthcoming. Also, significant issues of public interest
14 are raised as the District Court's ruling effectively disenfranchises significant
15 portions of Nevada citizens who are covered by the Uniform Common-Interest
16 Ownership Act.
17
18
19

20 **4. Writ relief is appropriate and necessary to prevent the**
21 **negative and adverse consequences of the District Court's**
22 **interpretation of the law, and where this Court's holding in**
23 ***Beazer Homes Holding Corp. v. District Court* is undermined**

24 Similar to the *Beazer* decision, this writ raises important issues of law and
25 public policy concerning the ability of common-interest community associations to
26 litigate claims on behalf of their members in a representative capacity. The District
27 Court's interpretation of the law, if allowed to stand, would result in the obliteration
28

1 of NRS 116.3102 and associations' representative standing in Chapter 40 actions
2 and all other actions beyond Chapter 40. The ruling is also in direct contravention
3 of this Court's mandate in *Beazer* that "[f]ailure to meet any additional procedural
4 requirements . . . cannot strip a common-interest community association of its
5 standing to proceed on behalf of its members under NRS 116.3102(1)(d)." *Beazer*
6 *Homes Holding Corp., supra*, 291 P.3d at 134, italics added. Here, the District Court
7 created a legally untenable limitation on an Association's NRS 116.3102(1)(d)
8 standing whereby the Association's otherwise valid Chapter 40 claims, already
9 inspected and established, are eliminated whenever a member sells his or her unit
10 after the commencement of the action.
11
12
13
14

15 The District Court's ruling significantly affects the operation and application
16 of Chapter 40 by mandating that Chapter 40's procedural requirements and the
17 resultant action be restarted or reduced every time a member of an association sells
18 his or her unit. Such a mandate operates to turn Chapter 40's spirit and intent, as an
19 efficient method of resolving defect claims, on its head by creating an infinite loop.
20 The Uniform Common-Interest Ownership Act has effectively been rewritten by
21 judicial fiat through the erroneous conclusions of a single District Court. In sum,
22 resolution of the District Court's interpretation of the law will promote judicial
23 economy and will affect every action pending in the District Courts involving NRS
24 116.3102 and an association's utilization of representative standing.
25
26
27
28

IV. STATEMENT OF FACTS

The High Noon at Arlington Ranch common-interest community consists of 342 attached residential units and common areas located in Clark County, Nevada. *Petitioner's Appendix*, Vol. I, Tab 1, pp. 0002-0003. There are 114 residential buildings, with three units per building. *Ibid.* The development was constructed and sold by D.R. Horton with sales beginning in 2004. *Id.* at p. 0003. The Association brought this constructional defect action against the developer DRH on June 07, 2007. *Petitioner's Appendix*, Vol. I, Tab 1, pp. 0001-0012.

A. Summary of D.R. Horton's Motion for Partial Summary Judgment and Reply

On January 24, 2014, DRH brought a Motion for Partial Summary Judgment which was heard by the District Court on February 27, 2014. *Petitioner's Appendix*, Vols. III-IV, Tab 7, pp. 0606-0884. In that motion, DRH contended that since only 112 out of 342 of the Association's members were owners of the units at the time the Complaint was filed in 2007, the Association's standing is reduced by that amount. *Id.* at pp. 0609-0610 [4:4-5:15]. DRH further asserted that the subclass of 192 units for interior claims purposes was reduced to 62 homes for the same reason. *Ibid.* DRH's contention as to standing was premised on two California cases, *Vaughn v. Dame Const. Co.*, 223 Cal.App.3d 144 (1990) and *Krusi v. S.J. Amoroso Const. Co.*, 81 Cal.App.4th 995 (2000), that DRH incorrectly asserted stand for the proposition that an Association cannot pursue claims on behalf of members who

1 purchased their units subsequent to the commencement of the Complaint. *Id.* at pp.
2 0612-0617 [7:1-12:8].

3
4 DRH also incorrectly cited to *D.R. Horton v. District Court*, 125 Nev. 449
5 (2009) for a proposition that the case did not address nor hold: that the Uniform
6 Common-Interest Ownership Act did not allow for Association standing for
7 subsequent purchasers because they were not “unit owners” at the time the
8 Complaint was filed. *Id.* at pp. 0617-0618 [12:16-13:8]. DRH asserted, without
9 legal authority, that “[f]or homeowners who came later, they were prospective
10 plaintiffs and would not be able to satisfy normal standing requirements.” *Id.* at p.
11 0618 [13:10-13:11]. DRH also argued that allowing the Association to represent its
12 members who became members after the Complaint commenced would somehow
13 violate DRH’s nebulous rights and the rights of these subsequent members. *Id.* at
14 pp. 0619-0621 [14:13-16:26].

15
16 In its reply brief, DRH argued that subsequent members of the Association
17 were not “unit owners” under the language of NRS 116.3102, and thus the
18 Association had no standing for their claims. *Petitioner’s Appendix*, Vol. IV, Tab
19 15, p. 0916 [7:4-7:19]. DRH improperly presented new evidence or legal authority
20 on reply, citing to the District Court’s summary judgment ruling in a single family
21 home case involving individual homeowners (not an association) – *Smith, et al. v.*
22 *Central Park, LLC, et al.*, Case No. A605954 – for the proposition that claims
23
24
25
26
27
28

1 brought by subsequent purchasers do not relate back to the original Chapter 40
2 notice. *Id.* at pp. 0917-0918 [8:19-9:21], 0920-0930.

3
4 **B. Summary of High Noon at Arlington Ranch Homeowners**
5 **Association's Opposition to Partial Summary Judgment**

6 In opposition, the Association pointed out that DRH had misread the
7 California authorities and that subsequent California decisions explicitly overruled
8 DRH's misinterpretation. *Petitioner's Appendix*, Vol. IV, Tab 14, pp. 0900-0902
9 [2:16-4:2]. The proper reading of the California authorities was that a plaintiff suing
10 for construction defects retains standing irrespective of any changes in ownership of
11 the unit. *Id.* at p. 0906 [8:1-8:16]. The Association argued that it was the "real party
12 in interest" pursuant to the Uniform Common-Interest Ownership Act, and as the
13 real party in interest it may assert the Chapter 40 claims relating to its members'
14 units. *Id.* at pp. 0903-0904 [5:10-6:11]. Subsequent changes in ownership of the
15 common-interest community's units does not divest the Association of its standing.
16 *Ibid.* The Association asserted that DRH's interpretation would turn NRS Chapter
17 40 into an infinite loop where Chapter 40's pre-litigation procedures would restart
18 anytime a unit was sold, and that such a result did not comport with the purpose of
19 NRS 116.3102(1)(d). *Id.* at p. 0901 [3:2-3:11].

20
21
22 The Association pointed out that contrary to the assertion of DRH, this Court's
23 decision in *D.R. Horton v. District Court* and *Beazer Homes Holding Corp. v.*
24 *District Court* made absolutely no distinction between past, present and future
25
26
27
28

1 members of an association for the application of NRS 116.3102(1)(d). *Id.* at p. 0901
2 [3:7-3:11]. The Association argued that no Nevada legal authority has endorsed
3 DRH's misinterpretation of the California authorities. *Id.* at p. 0902 [4:13-5:9].
4 Critically, the Association cited to *ANSE, Inc. v. District Court*, 124 Nev. 862 (2008)
5 for the rule that courts shall not read additional qualifications, conditions or
6 limitations into statutes that are not apparent in the statute's plain language – which
7 was exactly what DRH was requesting of the District Court. *Id.* at p. 0905 [7:10-
8 7:28].

9
10
11 The Association argued DRH's position was invalid because DRH presumed
12 that only the unit owner could be the “real party in interest” for purposes of pursuing
13 Chapter 40 actions. *Id.* at pp. 0906-0907 [8:26-9:2]. The Association argued that
14 this position is contradicted by the very authority cited by DRH. *Id.* at pp. 0907-
15 0908 [9:3-10:2]. The California case, *Vaughn v. Dame Const. Co.*, *supra*, 223
16 Cal.App.3d 144 stated that “defendant apparently fails to understand that the real
17 party in interest is the party who has title to the cause of action,” and that pursuant
18 to NRS 116.3102(1)(d), the Association held title to the causes of action in the
19 instant action. *Id.* at p. 0906 [8:3-8:16].

20
21 Citing to *Jasmine Networks, Inc. v. Superior Court*, 180 Cal.App.4th 980
22 (2009), a case interpreting *Vaughn* and *Krusi*, the Association identified the correct
23 rule in California that the right to be a real party in interest and own title to a cause
24
25
26
27
28

1 of action is distinct from ownership to real property, and transfers of ownership do
2 not alter or reduce these aforementioned rights. *Id.* at p. 0907-0908 [9:3-10:2].

3
4 Further, *Standard Fire Ins. Co. v. Spectrum Community Assn.*, 141
5 Cal.App.4th 1117 (2006), a case interpreting *Vaughn* and *Krusi*, held that “[t]he
6 intent of the Legislature is to enable homeowners associations to pursue causes of
7 action against developers with respect to construction defects . . . rely[ing] on
8 distinguishable cases such as *Vaughn*, [citation] *Keru*, [citation] and *Krusi* [citation]
9 to achieve a contrary result would be to frustrate that legislative intent. *Id.* at p. 0908
10 [10:3-10:12]. In sum, the Association is the real party in interest for Chapter 40
11 claims affecting two or more units at the common-interest community, and
12 subsequent changes in ownership of those units cannot diminish the Association’s
13 real party in interest and claimant status. *Id.* at p. 0908 [10:13-10:22].

14
15
16
17 **C. Summary of Transcript of Proceedings at hearing on Motion for**
18 **Partial Summary Judgment**

19 At the hearing on the Motion for Partial Summary Judgment, the District
20 Court’s first statement on the issue was to reference all counsel present to its ruling
21 in *Balle v. Carina Corp. Petitioner’s Appendix*, Vol. IV, Tab 16, pp. 0949-0950
22 [19:15-20:10]; Vol. IV, Tab 18, pp. 0969-0984. The District Court made copies of
23 the ruling and granted a 17-minute recess to allow all counsel to review this never
24 before seen document. *Ibid.* The Association, through its counsel, stressed to the
25 District Court that the *Balle* ruling was distinguishable and inapplicable because it
26
27
28

involved single family homes, not cases invoking the Uniform Common-Interest Ownership Act and NRS 116.3102(1)(d). *Id.* at pp. 0951-0952 [21:22-22:15]. Further, it was argued to the District Court that standing cannot be measured by a “snapshot” of the identity of the Association’s members at the filing of the Complaint. *Id.* at pp. 0953-0954 [23:9-24:19].

The District Court reiterated its *Balle* ruling as to single family homeowners and emphasized the hypothetical situation of the requirement of assignments for subsequent homeowners to pursue a Chapter 40 claim. *Id.* at pp. 0954-0955 [24:20-25:6], 0956 [26:3-26:9]. The District Court asserted that “my rub was when there’s no assignment and homeowner two wants nothing to do with it or they didn’t get the assignment, their foreclosure, whatever the case may be there’s a break in that chain.” *Id.* at p. 0956 [26:3-26:9]. The Association responded that for Chapter 40 cases, there is no break in the “chain” when the action involves a common-interest community, and standing is authorized under NRS 116.3102(1)(d). *Id.* at pp. 0956-0958 [26:10-28:20].

D. Summary of District Court’s Order granting Motion for Partial Summary Judgment

On March 18, 2014, the District Court issued its Order granting the Motion for Partial Summary Judgment and striking the Association’s standing for 67% its members for exterior and interior defect claims, effectively cutting down the Association’s standing to only 33% of its members. *Petitioner’s Appendix*, Vol. IV,

1 Tab 19, pp. 0985-0995. The Conclusions of Law section of the Order, paragraphs 1
2 through 4, are carbon copies of the District Court's *Balle* ruling, setting forth the
3 legal basis for its ruling. *Id.* at pp. 0990-0991 [6:4-7:14] *cf.* Vol. IV, Tab 18, pp.
4 0974-0976 [6:17-8:13]. The remaining Conclusions of Law entries in the Order
5 essentially track the rationale and logic used by the District Court in its *Balle* ruling.
6
7 *See id.* at pp. 0991-0993 [7:15-9:20] *cf.* Vol. IV, Tab 18, pp. 0976-0979 [8:14-
8 11:13].
9

10 Specifically, the District Court concluded that "if a property owner no longer
11 owns the home, he does not retain any claims he may have had under NRS 40.655
12 due to continuing or remaining construction defects." *Petitioner's Appendix*, Vol.
13 IV, Tab 19, p. 0991 [7:18-7:21]. The District Court ruled that "prior owners"
14 retained claims for any other damages that did not follow the home such as attorney's
15 fees, loss of use, reduction in value or necessary repairs, for example. *Id.* at pp.
16 0991-0992 [7:22-8:4]. It further observed that "while changes in ownership do not
17 strip the homeowners association of standing to pursue, transfers of real property
18 can change or adjust the particular claims or damages sought." *Id.* at p. 0992 [8:9-
19 8:10]. The District Court provided no legal authority in support of that observation.
20
21 *Ibid.*
22
23
24

25 The District Court further stated that "the former owners are no longer the
26 'real parties in interest' with respect to such claims . . . they cannot maintain such
27
28

1 causes of action.” *Id.* at p. 0992 [8:13-8:15]. The District Court analogized to
2 personal injury actions where “damages or injuries may transform or change
3 throughout the duration of litigation” but did not provide legal authority to support
4 application to Chapter 40 actions invoking the Uniform Common-Interest
5 Ownership Act. *Id.* at p. 0992 [8:16-8:27]. The District Court reasoned that, “this
6 Court has ruled in other cases, owners selling their homes can, in conjunction with
7 the sale of real property, assign ongoing claims for constructional defects existing in
8 the residence to the purchases . . . once the prior owners’ interest in the home
9 extinguishes, via sale or other transfer . . . they no longer own, and thus, cannot
10 maintain claims” *Id.* at p. 0993 [9:1-9:11]. The District Court did not cite to
11 any legal authority supporting the application of those prior rulings to the specific
12 facts of the instant action. *Ibid.*

17 Significantly, the District Court presumed that unit owners were the “real
18 party in interest” or actual claimant, and that the Association was merely an alter-
19 ego of those individuals. *Id.* at p. 0993 [9:1-9:11] It noted that, “[t]his Court’s
20 conclusion protects the plaintiff-homeowners in the retention of certain claims,
21 enables defendant-contractors to avail themselves of evidence and defenses they
22 have against the real party in interest, assures finality of judgment, and that
23 defendants will be protected against another suit brought by subsequent owners on
24 the same matter.” *Id.* at p. 0993 [9:8-9:11] Nowhere in this portion of the District
25
26
27
28

1 Court's Order is there any recognition that the Association is the actual "real party
2 in interest" pursuant to NRS 116.3102(1)(d) in the instant action, and no legal
3 authority was cited by the District Court to support its conclusion. *Ibid.*

4 5 **V. STANDARD OF REVIEW**

6 When the parties raise only legal issues on appeal from a district court order,
7 the Court reviews the matter de novo. *St. James Village, Inc. v. Cunningham*, 125
8 Nev. 211, 216 (2009). This Court has held that when the issue presented in an
9 original writ proceeding is a question of statutory interpretation, this Court shall
10 review the District Court's decision de novo. *Int'l Game Tech., Inc. v. District Court*,
11 124 Nev. 193, 197-198 (2008). This writ petition involves the confluence of Chapter
12 40, the Uniform Common-Interest Ownership Act, and NRCP 17 and 19, and thus
13 de novo review is appropriate. Finally, reversal under an abuse of discretion
14 standard of review is appropriate where the district court's decision was based on an
15 erroneous legal standard. *State Dep't of Bus. & Indus. v. Nev. Ass'n. Servs.*, 294
16 P.3d 1223, 1226 (2012).

17 18 19 20 21 **VI. ARGUMENT**

22 23 **A. Under The Uniform Common-Interest Ownership Act, NRS 24 116.3102(1)(d), Homeowner Associations Are The Real Party In 25 Interest For Claims Affecting Two Or More Units In A Common- 26 Interest Community – NRCP 17(a) Is Thus Satisfied In The Instant 27 Action** 28

1 This Court’s holding in *Beazer Homes Holding Corp.* explained that although
2 it is true that an action must be commenced by the real party in interest under NRC
3 17(a) and *Szilagyi v. Testa*, 99 Nev. 834, 838 (1983), Nevada’s adoption of the
4 Uniform Common-Interest Ownership Act made associations the real party in
5 interest for the claims of its members. *Beazer Homes Holding Corp.*, *supra*, 291
6 P.3d at 134. “The legislation conferred standing on common-interest community
7 associations . . . to litigate certain matters in their own name on behalf of their
8 members.” *Id.*, italics added. “This statute affords the common-interest community
9 association not only the right to come into court, but also the right to obtain relief
10 solely on behalf of its *members*. *Id.*, italics added.

14 The *Beazer* decision is dispositive to this writ petition because when read in
15 conjunction with NRC 17(a), it is abundantly clear that the Association is the real
16 party in interest as to the claims of its members concerning the common interest
17 development—whether the members be past, present or future owners of units in the
18 common-interest community. Specifically, NRC 17(a) defines a real party in
19 interest as including “a party *authorized by statute may sue in that person's own*
20 *name* without joining the party for whose benefit the action is brought.” NRC
21 17(a) (italics added.) NRS 116.3102(1)(d) is a statute that NRC 17(a) refers to and
22 constitutes a statutory grant of real party in interest status to common-interest
23 community associations. The District Court’s ruling incorrectly presumed that only
24 25
26
27
28

1 individual owners of units may serve as real parties in interest pursuant to NRCP
2 17(a).

3
4 The District Court's erroneous presumption is also irreconcilable with its own
5 orders, dated November 12, 2013 and March 20, 2014, ruling that the Association's
6 claims had met NRS 116.3102(1)(d) standing requirements, and setting forth the
7 manner in which those claims will proceed to trial. *Petitioner's Appendix*, Vol. I,
8 Tab 2, pp. 0013-0022; Vol. IV, Tab 20. The District Court correctly recognized that
9 the Association has standing pursuant to NRS 116.3102(1)(d) to pursue the claims
10 of its members that concern the common interest community. *Petitioner's Appendix*,
11 Vol. I, Tab 2, pp. 0017 [5:5-5:16], 0020 [8:7-8:22], 0021 [9:24-9:28]; Vol. IV, Tab
12 20, pp. 0997-0998 [2:4-3:6]. However, the District Court then became confused by
13 the twisted and untenable arguments made by DRH, and in its Order granting the
14 partial motion for summary judgment, the District Court contradicted its own
15 findings and legal rationale regarding standing set forth in its previous orders.
16 *Petitioner's Appendix*, Vol. IV, Tab 19, *cf.* *Petitioner's Appendix*, Vol. I, Tab 2, pp.
17 0017 [5:5-5:16], 0020 [8:7-8:22], 0021 [9:24-9:28]; Vol. IV, Tab 20, pp. 0997-0998
18 [2:4-3:6].

19
20 Indeed, neither this Court nor any California authorities cited by DRH has
21 even contemplated, let alone held, that a homeowner association's standing pursuant
22 to a statutory grant of authority is modified merely due to changes in ownership of
23
24
25
26
27
28

1 the units in a common-interest community. Nothing in the Uniform Common-
2 Interest Ownership Act affords such considerations, as shown by the absence of any
3 citation to supporting legal authorities in the District Court's ruling related to
4 limitations on NRS 116.3102(1)(d) due to sales of units.
5

6
7 **B. Homeowner Associations' Statutory Grant Of Standing Pursuant To**
8 **The Uniform Common-Interest Ownership Act Comports With The**
9 **Purpose And Intent Of NRCP 17(a) – To Ensure That Homeowners**
10 **Associations Are Empowered To Dispositively Prosecute, Settle Or**
11 **Adjudicate Claims In Its Own Name As The Real Party In Interest**

12 This Court, long ago, explained that "F. R. C. P. 17(a) states that '[e]very
13 action shall be prosecuted in the name of the real party in interest.' This has been
14 defined as the person who 'by the substantive law has the right to be enforced.'" *Lum v. Stinnett*, 87 Nev. 402, 408 (1971) citing 3 *Moore's Federal Practice*, par.
15 17.02 at page 1305 (2nd ed. 1964). The *Lum* decision further held that "[t]he purpose
16 behind this requirement is to protect individuals from the harassment of suits by
17 persons who do not have the power to make final and binding decisions concerning
18 prosecution, compromise and settlement."
19
20
21

22 The Association's standing pursuant to NRS 116.3102(1)(d) fulfills these
23 goals of NRCP 17(a) because by statutory grant, the Association may assert claims
24 *in its own name* for construction defects affection two or more units that affect the
25 common-interest development. Nothing in the District Court's ruling found that the
26
27
28

1 Association did not possess the “power to make final and binding decisions
2 concerning prosecution, compromise and settlement.” *Ibid.*

3
4 Moreover, NRCP 17(b) provides further support of the Association’s
5 contention in that it states “[t]he capacity of an individual, including one acting in a
6 representative capacity, to sue or be sued shall be determined by the law of this State.
7 The capacity of a corporation to sue or be sued shall be determined by the law under
8 which it was organized” NRCP 17(b). The Association is organized and
9 sanctioned under the Uniform Common-Interest Ownership Act. *Petitioner’s*
10 *Appendix*, Vol. I, Tab 1, pp. 0002 [2:1-2:4]. Therefore, NRCP 17(a)-(b), NRS
11 Chapter 40 and NRS 116.3102(1)(d) grant the Association representative capacity
12 to make final and binding decisions regarding the prosecution, settlement and
13 adjudication of NRS Chapter 40 actions.

14
15 NRCP 19 is also instructive because it provides for joinder of any persons
16 needed for complete relief, and among other things, to prevent the risk of parties
17 subject to a substantial risk of incurring double, multiple, or otherwise inconsistent
18 obligations by reason of the claimed interest. NRCP 19(a). NRCP 19 grants District
19 Courts with the authority and power to order joinder of these persons. *Ibid.* The
20 District Court justified its decision with the observation that the ruling “assures
21 finality of the judgment, and that defendants will be protected against another suit
22 brought by subsequent owners on the same matter.” However, no Nevada court has
23
24
25
26
27
28

1 ever ruled that joinder of individual members of an association is necessary for the
2 maintenance of an action founded on NRS 116.3102(1)(d). As this Court has
3 observed and analyzed in *D.R. Horton v. District Court* and *Beazer Homes Holding*
4 *Corp. v. District Court*, NRS 116.3102(1)(d) provides authority for associations to
5 resolve claims on behalf of its members. *Beazer Homes Holding Corp., supra*, 291
6 P.3d at 134; *D.R. Horton, supra*, 125 Nev. at 451-452.

9 **C. Homeowner Associations Exercising Their NRS 116.3102(1)(d)**
10 **Standing Rights Are *Bona Fide* Real Parties In Interest, And Are Not**
11 **Merely An Alter-Ego Of Their Individual Members Or Members'**
12 **Claims – Hence A Federal District Court Has Ruled That Members**
13 **Do Not Need To Be Joined As Indispensable Parties Under NRCP 19**

14 A recent decision by the United States District Court for the District of Nevada
15 offers a very instructive analysis of the interplay between NRCP 17(a) and Chapter
16 40 representative actions pursuant to NRS 116.3102(1)(d). In *Greystone Nev., LLC*
17 *v. Anthem Highlands Cmty. Ass'n.* the court made the following observation:

19 There is, of course, a difference between a private assignment and a
20 statutory authorization to sue in a representative capacity [NRS
21 116.3102(1)(d)], but the difference only concerns the assignors' or
22 represented parties' ability to take back the interest in the claim; an
23 assignor's ability to take back his interest in the claim is governed by the
24 terms of the assignment, whereas a statutorily represented party's ability
25 to take back his interest in the claim is governed by the statute. *But*
26 *because both such an assignee and such a statutory representative are*
27 *treated as real parties in interest under Rule 17, there is no reason to*
28 *treat them differently for the purposes of aggregating claims under the*
diversity statute . . . So long as a statutory representative is the real party
in interest for certain claims under Rule 17, it may join all such claims
under Rule 18 for the purposes of diversity jurisdiction. [Citation.]

1 Defendant argues that the Homeowners must be individually joined as
2 indispensable parties under Rule 19, but Plaintiffs correctly respond
3 that “a party authorized by statute” is a real party in interest that “may
4 sue in [its] own name[] without joining the person[s] for whose benefit
5 the action is brought.” See Fed. R. Civ. P. 17(a)(1), (a)(1)(G).
6 Defendant [Anthem Highlands Community Association] has filed the
7 Chapter 40 notices as the Homeowners' statutory representative.

8 Greystone Nev., LLC v. Anthem Highlands Cmty. Ass'n., 2012 U.S. Dist. LEXIS
9 187826, 16-17 (2012), italics added, citations omitted.

10 The critical consideration from the *Greystone Nev., LLC* decision is that under
11 statutory authorization to sue in a representative capacity, the claims of past, present
12 and future members of the Association are asserted by the Association as the real
13 party in interest, and thus changes in ownership have no effect on the ability of the
14 Association to prosecute those claims to verdict. The other dispositive conclusions
15 to be gleaned from the decision is that: (1) NRS 116.3102(1)(d) is a statutory grant
16 of authority for associations to be a *bona fide*, real party in interest for the purposes
17 of NRCP 17(a); (2) participation or assignments from individual homeowners are
18 not necessary for the final and full adjudication of the action under NRCP 19; and
19 (3) for purposes of NRS 40.610, an association suing in its representative capacity
20 is indeed a “claimant” as defined by the statute. The result is that the District Court’s
21 justification and analysis as to the rights and claims of former versus present
22 members of the Association was without legal support.
23
24
25
26
27
28

1 The critical error in the District Court's rationale is that the District Court
2 erroneously concluded that the "claimant" and "real party in interest" pursuant to
3 NRS 40.610 and NRS 116.3102(1)(d) may *only* be the owner of a unit in a common-
4 interest community, and never the Association. *Petitioner's Appendix*, Vol. IV, Tab
5 19, pp. 0991-0992 [7:6-7:14, 8:13-8:15]. The District Court erroneously concluded
6 that the Association's standing under NRS 116.3102(1)(d) was only as a "surrogate"
7 or "alter-ego" of the claims of its members. *See id.* at p. 0993 [9:8-9:11]. This is in
8 error because it is the Association that is the "claimant" and "real party in interest"
9 pursuant to NRS 40.610 and NRS 116.3102(1)(d), respectively, by the Legislature's
10 adoption of the Uniform Common-Interest Ownership Act. Therefore, the
11 Association's standing pursuant to the rationale of *Greystone Nev., LLC v. Anthem*
12 *Highlands Cmty. Ass'n.*, may only be delimited by an express statutory limitation to
13 NRS 116.3102(1)(d) – and none exists that would support the District Court's ruling.
14 Indeed, this Court's holdings in *D.R. Horton* and *Beazer Homes Holding Corp.*
15 specifically recognized the "claimant" status of Associations pursuing a
16 representative action pursuant to NRS 116.3102(1)(d). *Beazer Homes Holding*
17 *Corp.*, *supra*, 291 P.3d at 134; *D.R. Horton*, *supra*, 125 Nev. at 451-452.

24
25 **E. It Is Presumed That The Legislature Intended A Logical Result In**
26 **The Adoption Of Statutes Yet The District Court's Interpretation Of**
27 **NRS 116.3102(1)(d) Results In An Artificial Distinction And Illogical**
28 **Consequences, In Addition To Violating *ANSE, Inc. v. District***

1 ***Court's Prohibition Against Reading Limitations Into A Statute That***
2 ***Do Not Exist In Its Plain Language***

3 The District Court's reliance on changes of ownership in units in a common-
4 interest community as a basis to withhold standing is misplaced because nothing in
5 either the language or the Legislative history of the Uniform Common-Interest
6 Ownership Act imposes such requirements. The Legislature is presumed to have
7 known that logically, ownership of units in common-interest communities
8 frequently changes, and adopted NRS 116.3102(1)(d) in recognition of that reality.
9
10 *See Clark County Sch. Dist. v. Clark County Classroom Teachers Ass'n*, 115 Nev.
11 98, 103 (1999). This Court in *Clark County Sch. Dist.* cogently observed that, “
12 [t]o conclude that the statute does not confer subpoena power would be to draw an
13 artificial distinction where no difference in fact exists, and such a result would be
14 illogical . . . [t]he legislature is presumed to have intended a logical result, rather
15 than an absurd or unreasonable one.” *Id.* citing *Angoff v. M & M Management*
16 *Corp.*, 897 S.W.2d 649 (Mo. Ct. App. W.D. 1995). Here, the District Court's ruling
17 inserted an artificial distinction that resulted in an unreasonable outcome, to wit:
18 ownership changes in units in a common-interest community strips both the new
19 members and the association of standing to pursue Chapter 40 claims against liable
20 contractors.
21

22 In the Conclusions of Law section of its Order, the District Court makes
23 several references to its misconception of the effect of changes in membership in the
24
25
26
27
28

1 Association's standing by observing that: (1) "the question of 'standing to bring suit'
2 focuses on the party seeking adjudication"³; (2) "[t]here is no question that, in order
3 to bring a cause of action pursuant to [Chapter 40] . . . he must be a 'claimant'"⁴; (3)
4 "[t]his Court agrees with Defendant's view that if a property owner no longer owns
5 the home, he does not retain any claims he may have had under NRS 40.655"⁵; (4)
6 "the former owners are no longer the 'real parties in interest' with respect to such
7 claims . . . they cannot maintain such causes of action"⁶; and (5) [t]his Court'
8 conclusion protects the plaintiff-homeowners in the retention of certain claims,
9 enables defendant-contractors to avail themselves of evidence and defenses they
10 have against the real party in interest, assures finality of the judgment, and that
11 defendants will be protected against another suit brought by subsequent owners on
12 the same matter."⁷

13
14 The District Court's ruling violates the guidance of *ANSE, Inc. v. Eighth*
15 *Judicial Dist. Court of Nev.* where it was observed that:

16
17
18
19
20
21
22 ³ *Petitioner's Appendix*, Vol. IV, Tab 19, p. 0991 [7:3-7:4].

23 ⁴ *Id.* at p. 0991 [7:6-7:9].

24 ⁵ *Id.* at p. 0991 [7:18-7:20].

25 ⁶ *Id.* at p. 0992 [8:13-8:15].

26 ⁷ *Id.* at p. 0993 [9:7-9:12].

1 Further, allowing homeowners who are not the home's original
2 purchasers to seek NRS Chapter 40's remedies *is in harmony with the*
3 *other provisions of NRS Chapter 40 . . .* NRS 40.610 defines a
4 constructional defect claimant as “[a]n owner of a residence” – *without*
5 *qualification. NRS 40.610 plainly does not require that a constructional*
6 *defect claimant be a residence's first owner, as petitioners'*
interpretation of 'new residence' suggests, or expressly impose any
other limitation.

7 *ANSE, Inc. v. Eighth Judicial Dist. Court of Nev.*, 124 Nev. 862, 873 (2008) (“*ANSE*
8 *Inc.*”) The *ANSE Inc.* Court noted that the statute must be read to reflect “. . . the
9 spirit of Chapter 40 –to provide an expansive remedy to homeowners and protection
10 for developers.” *Id.* at 873 *citing McKay v. Bd. of Supervisors*, 102 Nev. 644, 648
11 (1986) [noting that a statute's interpretation may not violate the spirit of the act of
12 which it is a part]. The *ANSE, Inc.* Court further cautioned against a reading of the
13 statute that “. . . leads to disparate treatment among similarly situated homeowners.”
14 *Id.* at 873. That is precisely what the District Court's ruling would do: a
15 homeowners association could redress construction defects in homes that maintained
16 ownership throughout the litigation process, but could not maintain a claim arising
17 from identically situated homes that underwent a change in ownership.
18
19
20
21

22 The salient instruction of *ANSE, Inc.* is that courts shall not read additional
23 qualifications or limitations into statutes that are not set forth in the statute's plain
24 language, and are contrary to the expansive spirit of the statute. NRS 116.3102(1)(d)
25 does not possess any limiting or qualifying language that limits standing to the
26 members present at the time an action is filed, to the exclusion and detriment of
27
28

1 subsequent members. The District Court's ruling erroneously imposed a limitation
2 that destroys the harmony with other provisions of Chapter 40 and the Uniform
3 Common-Interest Ownership Act. *See ANSE, Inc, supra*, 124 Nev. at 873. The
4 District Court's ruling encourages defendants to drag-out Chapter 40 actions for as
5 long as possible to allow changes in ownership to occur in the interim, and then
6 offers a mechanism to gut an association's representative action, and deprive
7 individual members of collective representation, on the eve of trial. Such an inchoate
8 scenario violates the *Clark County Sch. Dist.* Court's warning against interpreting
9 statutes in a manner that manifest unreasonable, illogical or absurd results. *Clark*
10 *County Sch. Dist., supra*, 115 Nev. at 103.

11
12
13
14
15 **F. The Measure Of An Association's NRS 116.3102(1)(d) Standing**
16 **Derives From The Existence Of Issues Affecting Two Or More *Units***
17 **Owned By An Association's *Members*, And The Specific Identity Of**
18 **Owners Of Units Is Irrelevant In The Determination Of Association**
19 **Standing Pursuant to NRS 116.3102(1)(d)**

20 The District Court's delineation between former and current owners of units
21 is an empty and meaningless distinction with regard to an association's rights under
22 the Uniform Common-Interest Ownership Act. Standing under NRS 116.3102(1)(d)
23 has nothing to do with the identity of the unit owners or how long they have owned
24 the units. The trigger activating standing under NRS 116.3102(1)(d) are claims
25 affecting two or more *units* within the common interest community—not the identity
26 of the owners of the units. An association's statutory standing to bring claims
27
28

1 affecting the common interest community is starkly distinct from a single family
2 homeowner's standing to bring claims affecting only the home that he or she owns.

3
4 The District Court confounded these two very different and distinct types of
5 standing, and failed to take into account the full implications of NRS 116.3102(1)(d).

6
7 This Court in *D.R. Horton, Inc. v. District Court* cogently observed that
8 “[b]ecause the provisions of NRS Chapter 116, among other sources, demonstrate
9 that a common-interest community includes individual units, we conclude that under
10 NRS 116.3102(1)(d), a homeowners’ association has standing to file a representative
11 action on behalf of its *members for constructional defects in individual units of a*
12 *common-interest community.*” *D.R. Horton, supra*, 125 Nev. at 451-452, italics
13 added. That statement is a recognition that representative standing under NRS
14 116.3102(1)(d) is satisfied where: (1) the units are part of a common-interest
15 community; (2) the units belong to a *member* of the common-interest community;
16 and (3) constructional defects affect two or more of those units. Whether the
17 “member” was an owner of a unit in 2007 when the action was commenced, or an
18 owner of a unit in 2014, is of no consequence because they are a “member” upon
19 taking possession of a unit under NRS 116.095. NRS 116.3102(1)(d) is a Legislative
20 mandate that the Association is the real party in interest for any claims involving
21 two or more units – nothing more is required. *See D.R. Horton, supra*, 125 Nev. at
22 455.
23
24
25
26
27
28

1 The *D.R. Horton* Court’s citation to section 6.11 of the Restatement (Third)
2 of Property and its commentary is instructive. “The Restatement reads: ‘. . . the
3 association has the power to institute . . . litigation . . . *in its own name, on behalf of*
4 *itself, or on behalf of the member* property owners in a common-interest community
5 on matters affecting the community.’” *Id.* at 454, fn. 1, italics added. The key point
6 is that the Court in *D.R. Horton, supra*, after a thorough analysis of the Legislature’s
7 intent, “conclude[d] that where NRS 116.3102(1)(d) confers standing on a
8 homeowners’ association to assert claims ‘on matters affecting the common-interest
9 community,’ a homeowners’ association has standing to assert claims that affect
10 *individual units.*” *Id.* at 457, italics added.

14 This Court observed that “because a common-interest community includes
15 both common elements and *units*, a homeowners’ association has standing under
16 NRS 116.3102(1)(d) to assert a cause of action against a developer for constructional
17 defects within *individual units.*” *Id.* at 460, italics added. The aforementioned
18 quotation is a succinct rule by which NRS 116.3102(1)(d) is applied, and was
19 violated by the District Court’s requirement that changes in ownership of units after
20 the filing of a complaint limit the application of NRS 116.3102(1)(d). Therefore,
21 the District Court’s ruling is an abuse of discretion because usurped this Court’s
22 directives on issues of association standing.

1 **G. The District Court Abused Its Discretion And Applied An Incorrect**
2 **Legal Standard By Relying On Its Rationale And Ruling In A Single**
3 **Family Home Action That Did Not Involve NRS 116.3102(1)(d)**

4 The District Court's erroneous ruling was compounded by its improper
5 reliance on its 2009 Order in the *Balle v. Carina Corp.* action involving single family
6 homes. Indeed, it should be noted that a cursory comparison between the *Balle*
7 Order and the *High Noon* Order in the instant action reveals that they are nearly
8 carbon copies of each other in regards to the Conclusions of Law sections.
9 *Petitioner's Appendix*, Vol. IV, Tab 19, at pp. 0990-0993 [6:4-9:20] *cf.* Vol. IV, Tab
10 18, pp. 0974-0979 [6:17-11:13]. This is problematic because NRS Chapter 40
11 actions brought by individual owners of single family homes do not implicate the
12 statutory authority of NRS 116.3102(1)(d).
13
14
15

16 The Court's Conclusions of Law failed to recognize the distinction between
17 Chapter 40 actions brought by individual owners versus Chapter 40 actions brought
18 by associations in their representative capacity pursuant to statutory authorization
19 under NRS 116.3102(1)(d). *Ibid.* The critical distinction is that under the latter
20 scenario, it is the association that is the real party in interest, and the possessor of the
21 claims pursuant to NRS 40.655. In sum, the District Court's ruling relied upon the
22 wrong legal standard and is thus an abuse of discretion. *State Dep't of Bus. & Indus.*
23 *v. Nev. Ass'n. Servs.*, *supra*, 294 P.3d at 1226 [reversal for a district court's abuse of
24
25
26
27
28

1 discretion is appropriate where the district court's decision was based on an
2 erroneous legal standard].

3
4 **G. The District Court's Reliance On Its Ruling In *Balle v. Carina Corp.***
5 **To Grant Partial Summary Judgment Violated NRCP 56 Because**
6 **Granting Of Summary Judgment On Independent Grounds Is**
7 **Prohibited**

8 The District Court's reliance upon its ruling in *Balle v. Carina Corp.* presents
9 additional procedural errors that violate NRCP 56 in that the Association's due
10 process rights were impacted because the adverse ruling was premised on legal
11 authorities not raised by DRH. NRCP 56, unlike its Federal counterpart, FRCP 56,
12 makes no allowance for summary judgment upon grounds not raised by the moving
13 party. Indeed, when the Legislature amended NRCP 56 in 2004 to conform to FRCP
14 56, it declined to incorporate FRCP 56(f)'s allowance for summary judgment on
15 grounds independent of the motion⁸. *Short v. Celestino* set forth the applicable
16 standard for summary judgment in the absence of FRCP 56(f)'s special allowance:
17
18

19 A party seeking summary judgment must specifically delineate the basis
20 upon which summary judgment is sought in order to allow the opposing
21 party a meaningful opportunity to respond." [Citation.] The purpose for
22 the rule is to ensure that a party opposing a motion for summary
23 judgment has a meaningful opportunity to respond to the motion.

24 ⁸ FRCP 56(f). Judgment Independent of the Motion. After giving notice and a
25 reasonable time to respond, the court may: (1) grant summary judgment for a
26 nonmovant; (2) grant the motion on grounds not raised by a party; or (3) consider
27 summary judgment on its own after identifying for the parties material facts that
28 may not be genuinely in dispute.

1 [Citation.] . . . This court has previously ruled that it follows that a trial
2 court may not grant a summary judgment based upon an issue that was
3 not raised by either party.

4 *Short v. Celestino*, 1996 Ohio App. LEXIS 2564, at 7-8 (1996).

5 Notwithstanding the statutory bar of NRCP 56 against granting summary
6 judgment on independent grounds, the Transcript of Proceedings reveals that the
7 District Court, for the first time at oral argument on the motion, referenced its ruling
8 in *Balle v. Carina Corp.* and made copies to be distributed to all counsel who were
9 present. *Petitioner's Appendix*, Vol. IV, Tab 16, pp. 0949-0950 [19:15-20:10]; Vol.
10 IV, Tab 18, pp. 0969-0984. A short recess was then taken to allow counsel to review
11 that document. *Ibid.* The *Balle v. Carina Corp.* Order was a never before seen legal
12 authority that the District Court based its ruling upon. *Ibid.* The Association's
13 counsel had no notice or opportunity to meaningfully respond to this new source of
14 authority. *Ibid.* The District Court unwittingly became a second advocate for the
15 Partial Summary Judgment motion. The fact that the *Balle v. Carina Corp.* Order
16 and the Order at issue here are nearly identical, especially in the Conclusions of Law
17 sections, is further evidence that the District Court's ruling violated NRCP 56 and
18 the Association's due process rights.

19
20
21
22
23
24
25 **H. The District Court's Order Granting Partial Summary Judgment**
26 **Contradicted And Is Inconsistent With Its Prior Orders Finding**
27 **That The Association's Claims Satisfied NRS 116.3102(1)(d)**
28 **Standing Requirements**

1 Viewed through the prism of the District Court's prior rulings related to the
2 Association's NRS 116.3102(1)(d) standing, the Order at issue stands in stark
3 contrast, is arbitrary, and unfairly prejudiced the Association after years of litigation.
4 *See Petitioner's Appendix*, Vol. IV, Tab 19, *cf. Petitioner's Appendix*, Vol. I, Tab
5 2, pp. 0017 [5:5-5:16], 0020 [8:7-8:22], 0021 [9:24-9:28]; Vol. IV, Tab 20, pp. 0997-
6 0998 [2:4-3:6]. For instance, in its November 12, 2013 Order in response to this
7 Court's January 25, 2013 Writ of Mandamus, the District Court ruled that the
8 Association possessed NRS 116.3102(1)(d) standing for any claims affecting two or
9 more units. *Ibid.* No exception or qualification was made for the artificial
10 distinction of members who were present in 2007 when the Complaint was filed.
11 *Ibid.* In fact, the only exception imposed by the District Court was that on issues
12 affecting only a single member, the Association could not proceed under NRS
13 116.3102(1)(d), and had leave to amend the Complaint to name those individual
14 members. *Petitioner's Appendix*, Vol. I, Tab 2, pp. 0020-0021 [8:19-9:9].

15
16
17
18
19
20 Specifically, the District Court observed that, "Plaintiff and its homeowner-
21 members are not necessarily required to have every single unit inspected or
22 destructively tested to determine whether a particular construction defect exists in
23 order for the Association to send a notice of constructional defects under NRS
24 40.645, or ultimately, to bring an action under NRS 40.600, *et seq.* on behalf of all
25 homeowners in its representative capacity." *Id.* at p. 0017 [5:7-5:13]. The District
26
27
28

1 Court went on to conclude that “Plaintiff may act on behalf of the 194 homeowner-
2 members in a representative capacity” *Id.* at p. 0017 [5:16-5:17]. The District
3 Court noted that, “[i]n cases where homeowners suffering constructional defects
4 number forty (40) or more, this Court concludes the deficient NRCP 23 elements . .
5 . are met, meaning Plaintiff may represent those homeowners, and present such
6 claims by generalized proof, or in a class-action format.” *Id.* at p. 0019 [7:9-7:13].
7 It concluded with the statement that, “Plaintiff . . . may institute and/or maintain
8 litigation on behalf of two or more individual owners suffer the same constructional
9 defects. *See* NRS 116.3102(1)(d) . . . [¶] This Court accords Plaintiff . . . leave to file
10 an amended complaint *only for the purpose of including claims of homeowners*
11 *suffering the constructional defect not encountered by their neighbors to prosecute*
12 *individual claims.*” *Id.* at pp. 0020-0021 [8:7-9:4].

17 In light of those previous pronouncements, it was a complete shock to the
18 Association that the District Court issued its Order granting DRH’s Motion for
19 Partial Summary Judgment on grounds that an association’s claims are subject to
20 amendment, limitation, or reduction based on changes to the identity of the
21 Association’s members since 2007. The District Court’s observation that, “[t]he
22 concept that damages or injuries may transform or change throughout the duration
23 of litigation is nothing new” and its comparisons with personal injury actions were
24 an “apples to oranges” logical fallacy. *Petitioner’s Appendix*, Vol. IV, Tab 19, p.
25
26
27
28

1 0992 [8:16-8:27]. The Association's standing and rights as the real party in interest
2 is controlled by the Uniform Common-Interest Ownership Act, and the *only*
3 applicable legal standard on the issue of standing. The District Court applied the
4 wrong legal standard and analysis to support its ruling – a ruling that is inconsistent
5 with its prior rulings as to the Association's standing.
6
7

8 **VII. CONCLUSION**

9
10 For the forgoing reasons, Petitioner Association urges this Court for issuance
11 of a writ of mandamus, commanding Respondents, the Eighth Judicial District Court
12 and the Honorable Susan H. Johnson to rule that the Motion for Partial Summary
13 Judgment is without merit and be accordingly denied with prejudice.
14

15 Dated: April 18, 2014

ANGIUS & TERRY LLP

16
17
18 By: 

19 Paul P. Terry, Jr., Esq., SBN 7192
20 John J. Stander, Esq., SBN 9198
21 Scott P. Kelsey, Esq., SBN 7770
22 1120 N. Town Center Dr., Ste. 260
23 Las Vegas, Nevada 89144
24 *Attorneys for Petitioner*
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Holly Woodard
Employee of ANGIUS & TERRY, LLP