# Addendum “B”
# (Part 2 of 2)

(a) The association, the members of its executive board and its officers, employees, agents and community manager may enter the grounds of a unit after providing written notice and, notwithstanding any other provision of law, are not liable for trespass.

(b) Any such maintenance, repair, restoration and replacement of a security wall must be performed:

(1) During normal business hours;

(2) Within a reasonable length of time; and

(3) In a manner that does not adversely affect access to a unit or the legal rights of a unit's owner to enjoy the use of his or her unit.

(c) Notwithstanding any other provision of law, the executive board is prohibited from imposing an assessment without obtaining prior approval of the units' owners unless the total amount of the assessment is less than 5 percent of the annual budget of the association.

4. As used in this section, "security wall" means any wall composed of stone, brick, concrete, concrete blocks, masonry or similar building material, including, without limitation, ornamental iron or other fencing material, together with footings, pilasters, outriggers, grillwork, gates and other appurtenances, constructed around the perimeter of a residential subdivision with respect to which a final map has been recorded pursuant to NRS 278.360 to 278.460, inclusive, to protect the several tracts in the subdivision and their occupants from vandalism.

(Added to NRS by 2009, 2862)

## Meetings and Voting

**NRS 116.31075 Meetings of rural agricultural residential common-interest communities: Compliance with Open Meeting Law.** In conducting any meetings, a rural agricultural residential common-interest community must comply with the provisions set forth in chapter 241 of NRS concerning open meetings which are generally applicable to public bodies.

(Added to NRS by 2003, 2221)

**NRS 116.3108 Meetings of units' owners of association; frequency of meetings; calling special meetings; requirements concerning notice and agendas; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings.**

1. A meeting of the units' owners must be held at least once each year at a time and place stated in or fixed in accordance with the bylaws. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. An association shall hold a special meeting of the units' owners to address any matter affecting the common-interest community or the association if its president, a majority of the executive board or units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of votes in the association request that the secretary call such a meeting. To call a special meeting, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this subsection and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be given to the units' owners in the manner set forth in NRS 116.31068. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

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

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

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

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

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

(c) A period devoted to comments by units' owners regarding any matter affecting the common-interest community or the association and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the minutes or a summary of the minutes must be provided to

any unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

6. Except as otherwise provided in subsection 7, the minutes of each meeting of the units' owners must include:

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

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

7. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

8. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

9. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the other units' owners who are in attendance at the meeting.

10. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

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

(a) Could not have been reasonably foreseen;

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

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

(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

(Added to NRS by 1991, 562; A 1995, 2230; 1997, 3118; 1999, 3004; 2001, 470; 2003, 2232, 2270; 2005, 2598; 2009, 2800, 2886, 2920; 2011, 2436)

**NRS 116.31083 Meetings of executive board; frequency of meetings; periodic review of certain financial and legal matters at meetings; requirements concerning minutes of meetings; right of units' owners to make audio recordings of certain meetings.**

1. A meeting of the executive board must be held at least once every quarter, and not less than once every 100 days and must be held at a time other than during standard business hours at least twice annually.

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Given to the units' owners in the manner set forth in NRS 116.31068; or

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

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

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

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

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

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

6. At least once every quarter, and not less than once every 100 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

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

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

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

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

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

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

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

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

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

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

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

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

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

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

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

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

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

(a) Could not have been reasonably foreseen;

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

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

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

(Added to NRS by 1999, 2995; A 2001, 472; 2003, 2234; 2005, 2600; 2009, 2803, 2889, 2922; 2011, 2439)

**NRS 116.31084 Voting by member of executive board; disclosures; abstention from voting on certain matters.**

1. A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall:

(a) Disclose the matter to the executive board; and

(b) Abstain from voting on any such matter.

2. A member of an executive board who has a member of his or her household or any person related to the member by blood, adoption or marriage within the third degree of consanguinity or affinity who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall disclose the matter to the executive board before voting on any such matter.

3. For the purposes of this section:

(a) An employee of a declarant or an affiliate of a declarant who is a member of the executive board shall not, solely by reason of such employment or affiliation, be deemed to gain any personal profit or compensation.

(b) A member of an executive board shall not be deemed to gain any personal profit or compensation solely because the member of the executive board is the owner of a unit in the common-interest community.

(Added to NRS by 2009, 1099, 2908)

**NRS 116.31085 Right of units' owners to speak at certain meetings; limitations on right; limitations on power of executive board to meet in executive session; procedure governing hearings on alleged violations; requirements concerning minutes of certain meetings.**

1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

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

3. An executive board may meet in executive session only to:

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

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

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

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

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

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

(b) Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; and

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

5. The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to the person's designated representative.

7. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

(Added to NRS by 1997, 3111; A 1999, 3005; 2003, 2236, 2271; 2005, 2602; 2009, 1100, 2891)

**NRS 116.31086 Solicitation of bids for association project; bids to be opened at meeting of executive board.**

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

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

(Added to NRS by 2009, 1099)

**NRS 116.31087 Right of units' owners to have certain complaints placed on agenda of meeting of executive board.**

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

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

(Added to NRS by 2003, 2218; A 2009, 2892)

**NRS 116.31088 Meetings regarding civil actions; requirements for commencing or ratifying certain civil actions; right of units' owners to request dismissal of certain civil actions; disclosure of terms and conditions of settlements.**

1. The association shall provide written notice to each unit's owner of a meeting at which the commencement of a civil action is to be considered at least 21 calendar days before the date of the meeting. Except as otherwise provided in this subsection, the association may commence a civil action only upon a vote or written agreement of the owners of units to which at least a majority of the votes of the members of the association are allocated. The provisions of this subsection do not apply to a civil action that is commenced:

(a) To enforce the payment of an assessment;

(b) To enforce the declaration, bylaws or rules of the association;

(c) To enforce a contract with a vendor;

(d) To proceed with a counterclaim; or

(e) To protect the health, safety and welfare of the members of the association. If a civil action is commenced pursuant to this paragraph without the required vote or agreement, the action must be ratified within 90 days after the commencement of the action by a vote or written agreement of the owners of the units to which at least a majority of votes of the members of the association are allocated. If the association, after making a good faith effort, cannot obtain the required vote or agreement to commence or ratify such a civil action, the association may thereafter seek to dismiss the action without prejudice for that reason only if a vote or written agreement of the owners of the units to which at least a majority of votes of the members of the association are allocated was obtained at the time the approval to commence or ratify the action was sought.

2. At least 10 days before an association commences or seeks to ratify the commencement of a civil action, the association shall provide a written statement to all the units' owners that includes:

(a) A reasonable estimate of the costs of the civil action, including reasonable attorney's fees;

(b) An explanation of the potential benefits of the civil action and the potential adverse consequences if the association does not commence the action or if the outcome of the action is not favorable to the association; and

(c) All disclosures that are required to be made upon the sale of the property.

3. No person other than a unit's owner may request the dismissal of a civil action commenced by the association on the ground that the association failed to comply with any provision of this section.

4. If any civil action in which the association is a party is settled, the executive board shall disclose the terms and conditions of the settlement at the next regularly scheduled meeting of the executive board after the settlement has been reached. The executive board may not approve a settlement which contains any terms and conditions that would prevent the executive board from complying with the provisions of this subsection.

(Added to NRS by 2005, 2585)

**NRS 116.3109 Quorum.**

1. Except as otherwise provided in this section and NRS 116.31034, and except when the governing documents provide otherwise, a quorum is present throughout any meeting of the units' owners if persons entitled to cast 20 percent of the votes in the association:

(a) Are present in person;

(b) Are present by proxy;

(c) Have cast absentee ballots in accordance with paragraph (d) of subsection 2 of NRS 116.311; or

(d) Are present by any combination of paragraphs (a), (b) and (c).

2. If the governing documents of an association contain a quorum requirement for a meeting of the association that is greater than the 20 percent required by subsection 1 and, after proper notice has been given for a meeting, the members of the association who are present in person or by proxy at the meeting are unable to hold the meeting because a quorum is not present at the beginning of the meeting, the members who are present in person at the meeting may adjourn the meeting to a time that is not less than 48 hours or more than 30 days from the date of the meeting. At the subsequent meeting:

(a) A quorum shall be deemed to be present if the number of members of the association who are present in person or by proxy at the beginning of the subsequent meeting equals or exceeds 20 percent of the total number of voting members of the association; and

(b) If such a quorum is deemed to be present but the actual number of members who are present in person or by proxy at the beginning of the subsequent meeting is less than the number of members who are required for a quorum under the governing documents, the members who are present in person or by proxy at the subsequent meeting may take action only on those matters that were included as items on the agenda of the original meeting.

➥ The provisions of this subsection do not change the actual number of votes that are required under the governing documents for taking action on any particular matter.

3. Unless the governing documents specify a larger number, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the members present is the act of the executive board unless a greater vote is required by the declaration or bylaws.

4. Meetings of the association must be conducted in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*, unless the bylaws or a resolution of the executive board adopted before the meeting provide otherwise.

(Added to NRS by 1991, 563; A 1999, 3006; 2003, 2237; 2011, 2441)

**NRS 116.311 Voting by units' owners; use of absentee ballots and proxies; voting by lessees of leased units; association prohibited from voting as owner of unit; voting without a meeting.**

1. Unless prohibited or limited by the declaration or bylaws and except as otherwise provided in this section, units' owners may vote at a meeting in person, by absentee ballot pursuant to paragraph (d) of subsection 2, by a proxy pursuant to subsections 3 to 8, inclusive, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection 9.

2. At a meeting of units' owners, the following requirements apply:

(a) Units' owners who are present in person may vote by voice vote, show of hands, standing or any other method for determining the votes of units' owners, as designated by the person presiding at the meeting.

(b) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners cast the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(c) Unless a greater number or fraction of the votes in the association is required by this chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(d) Subject to subsection 1, a unit's owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner who requests it if the request is made at least 3 days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(e) When a unit's owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit's owner having the right to do so.

3. Except as otherwise provided in this section, votes allocated to a unit may be cast pursuant to a proxy executed by a unit's owner. A unit's owner may give a proxy only to a member of his or her immediate family, a tenant of the unit's owner who resides in the common-interest community, another unit's owner who resides in the common-interest community, or a delegate or representative when authorized pursuant to NRS 116.31105. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit

through an executed proxy. A unit's owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

4. Before a vote may be cast pursuant to a proxy:

(a) The proxy must be dated.

(b) The proxy must not purport to be revocable without notice.

(c) The proxy must designate the meeting for which it is executed, and such a designation includes any recessed session of that meeting.

(d) The proxy must designate each specific item on the agenda of the meeting for which the unit's owner has executed the proxy, except that the unit's owner may execute the proxy without designating any specific items on the agenda of the meeting if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy designates one or more specific items on the agenda of the meeting for which the unit's owner has executed the proxy, the proxy must indicate, for each specific item designated in the proxy, whether the holder of the proxy must cast a vote in the affirmative or the negative on behalf of the unit's owner. If the proxy does not indicate whether the holder of the proxy must cast a vote in the affirmative or the negative for a particular item on the agenda of the meeting, the proxy must be treated, with regard to that particular item, as if the unit's owner were present but not voting on that particular item.

(e) The holder of the proxy must disclose at the beginning of the meeting for which the proxy is executed and any recessed session of that meeting the number of proxies pursuant to which the holder will be casting votes.

5. A proxy terminates immediately after the conclusion of the meeting, and any recessed sessions of the meeting, for which it is executed.

6. Except as otherwise provided in this subsection, a vote may not be cast pursuant to a proxy for the election or removal of a member of the executive board of an association. A vote may be cast pursuant to a proxy for the election or removal of a member of the executive board of a master association which governs a time-share plan created pursuant to chapter 119A of NRS if the proxy is exercised through a delegate or representative authorized pursuant to NRS 116.31105.

7. The holder of a proxy may not cast a vote on behalf of the unit's owner who executed the proxy in a manner that is contrary to the proxy.

8. A proxy is void if the proxy or the holder of the proxy violates any provision of subsections 3 to 7, inclusive.

9. Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. Except as otherwise provided in NRS 116.31034 and 116.31036, if an association conducts a vote without a meeting, the following requirements apply:

(a) The association shall notify the units' owners that the vote will be taken by ballot.

(b) The association shall deliver a paper or electronic ballot to every unit's owner entitled to vote on the matter.

(c) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(d) When the association delivers the ballots, it shall also:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of votes necessary to approve each matter other than election of directors;

(3) Specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than 3 days after the date the association delivers the ballot; and

(4) Describe the time, date and manner by which units' owners wishing to deliver information to all units' owners regarding the subject of the vote may do so.

(e) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability of or attempted revocation by the person who cast that vote.

(f) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

10. If the declaration requires that votes on specified matters affecting the common-interest community must be cast by the lessees of leased units rather than the units' owners who have leased the units:

(a) This section applies to the lessees as if they were the units' owners;

(b) The units' owners who have leased their units to the lessees may not cast votes on those specified matters;

(c) The lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were the units' owners; and

(d) The units' owners must be given notice, in the manner provided in NRS 116.3108, of all meetings at which the lessees are entitled to vote.

11. If any votes are allocated to a unit that is owned by the association, those votes may not be cast, by proxy or otherwise, for any purpose.

(Added to NRS by 1991, 563; A 1999, 3006; 2003, 2238; 2009, 2924; 2011, 2442)

**NRS 116.31105 Voting by delegates or representatives; limitations; procedure for electing delegates or representatives.**

1. Except as otherwise provided in subsection 8, if the declaration so provides, in a common-interest community that consists of at least 1,000 units, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives.

2. Except as otherwise provided in subsection 8, in addition to a common-interest community identified in subsection 1, if the declaration so provides, in a common-interest community created before October 1, 1999, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives.

3. In addition to a common-interest community identified in subsections 1 and 2, if the declaration so provides, the voting rights of the owners of time shares within a time-share plan created pursuant to chapter 119A of NRS which is governed by a master association may be exercised by delegates or representatives.

4. For the purposes of subsection 1, each unit that a declarant has reserved the right to create pursuant to NRS 116.2105 and for which developmental rights exist must be counted in determining the number of units in a common-interest community.

5. For the purposes of subsection 3, each time share that a developer has reserved the right to create pursuant to paragraph (g) of subsection 2 of NRS 119A.380 must be counted in determining the number of time shares in a time-share plan.

6. Notwithstanding any provision in the declaration, the election of any delegate or representative must be conducted by secret written ballot.

7. When an election of a delegate or representative is conducted by secret written ballot:

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

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

(c) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.

(d) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) A candidate for delegate or representative may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association in the manner prescribed on the ballot before those secret written ballots have been opened and counted at a meeting called for that purpose.

8. Except as otherwise provided in subsection 9, the voting rights of the units' owners in the association for a common-interest community may be exercised by delegates or representatives only during the period that the declarant is in control of the association and during the 2-year period after the declarant's control of the association is terminated pursuant to NRS 116.31032.

9. The provisions of subsection 8 do not apply to:

(a) A time-share plan created pursuant to chapter 119A of NRS which is governed by a master association; or

(b) A condominium or cooperative containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted.

(Added to NRS by 2003, 2220; A 2009, 2925, 2926)

**NRS 116.31107 Voting by units' owners: Prohibited acts; penalty.**

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

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

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

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

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

(e) Submitting a counterfeit ballot.

2. A person who violates this section is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(Added to NRS by 2009, 2875)

**Liabilities, Insurance and Fiscal Affairs**

**NRS 116.3111 Tort and contract liability.**

1. A unit's owner is not liable, solely by reason of being a unit's owner, for an injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit's owner except the declarant is liable for that declarant's torts in connection with any part of the common-interest community which that declarant has the responsibility to maintain.

2. An action alleging a wrong done by the association, including, without limitation, an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit's owner. If the wrong occurred during any period of declarant's control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit's owner for all tort losses not covered by insurance suffered by the association or that unit's owner, and all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association.

3. Except as otherwise provided in subsection 4 of NRS 116.4116 with respect to warranty claims, any statute of limitation affecting the association's right of action against a declarant under this section is tolled until the period of declarant's control terminates. A unit's owner is not precluded from maintaining an action contemplated by this section because he or she is a unit's owner or a member or officer of the association. Liens resulting from judgments against the association are governed by NRS 116.3117.

(Added to NRS by 1991, 563; A 2011, 2444)

**NRS 116.3112 Conveyance or encumbrance of common elements.**

1. In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least a majority of the votes in the association, including a majority of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

2. Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least a majority of the votes in the association, including a majority of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all units' owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to NRS 116.2118, is void.

3. An agreement to convey common elements in a condominium or planned community, or to subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or subject it to a security interest, must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of units' owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the common-interest community is situated, and is effective only upon recordation.

4. The association, on behalf of the units' owners, may contract to convey an interest in a common-interest community pursuant to subsection 1, but the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

5. Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements or of any other part of a cooperative is void.

6. A conveyance or encumbrance of common elements or of a cooperative pursuant to this section does not deprive any unit of its rights of access and support.

7. Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

8. In a cooperative, the association may acquire, hold, encumber or convey a proprietary lease without complying with this section.

(Added to NRS by 1991, 564; A 1993, 2369)

**NRS 116.3113 Insurance: General requirements.**

1. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available and subject to reasonable deductibles:

(a) Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against risks of direct physical loss commonly insured against, which insurance, after application of any deductibles, must be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies;

(b) Commercial general liability insurance, including insurance for medical payments, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units; and

(c) Crime insurance which includes coverage for dishonest acts by members of the executive board and the officers, employees, agents, directors and volunteers of the association and which extends coverage to any business entity that acts as the community manager of the association and the employees of that entity. Such insurance may not contain a conviction requirement, and the minimum amount of the policy must be not less than an amount equal to 3 months of aggregate assessments on all units plus reserve funds or $5,000,000, whichever is less.

2. In the case of a building that contains units divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units, the insurance maintained under paragraph (a) of subsection 1, to the extent reasonably available, must include the units, but need not include improvements and betterments installed by units' owners.

3. If the insurance described in subsections 1 and 2 is not reasonably available, the association promptly shall cause notice of that fact to be given to all units' owners. The declaration may require the association to carry any other insurance, and the association may carry any other insurance it considers appropriate to protect the association or the units' owners.

4. An insurance policy issued to the association does not prevent a unit's owner from obtaining insurance for the unit's owner's own benefit.

(Added to NRS by 1991, 565; A 2011, 2445)

**NRS 116.31133 Insurance: Policies; use of proceeds; certificates or memoranda of insurance.**

1. Insurance policies carried pursuant to NRS 116.3113 must provide that:

(a) Each unit's owner is an insured person under the policy with respect to liability arising out of the unit's owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit's owner or member of his or her household;

(c) No act or omission by any unit's owner, unless acting within the scope of his or her authority on behalf of the association, voids the policy or is a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit's owner covering the same risk covered by the policy, the association's policy provides primary insurance.

2. Any loss covered by the property policy under subsections 1 and 2 of NRS 116.3113 must be adjusted with the association, but the proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, units' owners and lienholders as their interests may appear. Subject to NRS 116.31135, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, units' owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the common-interest community is terminated.

3. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit's owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit's owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(Added to NRS by 1991, 565; A 2003, 1210; 2011, 2445)

**NRS 116.31135 Insurance: Repair or replacement of damaged or destroyed portion of community.**

1. Any portion of the common-interest community for which insurance is required under NRS 116.3113 which is damaged or destroyed must be repaired or replaced promptly by the association unless:

(a) The common-interest community is terminated, in which case NRS 116.2118, 116.21183 and 116.21185 apply;

(b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

(c) Eighty percent of the units' owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild.

2. The cost of repair or replacement in excess of insurance proceeds, deductibles and reserves is a common expense. If the entire common-interest community is not repaired or replaced:

(a) The insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common-interest community; and

(b) Except to the extent that other persons will be distributees:

(1) The insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and

(2) The remainder of the proceeds must be distributed to all the units' owners or lienholders, as their interests may appear, as follows:

(I) In a condominium, in proportion to the interests of all the units in the common elements; and

(II) In a cooperative or planned community, in proportion to the liabilities of all the units for common expenses.

3. If the units' owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under subsection 1 of NRS 116.1107, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

(Added to NRS by 1991, 566; A 1993, 2370; 2011, 2446)

**NRS 116.31138 Insurance: Variance or waiver of provisions in community restricted to nonresidential use.** The provisions of NRS 116.3113, 116.31133 and 116.31135 may be varied or waived in the case of a common-interest community all of whose units are restricted to nonresidential use.

(Added to NRS by 1991, 567)

**NRS 116.311395 Funds of association to be deposited or invested at certain financial institutions.**

1. Except as otherwise provided in subsection 2, an association, a member of the executive board, or a community manager shall deposit or invest all funds of the association at a financial institution which:

(a) Is located in this State;

(b) Is qualified to conduct business in this State; or

(c) Has consented to be subject to the jurisdiction, including the power to subpoena, of the courts of this State and the Division.

2. Except as otherwise provided by the governing documents, in addition to the requirements of subsection 1, an association shall deposit, maintain and invest all funds of the association:

(a) In a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation;

(b) With a private insurer approved pursuant to NRS 678.755; or

(c) In a government security backed by the full faith and credit of the Government of the United States.

3. The Commission shall adopt regulations prescribing the contents of the declaration to be executed and signed by a financial institution located outside of this State to submit to consent to the jurisdiction of the courts of this State and the Division.

(Added to NRS by 2009, 1733)

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

(Added to NRS by 1991, 567)

**NRS 116.31142 Preparation and presentation of financial statements.**

1. The Commission shall adopt regulations prescribing the requirements for the preparation and presentation of financial statements of an association pursuant to this chapter.

2. The regulations adopted by the Commission must include, without limitation:

(a) The qualifications necessary for a person to prepare and present financial statements of an association; and

(b) The standards and format to be followed in preparing and presenting financial statements of an association.

(Added to NRS by 2005, 2584)

**NRS 116.31144 Audit and review of financial statements.**

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

(a) If the annual budget of the association is $45,000 or more but less than $75,000, cause the financial statement of the association to be reviewed by an independent certified public accountant during the year immediately preceding the year in which a study of the reserves of the association is to be conducted pursuant to NRS 116.31152.

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

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

2. Except as otherwise provided in this subsection, for any fiscal year, the executive board of an association shall cause the financial statement for that fiscal year to be audited by an independent certified public accountant if, within 180 days before the end of the fiscal year, 15 percent of the total number of voting members of the association submit a written request for such an audit. The provisions of this subsection do not apply to an association described in paragraph (c) of subsection 1.

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

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

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

(Added to NRS by 2005, 2584; A 2009, 462; 2011, 988)

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

1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

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

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

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore are necessary. Notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves pursuant to this paragraph, including, without limitation, to establish or carry out a funding plan, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments against the units in the common-interest community. Any such assessments imposed by the executive board must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.

3. Any assessment for common expenses or installment thereof that is 60 days or more past due bears interest at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on

January 1 or July 1, as the case may be, immediately preceding the date the assessment becomes past due, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the balance is satisfied.

4. Except as otherwise provided in the governing documents:

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

(b) Any common expense benefiting fewer than all of the units or their owners may be assessed exclusively against the units or units' owners benefited; and

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

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

6. If damage to a unit or other part of the common-interest community, or if any other common expense is caused by the willful misconduct or gross negligence of any unit's owner, tenant or invitee of a unit's owner or tenant, the association may assess that expense exclusively against his or her unit, even if the association maintains insurance with respect to that damage or common expense, unless the damage or other common expense is caused by a vehicle and is committed by a person who is delivering goods to, or performing services for, the unit's owner, tenant or invitee of the unit's owner or tenant.

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.

(Added to NRS by 1991, 567; A 1993, 2371; 1995, 2230; 1997, 3119, 3120; 1999, 3008; 2001, 2491; 2005, 2603; 2009, 1734, 2805, 2892; 2011, 2447)

**NRS 116.31151 Annual distribution to units' owners of operating and reserve budgets or summaries of such budgets and policy for collection of fees, fines, assessments or costs; ratification of budget.**

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

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

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

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

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

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

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

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

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

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

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the

association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

(Added to NRS by 1999, 2993; A 2003, 2241; 2005, 2605; 2009, 1205, 1735, 2806)

**NRS 116.31152 Study of reserves; duties of executive board regarding study; qualifications of person who conducts study; contents of study; submission of summary of study to Division; use of money credited against residential construction tax for upkeep of park facilities and related improvements identified in study.**

1. The executive board shall:

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

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

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

2. Except as otherwise provided in this subsection, the study of the reserves required by subsection 1 must be conducted by a person who holds a permit issued pursuant to chapter 116A of NRS. If the common-interest community contains 20 or fewer units and is located in a county whose population is less than 55,000, the study of the reserves required by subsection 1 may be conducted by any person whom the executive board deems qualified to conduct the study.

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

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

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

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

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

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

4. A summary of the study of the reserves required by subsection 1 must be submitted to the Division not later than 45 days after the date that the executive board adopts the results of the study.

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

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

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

(Added to NRS by 1999, 2994; A 2003, 2241; 2005, 2606; 2009, 1736, 2213; 2011, 1144)

**NRS 116.31153 Signatures required for withdrawals of certain association funds; exceptions.**

1. Money in the reserve account of an association required by paragraph (b) of subsection 2 of NRS 116.3115 may not be withdrawn without the signatures of at least two members of the executive board or the signatures of at least one member of the executive board and one officer of the association who is not a member of the executive board.

2. Except as otherwise provided in subsection 3, money in the operating account of an association may not be withdrawn without the signatures of at least one member of the executive board or one officer of the association and a member of the executive board, an officer of the association or the community manager.

3. Money in the operating account of an association may be withdrawn without the signatures required pursuant to subsection 2 to:

(a) Transfer money to the reserve account of the association at regular intervals;

(b) Make automatic payments for utilities;

(c) Make an electronic transfer of money to a state agency pursuant to NRS 353.1467; or

(d) Make an electronic transfer of money to the United States Government, or any agency thereof, pursuant to any federal law requiring transfers of money to be made by an electronic means authorized by the United States Government or the agency thereof.

4. An association may use electronic signatures to withdraw money in the operating account of the association if:

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

(b) The executive board has expressly authorized the electronic transfer of money; and

(c) The association has established internal accounting controls which comply with generally accepted accounting principles to safeguard the assets of the association.

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

(Added to NRS by 1999, 2995; A 2009, 2927; 2011, 1879)

**NRS 116.31155 Fees imposed on associations or master associations to pay for costs of administering Office of Ombudsman and Commission; administrative penalties for failure to pay; interest on unpaid fees; limitations on amount of fees and penalties; procedure to recover fees, penalties or interest imposed in error.**

1. Except as otherwise provided in subsection 2, an association shall:

(a) If the association is required to pay the fee imposed by NRS 78.150, 82.193, 86.263, 87.541, 87A.560 or 88.591, pay to the Administrator a fee established by regulation of the Administrator for every unit in the association used for residential use.

(b) If the association is organized as a trust or partnership, or as any other authorized business entity, pay to the Administrator a fee established by regulation of the Administrator for each unit in the association.

2. If an association is subject to the governing documents of a master association, the master association shall pay the fees required pursuant to this section for each unit in the association that is subject to the governing documents of the master association, unless the governing documents of the master association provide otherwise. The provisions of this subsection do not relieve any association that is subject to the governing documents of a master association from its ultimate responsibility to pay the fees required pursuant to this section to the Administrator if they are not paid by the master association.

3. The fees required to be paid pursuant to this section must be:

(a) Paid at such times as are established by the Division.

(b) Deposited with the State Treasurer for credit to the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630.

(c) Established on the basis of the actual costs of administering the Office of the Ombudsman and the Commission and not on a basis which includes any subsidy beyond those actual costs. In no event may the fees required to be paid pursuant to this section exceed $3 per unit.

4. The Division shall impose an administrative penalty against an association or master association that violates the provisions of this section by failing to pay the fees owed by the association or master association within the times established by the Division. The administrative penalty that is imposed for each violation must equal 10 percent of the amount of the fees owed by the association or master association or $500, whichever amount is less. The amount of the unpaid fees owed by the association or master association bears interest at the rate set forth in NRS 99.040 from the date the fees are due until the date the fees are paid in full.

5. A unit's owner may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to both an association and a master association.

6. An association that is subject to the governing documents of a master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by the master association.

7. A master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by an association that is subject to the governing documents of the master association.

8. Upon the payment of the fees and any administrative penalties and interest required by this section, the Administrator shall provide to the association or master association evidence that it paid the fees and the administrative penalties and interest in compliance with this section.

9. Any person, association or master association which has been requested or required to pay any fees, administrative penalties or interest pursuant to this section and which believes that such fees, administrative penalties or interest has been imposed in error may, without exhausting any available administrative remedies, bring an action in a court of competent jurisdiction to recover:

(a) Any amount paid in error for any fees, administrative penalties or interest during the immediately preceding 3 years;

(b) Interest on the amount paid in error at the rate set forth in NRS 99.040; and

(c) Reasonable costs and attorney's fees.

(Added to NRS by 1997, 3112; A 1999, 8, 639, 3010, 3011; 2003, 2242; 2005, 2607; 2007, 485, 2268; 2009, 2893)

**NRS 116.31158 Registration of associations with Ombudsman; contents of form for registration.**

1. Each association shall, at the time it pays the fee required by NRS 116.31155, register with the Ombudsman on a form prescribed by the Ombudsman.

2. The form for registration must include, without limitation, the information required to be maintained pursuant to paragraph (e) of subsection 4 of NRS 116.625.

(Added to NRS by 1999, 2996; A 2003, 2243)

**Liens**

**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 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. The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

4. 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.

5. 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.

6. 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.

7. 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.

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

9. 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.

10. 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.

11. 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.

(Added to NRS by 1991, 567; A 1999, 390; 2003, 2243, 2272; 2009, 1010, 1207; 2011, 2448; 2013, 3787)

**NRS 116.31162 Foreclosure of liens: Mailing of notice of delinquent assessment; recording of notice of default and election to sell; period during which unit's owner may pay lien to avoid foreclosure; limitations on type of lien that may be foreclosed.**

1. Except as otherwise provided in subsection 5 or 6, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a

unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit,

➥ whichever date occurs later.

4. An association may not mail to a unit's owner or his or her successor in interest a letter of its intent to mail a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail the notice of delinquent assessment or take any other action to collect a past due obligation from a unit's owner or his or her successor in interest unless, not earlier than 60 days after the obligation becomes past due, the association mails to the address on file for the unit's owner:

(a) A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;

(b) A proposed repayment plan; and

(c) A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing.

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

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

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

6. The association may not foreclose a lien by sale if:

(a) The unit is owner-occupied housing encumbered by a deed of trust;

(b) The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee has recorded a notice of default and election to sell with respect to the unit pursuant to subsection 2 of NRS 107.080; and

(c) The trustee of record has not recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (d) of subsection 2 of NRS 107.086.

➥ As used in this subsection, "owner-occupied housing" has the meaning ascribed to it in NRS 107.086.

(Added to NRS by 1991, 569; A 1993, 2371; 1997, 3121; 1999, 3011; 2003, 2244, 2273; 2005, 2608; 2013, 3483, 3789)

**NRS 116.31163 Foreclosure of liens: Mailing of notice of default and election to sell to certain interested persons.** The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to:

1. Each person who has requested notice pursuant to NRS 107.090 or 116.31168;

2. Any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest; and

3. A purchaser of the unit, if the unit's owner has notified the association, 30 days before the recordation of the notice, that the unit is the subject of a contract of sale and the association has been requested to furnish the certificate required by NRS 116.4109.

(Added to NRS by 1993, 2355; A 2005, 2609)

**NRS 116.311635 Foreclosure of liens: Providing notice of time and place of sale; service of notice of sale; contents of notice of sale; proof of service.**

1. The association or other person conducting the sale shall also, after the expiration of the 90 days and before selling the unit:

(a) Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on the unit's owner as follows:

(1) A copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and to the address of the unit; and

(2) A copy of the notice of sale must be served, on or before the date of first publication or posting, in the manner set forth in subsection 2; and

(b) Mail, on or before the date of first publication or posting, a copy of the notice by certified or registered mail, return receipt requested, to:

(1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;

(2) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and

(3) The Ombudsman.

2. In addition to the requirements set forth in subsection 1, a copy of the notice of sale must be served:

(a) By a person who is 18 years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the notice of sale to an occupant of the unit who is of suitable age; or

(b) By posting a copy of the notice of sale in a conspicuous place on the unit.

3. Any copy of the notice of sale required to be served pursuant to this section must include:

(a) The amount necessary to satisfy the lien as of the date of the proposed sale; and

(b) The following warning in 14-point bold type:

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.

4. Proof of service of any copy of the notice of sale required to be served pursuant to this section must consist of:

(a) A certificate of mailing which evidences that the notice was mailed through the United States Postal Service; or

(b) An affidavit of service signed by the person who served the notice stating:

(1) The time of service, manner of service and location of service; and

(2) The name of the person served or, if the notice was not served on a person, a description of the location where the notice was posted on the unit.

(Added to NRS by 1993, 2355; A 2003, 2245; 2005, 2609; 2013, 3790)

**NRS 116.31164 Foreclosure of liens: Procedure for conducting sale; purchase of unit by association; execution and delivery of deed; use of proceeds of sale.**

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

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

3. After the sale, the person conducting the sale shall:

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

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

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

(1) The reasonable expenses of sale;

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

(3) Satisfaction of the association's lien;

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

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

(Added to NRS by 1991, 569; A 1993, 2372; 2005, 2610)

**NRS 116.31166 Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper application of purchase money; title vested in purchaser without equity or right of redemption.**

1. The recitals in a deed made pursuant to NRS 116.31164 of:

(a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;

(b) The elapsing of the 90 days; and

(c) The giving of notice of sale,

➥ are conclusive proof of the matters recited.

2. Such a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.

3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption.

(Added to NRS by 1991, 570; A 1993, 2373)

**NRS 116.31168 Foreclosure of liens: Requests by interested persons for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclose.**

1. The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community.

2. An association may, after recording a notice of default and election to sell, waive the default and withdraw the notice or any proceeding to foreclose. The association is thereupon restored to its former position and has the same rights as though the notice had not been recorded.

(Added to NRS by 1991, 570; A 1993, 2373)

**NRS 116.3117 Liens against association.**

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 proportionate to the ratio which that owner's liability for common expenses bears to the liabilities for common expenses of all owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that owner's unit for any portion of the common expenses incurred in connection with that lien.

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

2. In a cooperative:

(a) If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each owner of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

(b) Whether an owner's unit is subject to the claims of the association's creditors, no other property of an owner is subject to those claims.

(Added to NRS by 1993, 2355; A 2011, 2450)

**Books, Records and Other Documents**

**NRS 116.31175 Maintenance and availability of books, records and other papers of association: General requirements; exceptions; general records concerning certain violations; enforcement by Ombudsman; limitations on amount that may be charged to conduct review.**

1. Except as otherwise provided in subsection 4, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review at the business office of the association or a designated business location not to exceed 60 miles from the physical location of the common-interest community and during the regular working hours of the association, including, without limitation:

(a) The financial statement of the association;

(b) The budgets of the association required to be prepared pursuant to NRS 116.31151;

(c) The study of the reserves of the association required to be conducted pursuant to NRS 116.31152; and

(d) All contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party.

2. The executive board shall provide a copy of any of the records described in paragraphs (a), (b) and (c) of subsection 1 to a unit's owner or the Ombudsman within 21 days after receiving a written request therefor. Such records must be provided in electronic format at no charge to the unit's owner or, if the association is unable to provide the records

in electronic format, the executive board may charge a fee to cover the actual costs of preparing a copy, but the fee may not exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

3. If the executive board fails to provide a copy of any of the records pursuant to subsection 2 within 21 days, the executive board must pay a penalty of $25 for each day the executive board fails to provide the records.

4. The provisions of subsection 1 do not apply to:

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

(b) The records of the association relating to another unit's owner, including, without limitation, any architectural plan or specification submitted by a unit's owner to the association during an approval process required by the governing documents, except for those records described in subsection 5; and

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

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

(2) Has not been placed on an agenda for final approval by the executive board.

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

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

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

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

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

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

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

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

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

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

8. The executive board shall not require a unit's owner to pay an amount in excess of $10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of subsection 1.

(Added to NRS by 1999, 2996; A 2003, 2245; 2009, 1737, 2807, 2894, 2928; 2011, 1879, 2451)

**NRS 116.3118 Maintenance and availability of certain financial records necessary to provide information required for resale of units; right of units' owners to inspect, examine, photocopy and audit records of association.**

1. The association shall keep financial records sufficiently detailed to enable the association to comply with NRS 116.4109.

2. All financial and other records of the association must be:

(a) Maintained and made available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Made reasonably available for any unit's owner and his or her authorized agents to inspect, examine, photocopy and audit.

(Added to NRS by 1991, 571; A 1995, 2231; 2003, 2247)

**Miscellaneous Rights, Duties and Restrictions**

**NRS 116.31183 Retaliatory action prohibited; separate action by unit's owner.**

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

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

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

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

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

(a) Compensatory damages; and

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

(Added to NRS by 2003, 2218; A 2009, 2808, 2895)

**NRS 116.31184 Threats, harassment and other conduct prohibited; penalty.**

1. A community manager, an agent or employee of the community manager, a member of the executive board, an officer, employee or agent of an association, a unit's owner or a guest or tenant of a unit's owner shall not willfully and without legal authority threaten, harass or otherwise engage in a course of conduct against any other person who is the community manager of his or her common-interest community or an agent or employee of that community manager, a member of the executive board of his or her association, an officer, employee or agent of his or her association, another unit's owner in his or her common-interest community or a guest or tenant of a unit's owner in his or her common-interest community which:

(a) Causes harm or serious emotional distress, or the reasonable apprehension thereof, to that person; or

(b) Creates a hostile environment for that person.

2. A person who violates the provisions of subsection 1 is guilty of a misdemeanor.

(Added to NRS by 2013, 2529)

**NRS 116.31185 Prohibition against certain personnel soliciting or accepting compensation, gratuity or remuneration under certain circumstances.**

1. Except as otherwise provided in subsection 2, a member of an executive board, an officer of an association or a community manager shall not solicit or accept any form of compensation, gratuity or other remuneration that:

(a) Would improperly influence or would appear to a reasonable person to improperly influence the decisions made by those persons; or

(b) Would result or would appear to a reasonable person to result in a conflict of interest for those persons.

2. Notwithstanding the provisions of subsection 1, a member of an executive board, an officer of an association, a community manager or any person working for a community manager shall not accept, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value from:

(a) An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such attorney, law firm or vendor; or

(b) A declarant, an affiliate of a declarant or any person responsible for the construction of the applicable community or association which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such declarant, affiliate or person.

3. An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board, an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such member, officer, community manager or person.

4. A declarant, an affiliate of a declarant or any person responsible for the construction of a community or association, shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board, an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such member, officer, community manager or person.

5. In addition to the limitations set forth in subsection 1, a community manager shall not solicit or accept any form of compensation, fee or other remuneration that is based, in whole or in part, on:

(a) The number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners pursuant to NRS 116.31031 for violations of the governing documents of the association; or

(b) Any percentage or proportion of those fines.

6. The provisions of this section do not prohibit a community manager from being paid compensation, a fee or other remuneration under the terms of a contract between the community manager and an association if:

(a) The scope of the respective rights, duties and obligations of the parties under the contract comply with the standards of practice for community managers set forth as NRS 116A.630 and 116A.640 and any additional standards of practice adopted by the Commission by regulation pursuant to NRS 116A.400;

(b) The compensation, fee or other remuneration is being paid to the community manager for providing management of the common-interest community; and

(c) The compensation, fee or other remuneration is not structured in a way that would violate the provisions of subsection 1 or 5.

(Added to NRS by 2003, 2218; A 2005, 1716, 2611; 2009, 2808)

**NRS 116.31187 Prohibition against certain personnel contracting with association or accepting commission, personal profit or compensation from association; exceptions.**

1. Except as otherwise provided in this section, a member of an executive board or an officer of an association shall not:

(a) On or after October 1, 2003, enter into a contract or renew a contract with the association to provide financing, goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing financing, goods or services to the association.

2. The provisions of this section do not prohibit a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant or an affiliate of a declarant from:

(a) Receiving any commission, personal profit or compensation from the association, the declarant or an affiliate of the declarant for any financing, goods or services furnished to the association;

(b) Entering into contracts with the association, the declarant or affiliate of the declarant; or

(c) Serving as a member of the executive board or as an officer of the association.

(Added to NRS by 2003, 2218; A 2009, 2896, 2929)

**NRS 116.31189 Bribery of community manager or member of executive board; penalties; exceptions.**

1. Except as otherwise provided in subsection 3, a community manager or member of the executive board who asks for or receives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his or her vote, opinion or action upon any matter then pending or which may be brought before him or her in his or her capacity as a community manager or member of the executive board, will be influenced thereby, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

2. Except as otherwise provided in subsection 3, a person who offers or gives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that the vote, opinion or action of a community manager or member of the executive board upon any matter then pending or which may be brought before the community manager or member of the executive board in his or her capacity as a community manager or member of the executive board will be influenced thereby, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. The provisions of this section do not prohibit:

(a) An employee of a declarant or an affiliate of a declarant who is a member of an executive board from asking for or receiving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, from the declarant or affiliate.

(b) A declarant or an affiliate of a declarant whose employee is a member of an executive board from offering or giving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, to the employee who is a member of the executive board.

(c) A community manager from asking for or receiving, directly or indirectly, or an employer of a community manager from offering or giving, directly or indirectly, any compensation for work performed by the community manager pursuant to the laws of this State.

(Added to NRS by 2009, 2876)

**NRS 116.3119 Association as trustee.** With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

(Added to NRS by 1991, 571)

**NRS 116.320 Right of units' owners to display flag of the United States in certain areas; conditions and limitations on exercise of right.**

1. Except as otherwise provided in subsection 2, the executive board of an association shall not and the governing documents of that association must not prohibit a unit's owner from engaging in the display of the flag of the United States within such physical portion of the common-interest community as that owner has a right to occupy and use exclusively.

2. The provisions of this section do not:

(a) Apply to the display of the flag of the United States for commercial advertising purposes.

(b) Preclude an association from adopting, and do not preclude the governing documents of an association from setting forth, rules that reasonably restrict the placement and manner of the display of the flag of the United States by a unit's owner.

3. In any action commenced to enforce the provisions of this section, the prevailing party is entitled to recover reasonable attorney's fees and costs.

4. As used in this section, "display of the flag of the United States" means a flag of the United States that is:

(a) Made of cloth, fabric or paper;

(b) Displayed from a pole or staff or in a window; and

(c) Displayed in a manner that is consistent with 4 U.S.C. Chapter 1.

➥ The term does not include a depiction or emblem of the flag of the United States that is made of balloons, flora, lights, paint, paving materials, roofing, siding or any other similar building, decorative or landscaping component.

(Added to NRS by 2003, 2966)—(Substituted in revision for NRS 116.31067)

**NRS 116.325 Right of units' owners to exhibit political signs in certain areas; conditions and limitations on exercise of right.**

1. The executive board shall not and the governing documents must not prohibit a unit's owner or an occupant of a unit from exhibiting one or more political signs within such physical portion of the common-interest community as that owner or occupant has a right to occupy and use exclusively, subject to the following conditions:

(a) All political signs exhibited must not be larger than 24 inches by 36 inches.

(b) If the unit is occupied by a tenant, the unit's owner may not exhibit any political sign unless the tenant consents, in writing, to the exhibition of the political sign.

(c) All political signs exhibited are subject to any applicable provisions of law governing the posting of political signs.

(d) A unit's owner or an occupant of a unit may exhibit as many political signs as desired, but may not exhibit more than one political sign for each candidate, political party or ballot question.

2. The provisions of this section establish the minimum rights of a unit's owner or an occupant of a unit to exhibit political signs. The provisions of this section do not preempt any provisions of the governing documents that provide greater rights and do not require the governing documents or the executive board to impose any restrictions on the exhibition of political signs other than those established by other provisions of law.

3. As used in this section, "political sign" means a sign that expresses support for or opposition to a candidate, political party or ballot question in any federal, state or local election or any election of an association.

(Added to NRS by 2005, 2585; A 2009, 2896)

**NRS 116.330 Right of units' owners to install or maintain drought tolerant landscaping; conditions and limitations on exercise of right; installation of drought tolerant landscaping within common elements.**

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

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

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

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

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

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

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

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

(Added to NRS by 2005, 2583; A 2009, 2896)

**NRS 116.332 Right of units' owners to store containers for collection of solid waste or recyclable materials; adoption of rules by association.**

1. Except as otherwise provided in this section, an association of a planned community may not regulate or restrict the manner in which containers for the collection of solid waste or recyclable materials are stored on the premises of a residential unit with curbside service.

2. An association of a planned community may adopt rules, in accordance with the procedures set forth in the governing documents, as defined in subsections 1 and 2 of NRS 116.049, or the bylaws of the association, that reasonably restrict the manner in which containers for the collection of solid waste or recyclable materials are stored on the premises of a residential unit with curbside service during the time the containers are not within the collection area, including, without limitation, rules prescribing the location at which the containers are stored during that time. The rules adopted by the association:

(a) Must:

(1) Comply with all applicable codes and regulations; and

(2) Allow the unit's owner, or a tenant of the unit's owner, to store containers for the collection of solid waste or recyclable materials outside any building or garage on the premises of the unit during the time the containers are not within the collection area.

(b) May:

(1) Provide that the containers for the collection of solid waste or recyclable materials must be stored in the rear or side yard of the unit, if such locations exist, and in such a manner that the containers are screened from view from the street, a sidewalk or any adjacent property; and

(2) Include, without limitation, rules prescribing the size, location, color and material of any device, structure or item used to screen containers for the collection of solid waste or recyclable materials from view from the street, a sidewalk or any adjacent property and the manner of attachment of the device, structure or item to the structure on the premises where the containers are stored.

3. An association of a planned community may adopt rules that reasonably restrict the conditions under which containers for the collection of solid waste or recyclable materials are placed in the collection area, including, without limitation:

(a) The boundaries of the collection area;

(b) The time at which the containers may be placed in the collection area; and

(c) The length of time for which the containers may be kept in the collection area.

4. As used in this section:

(a) "Collection area" means the area designated for the collection of the contents of containers for the collection of solid waste or recyclable materials.

(b) "Curbside service" means the collection of solid waste or recyclable materials on an individual basis for each residential unit by an entity that is authorized to collect solid waste or recyclable materials.

(c) "Recyclable material" has the meaning ascribed to it in NRS 444A.013.

(d) "Residential unit" means an attached or detached unit intended or designed to be occupied by one family.

(e) "Solid waste" has the meaning ascribed to it in NRS 444.490.

(Added to NRS by 2013, 1367)

**NRS 116.335 Association prohibited from requiring unit's owner to obtain approval to rent or lease unit; exceptions.**

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

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

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

4. If the governing documents of an association require a unit's owner who leases or rents his or her unit, or the tenant of a unit's owner, to register with the association or its agent or otherwise submit to the association or its agent information concerning the lease or rental agreement or the tenant, the association or its agent:

(a) Must conduct such activities in accordance with the governing documents;

(b) May not require the unit's owner or tenant of the unit's owner to provide information which the association or its agent does not require to be provided to the association or its agent by a unit's owner who occupies his or her unit, except that the association or its agent may require the unit's owner to provide a copy of the lease or rental agreement; and

(c) May not charge a fee to the unit's owner for the registration or submission of information.

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

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

(a) If a unit's owner is prohibited from renting or leasing a unit because the maximum number or percentage of units which may be rented or leased in the common-interest community have already been rented or leased, the unit's owner may seek a waiver of the prohibition from the executive board based upon a showing of economic hardship, and the executive board may grant such a waiver and approve the renting or leasing of the unit.

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

(Added to NRS by 2005, 2584; A 2009, 1100; 2011, 2137)

**NRS 116.340 Transient commercial use of units within certain planned communities.**

1. Except as otherwise provided in subsection 2, a person who owns, or directly or indirectly has an interest in, one or more units within a planned community that are restricted to residential use by the declaration may use that unit or one of those units for a transient commercial use only if:

(a) The governing documents of the association and any master association do not prohibit such use;

(b) The executive board of the association and any master association approve the transient commercial use of the unit, except that such approval is not required if the planned community and one or more hotels are subject to the governing documents of a master association and those governing documents do not prohibit such use; and

(c) The unit is properly zoned for the transient commercial use and any license required by the local government for the transient commercial use is obtained.

2. A declarant who owns, or directly or indirectly has an interest in, one or more units within a planned community under the governing documents of the association that are restricted to residential use by the declaration may use that unit or those units for a transient commercial use during the period that the declarant is offering units for sale within the planned community if such use complies with the requirements set forth in paragraphs (a) and (c) of subsection 1.

3. The association and any master association may establish requirements for the transient commercial use of a unit pursuant to the provisions of this section, including, without limitation, the payment of additional fees that are related to any increase in services or other costs associated with the transient commercial use of the unit.

4. As used in this section:

(a) "Remuneration" means any compensation, money, rent or other valuable consideration given in return for the occupancy, possession or use of a unit.

(b) "Transient commercial use" means the use of a unit, for remuneration, as a hostel, hotel, inn, motel, resort, vacation rental or other form of transient lodging if the term of the occupancy, possession or use of the unit is for less than 30 consecutive calendar days.

(Added to NRS by 2003, 2219; A 2009, 1101)—(Substituted in revision for NRS 116.31123)

**NRS 116.345 Association of planned community prohibited from taking certain actions regarding property, buildings and structures within planned community; validity of existing restrictions.**

1. An association of a planned community may not restrict, prohibit or otherwise impede the lawful residential use of any property that is within or encompassed by the boundaries of the planned community and that is not designated as part of the planned community.

2. Except as otherwise provided in this subsection, an association may not restrict the access of a person to any of his or her property. An association may restrict access to and from a unit within a planned community if the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property.

3. An association may not expand, construct or situate a building or structure that is not part of any plat of the planned community if the expansion, construction or situation of the building or structure was not previously disclosed to the units' owners of the planned community unless the association obtains the written consent of a majority of the units' owners and residents of the planned community who own property or reside within 500 feet of the proposed location of the building or structure.

4. An association may not interrupt any utility service furnished to a unit's owner or a tenant of a unit's owner except for the nonpayment of utility charges when due. The interruption of any utility service pursuant to this subsection must be performed in a manner which is consistent with all laws, regulations and governing documents relating to the interruption of any utility service. An association shall in every case send a written notice of its intent to interrupt any utility service to the unit's owner or the tenant of the unit's owner at least 10 days before the association interrupts any utility service.

5. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

(Added to NRS by 1999, 3354; A 2009, 1615, 2897, 2930)—(Substituted in revision for NRS 116.31125)

**NRS 116.350 Limitations regarding regulation of certain roads, streets, alleys or other thoroughfares; permissible regulation of parking or storage of certain vehicles.**

1. In a common-interest community which is not gated or enclosed and the access to which is not restricted or controlled by a person or device, the executive board shall not and the governing documents must not provide for the regulation of any road, street, alley or other thoroughfare the right-of-way of which is accepted by the State or a local government for dedication as a road, street, alley or other thoroughfare for public use.

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

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

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

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

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

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

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

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

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

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

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

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

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

5. As used in this section:

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

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

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

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

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

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

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

(1) Used in the furtherance of repairing, maintaining or operating any structure or any other physical facility necessary for the delivery of public utility services, including, without limitation, the furnishing of electricity, gas, water, sanitary sewer, telephone, cable or community antenna service; and

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

(Added to NRS by 2005, 2585; A 2009, 974)

## ARTICLE 4

## PROTECTION OF PURCHASERS

**NRS 116.4101 Applicability; exceptions.**

1. NRS 116.4101 to 116.412, inclusive, apply to all units subject to this chapter, except as otherwise provided in subsection 2 or as modified or waived by agreement of purchasers of units in a common-interest community in which all units are restricted to nonresidential use.

2. Neither a public offering statement nor a certificate of resale need be prepared or delivered in the case of a:

(a) Gratuitous disposition of a unit;

(b) Disposition pursuant to court order;

(c) Disposition by a government or governmental agency;

(d) Disposition by foreclosure or deed in lieu of foreclosure;

(e) Disposition to a dealer;

(f) Disposition that may be cancelled at any time and for any reason by the purchaser without penalty;

(g) Disposition of a unit in a planned community which contains no more than 12 units if:

(1) The declarant reasonably believes in good faith that the maximum assessment stated in the declaration will be sufficient to pay the expenses of the planned community; and

(2) The declaration cannot be amended to increase the assessment during the period of the declarant's control without the consent of all units' owners; or

(h) Disposition of a unit restricted to nonresidential purposes.

(Added to NRS by 1991, 571; A 1993, 2373; 1997, 3122; 1999, 3012; 2011, 2453)

**NRS 116.4102 Liability for preparation and delivery of public offering statement.**

1. Except as otherwise provided in subsection 2, a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of NRS 116.4103 to 116.4106, inclusive.

2. A declarant may transfer responsibility for the preparation of all or a part of the public offering statement to a successor declarant pursuant to NRS 116.3104 and 116.31043, or to a dealer who intends to offer units in the common-interest community. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection 1.

3. Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection 1 of NRS 116.4108. The declarant or his or her transferee under subsection 2 is liable under NRS 116.4108 and 116.4117 for any false or misleading statement set forth therein or for any omission of a material fact therefrom with respect to that portion of the public offering statement which he or she prepared. If a declarant or dealer did not prepare any part of a public offering statement that he or she delivers, he or she is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless he or she had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

4. If a unit is part of a common-interest community and is part of any other real estate in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of NRS 116.4103 to 116.4106, inclusive, as those requirements relate to the real estate in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two or more public offering statements. If the requirements of this chapter conflict with those of another law of this State, the requirements of this chapter prevail.

(Added to NRS by 1991, 571; A 1993, 2374; 2001, 2493)

**NRS 116.4103 Public offering statement: General provisions.**

1. Except as otherwise provided in NRS 116.41035, a public offering statement must set forth or fully and accurately disclose each of the following:

(a) The name and principal address of the declarant and of the common-interest community, and a statement that the common-interest community is a condominium, cooperative or planned community.

(b) A general description of the common-interest community, including to the extent possible, the types, number and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common-interest community.

(c) The estimated number of units in the common-interest community.

(d) Copies of the declaration, bylaws, and any rules or regulations of the association, but a plat is not required.

(e) The financial information required by subsection 2.

(f) A description of any services or subsidies being provided by the declarant or an affiliate of the declarant, not reflected in the budget that the declarant provides, or expenses which the declarant pays and which the declarant expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit.

(g) Any initial or special fee due from the purchaser or seller at closing, including, without limitation, any transfer fees, whether payable to the association, the community manager of the association or any third party, together with a description of the purpose and method of calculating the fee.

(h) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.

(i) A statement that unless the purchaser or his or her agent has personally inspected the unit, the purchaser may cancel, by written notice, his or her contract for purchase until midnight of the fifth calendar day following the date of execution of the contract, and the contract must contain a provision to that effect.

(j) A statement of any unsatisfied judgment or pending action against the association, and the status of any pending action material to the common-interest community of which a declarant has actual knowledge.

(k) Any current or expected fees or charges to be paid by units' owners for the use of the common elements and other facilities related to the common-interest community.

(l) In addition to any other document, a statement describing all current and expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.

(m) Any restraints on alienation of any portion of the common-interest community and any restrictions:

(1) On the leasing or renting of units; and

(2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on the sale or condemnation of or casualty loss to the unit or to the common-interest community, or on termination of the common-interest community.

(n) A description of any arrangement described in NRS 116.1209 binding the association.

(o) The information statement set forth in NRS 116.41095.

2. The public offering statement must contain any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include:

(a) A statement of the amount included in the budget as a reserve for repairs, replacement and restoration pursuant to NRS 116.3115;

(b) A statement of any other reserves;

(c) The projected common expense assessment by category of expenditures for the association; and

(d) The projected monthly common expense assessment for each type of unit, including the amount established as reserves pursuant to NRS 116.3115.

3. A declarant is not required to revise a public offering statement more than once each calendar quarter, if the following warning is given prominence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT AS OF (insert a specified date). RECENT DEVELOPMENTS REGARDING (here refer to particular provisions of NRS 116.4103 and 116.4105) MAY NOT BE REFLECTED IN THIS STATEMENT."

(Added to NRS by 1991, 572; A 1993, 2375; 1997, 3122; 1999, 3012; 2005, 2612; 2009, 1616, 2809; 2011, 2453)

**NRS 116.41035 Public offering statement: Limitations for certain small offerings.** If a common-interest community composed of not more than 12 units is not subject to any developmental rights and no power is reserved to a declarant to make the common-interest community part of a larger common-interest community, group of common-interest communities or other real estate, a public offering statement may include the information otherwise required by paragraphs (h) and (k) of subsection 1 of NRS 116.4103.

(Added to NRS by 1991, 573; A 1993, 553, 2376; 2011, 2455)

**NRS 116.4104 Public offering statement: Common-interest communities subject to developmental rights.** If the declaration provides that a common-interest community is subject to any developmental rights, the public offering statement must disclose, in addition to the information required by NRS 116.4103:

1. The maximum number of units that may be created;

2. A statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding restrictions of use;

3. A statement of the extent to which any buildings or other improvements that may be erected pursuant to any developmental right in any part of the common-interest community will be compatible with existing buildings and improvements in the common-interest community in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

4. General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the common-interest community pursuant to any developmental right reserved by the declarant, or a statement that no assurances are made in that regard;

5. A statement of any limitations as to the locations of any building or other improvement that may be constructed or made within any part of the common-interest community pursuant to any developmental right reserved by the declarant, or a statement that no assurances are made in that regard;

6. A statement that any limited common elements created pursuant to any developmental right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the common-interest community, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

7. A statement that the proportion of limited common elements to units created pursuant to any developmental right reserved by the declarant will be approximately equal to the proportion existing within other parts of the common-interest

community, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

8. A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to any units created pursuant to any developmental right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

9. A statement of the extent to which any assurances made pursuant to this section apply or do not apply if any developmental right is not exercised by the declarant.

(Added to NRS by 1991, 573)

**NRS 116.4105 Public offering statement: Time shares.** If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by NRS 116.4103 and 116.41035:

1. The number and identity of units in which time shares may be created;
2. The total number of time shares that may be created;
3. The minimum duration of any time shares that may be created; and
4. The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in NRS 116.3116 and 116.31162.

(Added to NRS by 1991, 574)

**NRS 116.4106 Public offering statement: Common-interest community containing converted building.**

1. The public offering statement of a common-interest community containing any converted building must contain, in addition to the information required by NRS 116.4103 and 116.41035:

(a) A statement by the declarant, based on a report prepared by an independent registered architect or licensed professional engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(b) A list of any outstanding notices of uncured violations of building codes or other municipal regulations, together with the estimated cost of curing those violations; and

(c) The budget to maintain the reserves required pursuant to paragraph (b) of subsection 2 of NRS 116.3115 which must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget was prepared, the current estimate of the amount of cash reserves that are necessary to repair, replace and restore the major components of the common elements and the current amount of accumulated cash reserves that are set aside for such repairs, replacements and restorations;

(3) A statement as to whether the declarant has determined or anticipates that the levy of one or more special assessments will be required within the next 10 years to repair, replace and restore any major component of the common elements or to provide adequate reserves for that purpose;

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves described in subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of reserves required pursuant to NRS 116.31152; and

(5) The funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years.

2. This section applies only to a common-interest community comprised of a converted building or buildings containing more than 12 units that may be occupied for residential use.

(Added to NRS by 1991, 574; A 1997, 1060; 2005, 2613)

**NRS 116.4107 Public offering statement: Common-interest community registered with Securities and Exchange Commission or State of Nevada.** If an interest in a common-interest community is currently registered with the Securities and Exchange Commission of the United States or with the State of Nevada pursuant to chapter 119, 119A or 119B of NRS, a declarant satisfies all requirements of this chapter relating to the preparation of a public offering statement if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission or the appropriate Nevada regulatory authority. An interest in a common-interest community is not a security under the provisions of chapter 90 of NRS.

(Added to NRS by 1991, 574)

**NRS 116.4108 Purchaser's right to cancel.**

1. A person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 shall provide a purchaser with a copy of the current public offering statement not later than the date on which an offer to purchase becomes binding on the purchaser. Unless the purchaser has personally inspected the unit, the purchaser may cancel, by written notice, the contract of purchase until midnight of the fifth calendar day following the date of execution of the contract, and the contract for purchase must contain a provision to that effect.

2. If a purchaser elects to cancel a contract pursuant to subsection 1, the purchaser may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

3. If a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 fails to provide a purchaser to whom a unit is conveyed with a current public offering statement, the purchaser is entitled to actual

damages, rescission or other relief, but if the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to rescission.

(Added to NRS by 1991, 574; A 1993, 2376; 2003, 2247)

**NRS 116.4109 Resales of units.**

1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his or her authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095.

(b) A statement from the association setting forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner.

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152.

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.

(f) In addition to any other document, a statement describing all current and expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, the purchaser must hand deliver the notice of cancellation to the unit's owner or his or her authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his or her authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his or her authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his or her authorized agent, the association shall furnish all of the following to the unit's owner or his or her authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b), (d), (e) and (f) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his or her authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his or her authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The other documents furnished pursuant to subsection 3 must be provided in electronic format to the unit's owner. The association may charge the unit's owner a fee, not to exceed $20, to provide such documents in electronic format. If the association is unable to provide such documents in electronic format, the association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter, to cover the cost of copying.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the purchaser is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his or her authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his or her authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

7. A unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit may request a statement of demand from the association. Not later than 10 days after receipt of a written request from the unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit for a statement of demand, the association shall furnish a statement of demand to the person who requested the statement. The association may charge a fee of not more than $150 to prepare and furnish a statement of demand pursuant to this subsection and an additional fee

of not more than $100 to furnish a statement of demand within 3 days after receipt of a written request for a statement of demand. The statement of demand:

(a) Must set forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner; and

(b) Remains effective for the period specified in the statement of demand, which must not be less than 15 business days after the date of delivery by the association to the unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit, whichever is applicable.

8. If the association becomes aware of an error in a statement of demand furnished pursuant to subsection 7 during the period in which the statement of demand is effective but before the consummation of a resale for which a resale package was furnished pursuant to subsection 1, the association must deliver a replacement statement of demand to the person who requested the statement of demand. Unless the person who requested the statement of demand receives a replacement statement of demand, the person may rely upon the accuracy of the information set forth in the statement of demand provided by the association for the resale. Payment of the amount set forth in the statement of demand constitutes full payment of the amount due from the selling unit's owner.

(Added to NRS by 1991, 575; A 1993, 2376; 1997, 3124; 2001, 2494; 2003, 2247; 2005, 2614; 2009, 1102, 1617, 2810, 2819; 2011, 2047, 2455, 3542; 2013, 3792)

**NRS 116.41095 Required form of information statement.** The information statement required by NRS 116.4103 and 116.4109 must be in substantially the following form:

BEFORE YOU PURCHASE PROPERTY IN A
COMMON-INTEREST COMMUNITY
DID YOU KNOW . . .

1. YOU GENERALLY HAVE 5 DAYS TO CANCEL THE PURCHASE AGREEMENT?

When you enter into a purchase agreement to buy a home or unit in a common-interest community, in most cases you should receive either a public offering statement, if you are the original purchaser of the home or unit, or a resale package, if you are not the original purchaser. The law generally provides for a 5-day period in which you have the right to cancel the purchase agreement. The 5-day period begins on different starting dates, depending on whether you receive a public offering statement or a resale package. Upon receiving a public offering statement or a resale package, you should make sure you are informed of the deadline for exercising your right to cancel. In order to exercise your right to cancel, the law generally requires that you hand deliver the notice of cancellation to the seller within the 5-day period, or mail the notice of cancellation to the seller by prepaid United States mail within the 5-day period. For more information regarding your right to cancel, see Nevada Revised Statutes 116.4108, if you received a public offering statement, or Nevada Revised Statutes 116.4109, if you received a resale package.

2. YOU ARE AGREEING TO RESTRICTIONS ON HOW YOU CAN USE YOUR PROPERTY?

These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions. The CC&Rs become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you. The CC&Rs, together with other "governing documents" (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property. By purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the CC&Rs, and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you. Certain provisions in the CC&Rs and other governing documents may be superseded by contrary provisions of chapter 116 of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the Internet address **http://www.leg.state.nv.us/nrs/**.

3. YOU WILL HAVE TO PAY OWNERS' ASSESSMENTS FOR AS LONG AS YOU OWN YOUR PROPERTY?

As an owner in a common-interest community, you are responsible for paying your share of expenses relating to the common elements, such as landscaping, shared amenities and the operation of any homeowners' association. The obligation to pay these assessments binds you and every future owner of the property. Owners' fees are usually assessed by the homeowners' association and due monthly. You have to pay dues whether or not you agree with the way the association is managing the property or spending the assessments. The executive board of the association may have the power to change and increase the amount of the assessment and to levy special assessments against your property to meet extraordinary expenses. In some communities, major components of the common elements of the community such as roofs and private roads must be maintained and replaced by the association. If the association is not well managed or fails to provide adequate funding for reserves to repair, replace and restore common elements, you may be required to pay large, special assessments to accomplish these tasks.

4. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU COULD LOSE YOUR HOME?

If you do not pay these assessments when due, the association usually has the power to collect them by selling your property in a nonjudicial foreclosure sale. If fees become delinquent, you may also be required to pay penalties and the association's costs and attorney's fees to become current. If you dispute the obligation or its amount, your only remedy to avoid the loss of your home may be to file a lawsuit and ask a court to intervene in the dispute.

5. YOU MAY BECOME A MEMBER OF A HOMEOWNERS' ASSOCIATION THAT HAS THE POWER TO AFFECT HOW YOU USE AND ENJOY YOUR PROPERTY?

Many common-interest communities have a homeowners' association. In a new development, the association will usually be controlled by the developer until a certain number of units have been sold. After the period of developer control, the association may be controlled by property owners like yourself who are elected by homeowners to sit on an executive board and other boards and committees formed by the association. The association, and its executive board, are responsible for assessing homeowners for the cost of operating the association and the common or shared elements of the community and for the day to day operation and management of the community. Because homeowners sitting on the executive board and other boards and committees of the association may not have the experience or professional background required to understand and carry out the responsibilities of the association properly, the association may hire professional community managers to carry out these responsibilities. Homeowners' associations operate on democratic principles. Some decisions require all homeowners to vote, some decisions are made by the executive board or other boards or committees established by the association or governing documents. Although the actions of the association and its executive board are governed by state laws, the CC&Rs and other documents that govern the common-interest community, decisions made by these persons will affect your use and enjoyment of your property, your lifestyle and freedom of choice, and your cost of living in the community. You may not agree with decisions made by the association or its governing bodies even though the decisions are ones which the association is authorized to make. Decisions may be made by a few persons on the executive board or governing bodies that do not necessarily reflect the view of the majority of homeowners in the community. If you do not agree with decisions made by the association, its executive board or other governing bodies, your remedy is typically to attempt to use the democratic processes of the association to seek the election of members of the executive board or other governing bodies that are more responsive to your needs. If you have a dispute with the association, its executive board or other governing bodies, you may be able to resolve the dispute through the complaint, investigation and intervention process administered by the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, the Nevada Real Estate Division and the Commission for Common-Interest Communities and Condominium Hotels. However, to resolve some disputes, you may have to mediate or arbitrate the dispute and, if mediation or arbitration is unsuccessful, you may have to file a lawsuit and ask a court to resolve the dispute. In addition to your personal cost in mediation or arbitration, or to prosecute a lawsuit, you may be responsible for paying your share of the association's cost in defending against your claim.

6. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE PURCHASERS OF YOUR PROPERTY WITH INFORMATION ABOUT LIVING IN YOUR COMMON-INTEREST COMMUNITY?

The law requires you to provide a prospective purchaser of your property with a copy of the community's governing documents, including the CC&Rs, association bylaws, and rules and regulations, as well as a copy of this document. You are also required to provide a copy of the association's current year-to-date financial statement, including, without limitation, the most recent audited or reviewed financial statement, a copy of the association's operating budget and information regarding the amount of the monthly assessment for common expenses, including the amount set aside as reserves for the repair, replacement and restoration of common elements. You are also required to inform prospective purchasers of any outstanding judgments or lawsuits pending against the association of which you are aware. For more information regarding these requirements, see Nevada Revised Statutes 116.4109.

7. YOU HAVE CERTAIN RIGHTS REGARDING OWNERSHIP IN A COMMON-INTEREST COMMUNITY THAT ARE GUARANTEED YOU BY THE STATE?

Pursuant to provisions of chapter 116 of Nevada Revised Statutes, you have the right:

(a) To be notified of all meetings of the association and its executive board, except in cases of emergency.

(b) To attend and speak at all meetings of the association and its executive board, except in some cases where the executive board is authorized to meet in closed, executive session.

(c) To request a special meeting of the association upon petition of at least 10 percent of the homeowners.

(d) To inspect, examine, photocopy and audit financial and other records of the association.

(e) To be notified of all changes in the community's rules and regulations and other actions by the association or board that affect you.

8. QUESTIONS?

Although they may be voluminous, you should take the time to read and understand the documents that will control your ownership of a property in a common-interest community. You may wish to ask your real estate professional, lawyer or other person with experience to explain anything you do not understand. You may also request assistance from the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, Nevada Real Estate Division, at (telephone number).

Buyer or prospective buyer's initials:_____

Date:_____

(Added to NRS by 1997, 3114; A 1999, 3013; 2003, 2248; 2005, 2616; 2007, 2269; 2009, 1738)

**NRS 116.411 Escrow of deposits; furnishing of bond in lieu of deposit.**

1. Except as otherwise provided in subsections 2, 3 and 4, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 must be placed in escrow and held either in this State or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until:

(a) Delivered to the declarant at closing;

(b) Delivered to the declarant because of the purchaser's default under a contract to purchase the unit;

(c) Released to the declarant for an additional item, improvement, optional item or alteration, but the amount so released:

(1) Must not exceed the lesser of the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for the purpose; and

(2) Must be credited upon the purchase price; or

(d) Refunded to the purchaser.

2. A deposit or advance payment made for an additional item, improvement, optional item or alteration may be deposited in escrow or delivered directly to the declarant, as the parties may contract.

3. In lieu of placing a deposit in escrow pursuant to subsection 1, the declarant may furnish a bond executed by the declarant as principal and by a corporation qualified under the laws of this State as surety, payable to the State of Nevada, and conditioned upon the performance of the declarant's duties concerning the purchase or reservation of a unit. Each bond must be in a principal sum equal to the amount of the deposit. The bond must be held until:

(a) Delivered to the declarant at closing;

(b) Delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or

(c) Released to the declarant for an additional item, improvement, optional item or alteration, but the amount so released must not exceed the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for that purpose, whichever is less.

4. Pursuant to subsection 1, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 is deemed to be placed in escrow and held in this State when the escrow holder has:

(a) The legal right to conduct business in this State;

(b) A registered agent in this State pursuant to subsection 1 of NRS 14.020; and

(c) Consented to the jurisdiction of the courts of this State by:

(1) Maintaining a physical presence in this State; or

(2) Executing a written instrument containing such consent, with respect to any suit or claim, whether brought by the declarant or purchaser, relating to or arising in connection with such sale or the escrow agreement related thereto.

(Added to NRS by 1991, 575; A 1993, 2377; 1995, 1420; 2009, 2931)

**NRS 116.4111 Release of liens.**

1. In the case of a sale of a unit where delivery of a public offering statement is required pursuant to subsection 3 of NRS 116.4102, a seller:

(a) Before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on real estate that a declarant has the right to withdraw from the common-interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

(1) In a condominium, that unit and its interest in the common elements; and

(2) In a cooperative or planned community, that unit and any limited common elements assigned thereto; or

(b) Shall provide a surety bond against the lien as provided for liens on real estate in NRS 108.2413 to 108.2425, inclusive.

2. Before conveying real estate to the association, the declarant shall have that real estate released from:

(a) All liens the foreclosure of which would deprive units' owners of any right of access to or easement of support of their units; and

(b) All other liens on that real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

(Added to NRS by 1991, 575; A 2003, 2618)

**NRS 116.4112 Converted buildings.**

1. A declarant of a common-interest community containing converted buildings, and any dealer who intends to offer units in such a common-interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a converted building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession. If, during the 6-month period before the recording of a declaration, a majority of the tenants or any subtenants in possession of any portion of the property described in such declaration has been required to vacate for reasons other than nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, a rebuttable presumption is created that the owner of such property intended to offer the vacated premises as units in a common-interest community at all times during that 6-month period.

2. For 60 days after delivery or mailing of the notice described in subsection 1, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that 60-day period, the offeror may not offer to dispose of an interest in that unit during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a converted building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

3. If a seller, in violation of subsection 2, conveys a unit to a purchaser for value who has no knowledge of the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes any right a tenant may have under subsection 2 to purchase that unit if the deed states that the seller has complied with subsection 2, but the conveyance does not affect the right of a tenant to recover damages from the seller for a violation of subsection 2.

4. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of NRS 40.251 and 40.280, the notice also constitutes a notice to vacate specified by those sections.

5. This section does not permit termination of a lease by a declarant in violation of its terms.

(Added to NRS by 1991, 576; A 2007, 1280)

**NRS 116.4113 Express warranties of quality.**

1. Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any affirmation of fact or promise that relates to the unit, its use or rights appurtenant thereto, improvements to the common-interest community that would directly benefit the unit or the right to use or have the benefit of facilities not located in the common-interest community creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or description of the physical characteristics of the common-interest community, including plans and specifications of or for improvements, creates an express warranty that the common-interest community will reasonably conform to the model or description;

(c) Any description of the quantity or extent of the real estate comprising the common-interest community, including plats or surveys, creates an express warranty that the common-interest community will conform to the description, subject to customary tolerances; and

(d) A provision that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful.

2. Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty is necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

3. Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

4. A warranty created by this section may be excluded or modified by agreement of the parties.

(Added to NRS by 1991, 577; A 1993, 2770)

**NRS 116.4114 Implied warranties of quality.**

1. A declarant and any dealer warrant that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

2. A declarant and any dealer impliedly warrant that a unit and the common elements in the common-interest community are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by a declarant or dealer, or made by any person before the creation of the common-interest community, will be:

(a) Free from defective materials; and

(b) Constructed in accordance with applicable law, according to sound standards of engineering and construction, and in a workmanlike manner.

3. A declarant and any dealer warrant to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

4. Warranties imposed by this section may be excluded or modified as specified in NRS 116.4115.

5. For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

6. Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

(Added to NRS by 1991, 577; A 2011, 2457)

**NRS 116.4115 Exclusion or modification of warranties of quality.**

1. Except as limited by subsection 2 with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

(a) May be excluded or modified by agreement of the parties; and

(b) Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

2. With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

(Added to NRS by 1991, 578)

**NRS 116.4116 Statute of limitations for warranties.**

1. Unless a period of limitation is tolled under NRS 116.3111 or affected by subsection 4, a judicial proceeding for breach of any obligation arising under NRS 116.4113 or 116.4114 must be commenced within 6 years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than 2 years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

2. Subject to subsection 3, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the time the common element is completed or, if later, as to:

(1) A common element that may be added to the common-interest community or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; or

(2) A common element within any other portion of the common-interest community, at the time the first unit is conveyed to a purchaser in good faith.

3. If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the common-interest community, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

4. During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce any warranty claims involving the common elements, and to address those claims. Only members of the executive board elected by units' owners other than the declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any control by the declarant or any member of the executive board or officer appointed by the declarant. All costs reasonably incurred by the committee, including attorney's fees, are common expenses, and must be added to the budget annually adopted by the association in accordance with the requirements of NRS 116.31151. If the committee is so created, the period of limitation for a warranty claim considered by the committee begins to run from the date of the first meeting of the committee.

(Added to NRS by 1991, 578; A 2011, 2457)

**NRS 116.4117 Effect of violations on rights of action; civil action for damages for failure or refusal to comply with provisions of chapter or governing documents; members of executive board not personally liable to victims of crimes; circumstances under which punitive damages may be awarded; attorney's fees.**

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

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

(a) By the association against:

(1) A declarant;

(2) A community manager; or

(3) A unit's owner.

(b) By a unit's owner against:

(1) The association;

(2) A declarant; or

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

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

3. Members of the executive board are not personally liable to the victims of crimes occurring on the property.

4. Except as otherwise provided in subsection 5, punitive damages may be awarded for a willful and material failure to comply with any provision of this chapter if the failure is established by clear and convincing evidence.

5. Punitive damages may not be awarded against:

(a) The association;

(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or

(c) The officers of the association for acts or omissions that occur in their capacity as officers of the association.

6. The court may award reasonable attorney's fees to the prevailing party.

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

8. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

(Added to NRS by 1991, 578; A 1993, 2377; 1997, 3125; 2009, 2812, 2898; 2011, 2458)

**NRS 116.4118 Labeling of promotional material.** No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT."

(Added to NRS by 1991, 579)

**NRS 116.4119 Declarant's obligation to complete and restore.**

1. Except for improvements labeled "NEED NOT BE BUILT," the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to NRS 116.2109,

whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

2. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common-interest community, of any portion of the common-interest community affected by the exercise of rights reserved pursuant to or created by NRS 116.211 to 116.2113, inclusive, 116.2115 or 116.2116.

(Added to NRS by 1991, 579)

**NRS 116.412 Substantial completion of units.** In the case of a sale of a unit in which delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed, until the declaration is recorded and the unit is substantially completed, in accordance with local ordinances.

(Added to NRS by 1991, 579; A 1993, 2377)

## ADMINISTRATION AND ENFORCEMENT OF CHAPTER

### General Provisions

**NRS 116.600 Commission for Common-Interest Communities and Condominium Hotels: Creation; appointment and qualifications of members; terms of office; compensation.**

1. The Commission for Common-Interest Communities and Condominium Hotels is hereby created.

2. The Commission consists of seven members appointed by the Governor. The Governor shall appoint to the Commission:

(a) One member who is a unit's owner residing in this State and who has served as a member of an executive board in this State;

(b) Two members who are units' owners residing in this State but who are not required to have served as members of an executive board;

(c) One member who is in the business of developing common-interest communities in this State;

(d) One member who holds a certificate;

(e) One member who is a certified public accountant licensed to practice in this State pursuant to the provisions of chapter 628 of NRS; and

(f) One member who is an attorney licensed to practice in this State.

3. Each member of the Commission must be a resident of this State. At least four members of the Commission must be residents of a county whose population is 700,000 or more.

4. Each member of the Commission must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of the member's appointment.

5. After the initial terms, each member of the Commission serves a term of 3 years. Each member may serve not more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.

6. While engaged in the business of the Commission, each member is entitled to receive:

(a) A salary of not more than $80 per day, as established by the Commission; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

(Added to NRS by 2003, 2209; A 2005, 2619; 2007, 2272; 2009, 2899; 2011, 1146)

**NRS 116.605 Commission for Common-Interest Communities and Condominium Hotels: Courses of instruction for members.**

1. The Division shall employ one or more training officers who are qualified by training and experience to provide to each member of the Commission courses of instruction concerning rules of procedure and substantive law appropriate for members of the Commission. Such courses of instruction may be made available to the staff of the Division as well as to community managers.

2. The training officer shall:

(a) Prepare and make available a manual containing the policies and procedures to be followed by executive boards and community managers; and

(b) Perform any other duties as directed by the Division.

3. Each member of the Commission must attend the courses of instruction described in subsection 1 not later than 6 months after the date that the member is first appointed to the Commission.

(Added to NRS by 2003, 2209; A 2009, 2899)

**NRS 116.610 Commission for Common-Interest Communities and Condominium Hotels: Election of officers; meetings; quorum.**

1. At the first meeting of each fiscal year, the Commission shall elect from its members a Chair, a Vice Chair and a Secretary.

2. The Commission shall meet at least once each calendar quarter and at other times on the call of the Chair or a majority of its members.

3. A majority of the members of the Commission constitutes a quorum for the transaction of all business.

(Added to NRS by 2003, 2210)

**NRS 116.615 Administration of chapter; regulations of Commission and Real Estate Administrator; delegation of authority; publications.**

1. The provisions of this chapter must be administered by the Division, subject to the administrative supervision of the Director of the Department of Business and Industry.

2. The Commission and the Division may do all things necessary and convenient to carry out the provisions of this chapter, including, without limitation, prescribing such forms and adopting such procedures as are necessary to carry out the provisions of this chapter.

3. The Commission, or the Administrator with the approval of the Commission, may adopt such regulations as are necessary to carry out the provisions of this chapter.

4. The Commission may by regulation delegate any authority conferred upon it by the provisions of this chapter to the Administrator to be exercised pursuant to the regulations adopted by the Commission.

5. When regulations are proposed by the Administrator, in addition to other notices required by law, the Administrator shall provide copies of the proposed regulations to the Commission not later than 30 days before the next meeting of the Commission. The Commission shall approve, amend or disapprove any proposed regulations at that meeting.

6. All regulations adopted by the Commission, or adopted by the Administrator with the approval of the Commission, must be published by the Division, posted on its website and offered for sale at a reasonable fee.

(Added to NRS by 2003, 2210; A 2005, 2619)

**NRS 116.620 Employment of personnel by Real Estate Division; duties of Attorney General; legal opinions by Attorney General.**

1. Except as otherwise provided in this section and within the limits of legislative appropriations, the Division may employ experts, attorneys, investigators, consultants and other personnel as are necessary to carry out the provisions of this chapter.

2. The Attorney General shall act as the attorney for the Division in all actions and proceedings brought against or by the Division pursuant to the provisions of this chapter.

3. The Attorney General shall render to the Commission and the Division opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof, that may be submitted to the Attorney General by the Commission or the Division.

(Added to NRS by 2003, 2210)

**NRS 116.623 Petitions for declaratory orders or advisory opinions: Regulations; scope; contents of petition; filing; period for response.**

1. The Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of:

(a) Any provision of this chapter or chapter 116A or 116B of NRS;

(b) Any regulation adopted by the Commission, the Administrator or the Division; or

(c) Any decision of the Commission, the Administrator or the Division or any of its sections.

2. Declaratory orders disposing of petitions filed pursuant to this section have the same status as agency decisions.

3. A petition filed pursuant to this section must:

(a) Set forth the name and address of the petitioner; and

(b) Contain a clear and concise statement of the issues to be decided by the Division in its declaratory order or advisory opinion.

4. A petition filed pursuant to this section is submitted for consideration by the Division when it is filed with the Administrator.

5. The Division shall:

(a) Respond to a petition filed pursuant to this section within 60 days after the date on which the petition is submitted for consideration; and

(b) Upon issuing its declaratory order or advisory opinion, mail a copy of the declaratory order or advisory opinion to the petitioner.

(Added to NRS by 2009, 2876)

**NRS 116.625 Ombudsman for Owners in Common-Interest Communities and Condominium Hotels: Creation of office; appointment; qualifications; powers and duties.**

1. The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels is hereby created within the Division.

2. The Administrator shall appoint the Ombudsman. The Ombudsman is in the unclassified service of the State.

3. The Ombudsman must be qualified by training and experience to perform the duties and functions of office.

4. In addition to any other duties set forth in this chapter, the Ombudsman shall:

(a) Assist in processing claims submitted to mediation or arbitration or referred to a program pursuant to NRS 38.300 to 38.360, inclusive;

(b) Assist owners in common-interest communities and condominium hotels to understand their rights and responsibilities as set forth in this chapter and chapter 116B of NRS and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities;

(c) Assist members of executive boards and officers of associations to carry out their duties;

(d) When appropriate, investigate disputes involving the provisions of this chapter or chapter 116B of NRS or the governing documents of an association and assist in resolving such disputes; and

(e) Compile and maintain a registration of each association organized within the State which includes, without limitation, the following information:

(1) The name, address and telephone number of the association;

(2) The name of each community manager for the common-interest community or the association of a condominium hotel and the name of any other person who is authorized to manage the property at the site of the common-interest community or condominium hotel;

(3) The names, mailing addresses and telephone numbers of the members of the executive board of the association;

(4) The name of the declarant;

(5) The number of units in the common-interest community or condominium hotel;

(6) The total annual assessment made by the association;

(7) The number of foreclosures which were completed on units within the common-interest community or condominium hotel and which were based on liens for the failure of the unit's owner to pay any assessments levied against the unit or any fines imposed against the unit's owner; and

(8) Whether the study of the reserves of the association has been conducted pursuant to NRS 116.31152 or 116B.605 and, if so, the date on which it was completed.

(Added to NRS by 1997, 3112; A 1999, 2997; 2003, 1302, 2222; 2007, 2273; 2013, 2300)

**NRS 116.630 Account for Common-Interest Communities and Condominium Hotels: Creation; administration; sources; uses.**

1. There is hereby created the Account for Common-Interest Communities and Condominium Hotels in the State General Fund. The Account must be administered by the Administrator.

2. Except as otherwise provided in subsection 3, all money received by the Commission, a hearing panel or the Division pursuant to this chapter or chapter 116B of NRS, including, without limitation, the fees collected pursuant to NRS 116.31155 and 116B.620, must be deposited into the Account.

3. If the Commission imposes a fine or penalty, the Commission shall deposit the money collected from the imposition of the fine or penalty with the State Treasurer for credit to the State General Fund. If the money is so deposited, the Commission may present a claim to the State Board of Examiners for recommendation to the Interim Finance Committee if money is required to pay attorney's fees or the costs of an investigation, or both.

4. The interest and income earned on the money in the Account, after deducting any applicable charges, must be credited to the Account.

5. The money in the Account must be used solely to defray:

(a) The costs and expenses of the Commission and the Office of the Ombudsman;

(b) If authorized by the Commission or any regulations adopted by the Commission, the costs and expenses of subsidizing proceedings for mediation, arbitration and a program conducted pursuant to NRS 38.300 to 38.360, inclusive; and

(c) If authorized by the Legislature or by the Interim Finance Committee if the Legislature is not in session, the costs and expenses of administering the Division.

(Added to NRS by 1997, 3113; A 1999, 8, 2998; 2003, 2223; 2007, 2274; 2010, 26th Special Session, 79; 2013, 2301)

**NRS 116.635 Immunity.** The Commission and its members, each hearing panel and its members, the Administrator, the Ombudsman, the Division, and the experts, attorneys, investigators, consultants and other personnel of the Commission and the Division are immune from any civil liability for any decision or action taken in good faith and without malicious intent in carrying out the provisions of this chapter.

(Added to NRS by 2003, 2211)

**NRS 116.640 Service of notice and other information upon Commission.** Any notice or other information that is required to be served upon the Commission pursuant to the provisions of this chapter may be delivered to the principal office of the Division.

(Added to NRS by 2003, 2210)

**NRS 116.643 Authority for Commission or Real Estate Administrator to adopt regulations requiring additional disclosures for sale of unit.** The Commission, or the Administrator with the approval of the Commission, may adopt regulations to require any additional disclosures in the case of a sale of a unit as it deems necessary.

(Added to NRS by 2009, 2908)

**NRS 116.645 Authority for Real Estate Division to conduct business electronically; regulations; fees; use of unsworn declaration; exclusions.**

1. The Administrator may adopt regulations which establish procedures for the Division to conduct business electronically pursuant to title 59 of NRS with persons who are regulated pursuant to this chapter and with any other persons with whom the Division conducts business. The regulations may include, without limitation, the establishment of fees to pay the costs of conducting business electronically with the Division.

2. In addition to the process authorized by NRS 719.280, if the Division is conducting business electronically with a person and a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the Division may allow the person to substitute a declaration that complies with the provisions of NRS 53.045 or NRS 53.250 to 53.390, inclusive, to satisfy the legal requirement.

3. The Division may refuse to conduct business electronically with a person who has failed to pay money which the person owes to the Division or the Commission.

(Added to NRS by 2003, 1301; A 2011, 15)

**General Powers and Duties of Commission**

**NRS 116.660 Issuance and enforcement of subpoenas.**

1. To carry out the purposes of this chapter, the Commission, or any member thereof acting on behalf of the Commission or acting on behalf of a hearing panel, may issue subpoenas to compel the attendance of witnesses and the production of books, records and other papers.

2. If any person fails to comply with a subpoena issued by the Commission or any member thereof pursuant to this section within 20 days after the date of service of the subpoena, the Commission may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 20 days after the date of service of the order, and show cause why the person has not complied with the subpoena. A certified copy must be served upon the person subpoenaed.

4. If it appears to the court that the subpoena was regularly issued by the Commission or any member thereof pursuant to this section, the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order the person shall be dealt with as for contempt of court.

(Added to NRS by 1999, 2996; A 2003, 2222)—(Substituted in revision for NRS 116.11145)

**NRS 116.662 Witnesses: Payment of fees and mileage.**

1. Each witness who is subpoenaed and appears at a hearing is entitled to receive for his or her attendance the same fees and mileage allowed by law to a witness in a civil case.

2. The fees and mileage for the witness:

(a) Must be paid by the party at whose request the witness is subpoenaed; or

(b) If the appearance of the witness is not requested by any party but the witness is subpoenaed at the request of the Commission or a hearing panel, must be paid by the Division.

(Added to NRS by 2005, 2586)

**NRS 116.665 Conducting hearings and other proceedings; collection of information; development and promotion of educational guidelines; accreditation of programs of education and research.**

1. The Commission shall conduct such hearings and other proceedings as are required by the provisions of this chapter.

2. The Commission shall collect and maintain or cause to be collected and maintained accurate information relating to:

(a) The number and kind of common-interest communities in this State;

(b) The effect of the provisions of this chapter and any regulations adopted pursuant thereto on the development and construction of common-interest communities, the residential lending market for units within common-interest communities and the operation and management of common-interest communities;

(c) Violations of the provisions of this chapter and any regulations adopted pursuant thereto;

(d) The accessibility and use of, and the costs related to, the arbitration, mediation and program procedures set forth in NRS 38.300 to 38.360, inclusive, and the decisions rendered and awards made pursuant to those procedures;

(e) The number of foreclosures which were completed on units within common-interest communities and which were based on liens for the failure of the unit's owner to pay any assessments levied against the unit or any fines imposed against the unit's owner;

(f) The study of the reserves required by NRS 116.31152; and

(g) Other issues that the Commission determines are of concern to units' owners, associations, community managers, developers and other persons affected by common-interest communities.

3. The Commission shall develop and promote:

(a) Educational guidelines for conducting the elections of the members of an executive board, the meetings of an executive board and the meetings of the units' owners of an association; and

(b) Educational guidelines for the enforcement of the governing documents of an association through liens, penalties and fines.

4. The Commission shall recommend and approve for accreditation programs of education and research relating to common-interest communities, including, without limitation:

(a) The management of common-interest communities;

(b) The sale and resale of units within common-interest communities;

(c) Alternative methods that may be used to resolve disputes relating to common-interest communities; and

(d) The enforcement, including by foreclosure, of liens on units within common-interest communities for the failure of the unit's owner to pay any assessments levied against the unit or any fines imposed against the unit's owner.

(Added to NRS by 2003, 2211; A 2013, 2301)

**NRS 116.670 Establishment of standards for subsidizing arbitration, mediation and educational programs; acceptance of gifts, grants and donations; agreements and cooperation with other entities.** The Commission may:

1. By regulation, establish standards for subsidizing proceedings for mediation, arbitration and a program conducted pursuant to NRS 38.300 to 38.360, inclusive, to ensure that such proceedings are not lengthy and are affordable and readily accessible to all parties;

2. By regulation, establish standards for subsidizing educational programs for the benefit of units' owners, members of executive boards and officers of associations;

3. Accept any gifts, grants or donations; and

4. Enter into agreements with other entities that are required or authorized to carry out similar duties in this State or in other jurisdictions and cooperate with such entities to develop uniform procedures for carrying out the provisions of this chapter and for accumulating information needed to carry out those provisions.

(Added to NRS by 2003, 2212; A 2013, 2302)

**NRS 116.675 Appointment of hearing panels; delegation of powers and duties; appeals to Commission.**

1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chair of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

(Added to NRS by 2003, 2210; A 2009, 2899)

**NRS 116.680 Use of audio or video teleconference for hearings.** The Commission or a hearing panel may conduct a hearing by means of an audio or video teleconference to one or more locations if the audio or video technology used at the hearing provides the persons present at each location with the ability to hear and communicate with the persons present at each other location.

(Added to NRS by 2003, 2211)

**Investigation of Violations; Remedial and Disciplinary Action**

**NRS 116.745 "Violation" defined.** As used in NRS 116.745 to 116.795, inclusive, unless the context otherwise requires, "violation" means a violation of:

1. Any provision of this chapter except NRS 116.31184;
2. Any regulation adopted pursuant to this chapter; or
3. Any order of the Commission or a hearing panel.

(Added to NRS by 2003, 2213; A 2005, 2620; 2013, 2530)

**NRS 116.750 Jurisdiction of Real Estate Division, Ombudsman, Commission and hearing panels.**

1. In carrying out the provisions of NRS 116.745 to 116.795, inclusive, the Division and the Ombudsman have jurisdiction to investigate and the Commission and each hearing panel has jurisdiction to take appropriate action against any person who commits a violation, including, without limitation:

(a) Any association and any officer, employee or agent of an association.

(b) Any member of an executive board.

(c) Any community manager who holds a certificate and any other community manager.

(d) Any person who is registered as a reserve study specialist, or who conducts a study of reserves, pursuant to chapter 116A of NRS.

(e) Any declarant or affiliate of a declarant.

(f) Any unit's owner.

(g) Any tenant of a unit's owner if the tenant has entered into an agreement with the unit's owner to abide by the governing documents of the association and the provisions of this chapter and any regulations adopted pursuant thereto.

2. The jurisdiction set forth in subsection 1 applies to any officer, employee or agent of an association or any member of an executive board who commits a violation and who:

(a) Currently holds his or her office, employment, agency or position or who held the office, employment, agency or position at the commencement of proceedings against him or her.

(b) Resigns his or her office, employment, agency or position:

(1) After the commencement of proceedings against him or her; or

(2) Within 1 year after the violation is discovered or reasonably should have been discovered.

(Added to NRS by 2003, 2213; A 2005, 2620; 2009, 2932)

**NRS 116.755 Rights, remedies and penalties are cumulative and not exclusive; limitations on power of Commission and hearing panels regarding internal activities of association.**

1. The rights, remedies and penalties provided by NRS 116.745 to 116.795, inclusive, are cumulative and do not abrogate and are in addition to any other rights, remedies and penalties that may exist at law or in equity.

2. If the Commission, a hearing panel or another agency or officer elects to take a particular action or pursue a particular remedy or penalty authorized by NRS 116.745 to 116.795, inclusive, or another specific statute, that election is not exclusive and does not preclude the Commission, the hearing panel or another agency or officer from taking any other actions or pursuing any other remedies or penalties authorized by NRS 116.745 to 116.795, inclusive, or another specific statute.

3. In carrying out the provisions of NRS 116.745 to 116.795, inclusive, the Commission or a hearing panel shall not intervene in any internal activities of an association except to the extent necessary to prevent or remedy a violation.

(Added to NRS by 2003, 2214)

**NRS 116.757 Confidentiality of records: Certain records relating to complaint or investigation deemed confidential; certain records relating to disciplinary action deemed public records.**

1. Except as otherwise provided in this section and NRS 239.0115, a written affidavit filed with the Division pursuant to NRS 116.760, all documents and other information filed with the written affidavit and all documents and other information compiled as a result of an investigation conducted to determine whether to file a formal complaint with the Commission are confidential. The Division shall not disclose any information that is confidential pursuant to this subsection, in whole or in part, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 2 and the disclosure is required pursuant to subsection 2.

2. A formal complaint filed by the Administrator with the Commission and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline or take other administrative action pursuant to NRS 116.745 to 116.795, inclusive, are public records.

(Added to NRS by 2005, 2586; A 2007, 2070; 2009, 2900)

**NRS 116.760 Right of person aggrieved by alleged violation to file affidavit with Real Estate Division; procedure for filing affidavit; administrative fine for filing false or fraudulent affidavit.**

1. Except as otherwise provided in this section, a person who is aggrieved by an alleged violation may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file with the Division a written affidavit that sets forth the facts constituting the alleged violation. The affidavit may allege any actual damages suffered by the aggrieved person as a result of the alleged violation.

2. An aggrieved person may not file such an affidavit unless the aggrieved person has provided the respondent by certified mail, return receipt requested, with written notice of the alleged violation set forth in the affidavit. The notice must:

(a) Be mailed to the respondent's last known address.

(b) Specify, in reasonable detail, the alleged violation, any actual damages suffered by the aggrieved person as a result of the alleged violation, and any corrective action proposed by the aggrieved person.

3. A written affidavit filed with the Division pursuant to this section must be:

(a) On a form prescribed by the Division.

(b) Accompanied by evidence that:

(1) The respondent has been given a reasonable opportunity after receiving the written notice to correct the alleged violation; and

(2) Reasonable efforts to resolve the alleged violation have failed.

4. The Commission or a hearing panel may impose an administrative fine of not more than $1,000 against any person who knowingly files a false or fraudulent affidavit with the Division.

(Added to NRS by 2003, 2214; A 2005, 2620)

**NRS 116.765 Referral of affidavit to Ombudsman for assistance in resolving alleged violation; report by Ombudsman; investigation by Real Estate Division; determination of whether to file complaint with Commission.**

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

2. The Ombudsman shall give such guidance to the parties as the Ombudsman deems necessary to assist the parties to resolve the alleged violation.

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

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

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

(Added to NRS by 2003, 2215)

**NRS 116.770 Procedure for hearing complaints: Time for holding hearing; continuances; notices; evidence; answers; defaults.**

1. Except as otherwise provided in subsection 2, if the Administrator files a formal complaint with the Commission, the Commission or a hearing panel shall hold a hearing on the complaint not later than 90 days after the date that the complaint is filed.

2. The Commission or the hearing panel may continue the hearing upon its own motion or upon the written request of a party to the complaint, for good cause shown, including, without limitation, the existence of proceedings for mediation or arbitration or a civil action involving the facts that constitute the basis of the complaint.

3. The Division shall give the respondent written notice of the date, time and place of the hearing on the complaint at least 30 days before the date of the hearing. The notice must be:

(a) Delivered personally to the respondent or mailed to the respondent by certified mail, return receipt requested, to his or her last known address.

(b) Accompanied by:

(1) A copy of the complaint; and

(2) Copies of all communications, reports, affidavits and depositions in the possession of the Division that are relevant to the complaint.

4. At any hearing on the complaint, the Division may not present evidence that was obtained after the notice was given to the respondent pursuant to this section, unless the Division proves to the satisfaction of the Commission or the hearing panel that:

(a) The evidence was not available, after diligent investigation by the Division, before such notice was given to the respondent; and

(b) The evidence was given or communicated to the respondent immediately after it was obtained by the Division.

5. The respondent must file an answer not later than 30 days after the date that notice of the complaint is delivered or mailed by the Division. The answer must:

(a) Contain an admission or a denial of the allegations contained in the complaint and any defenses upon which the respondent will rely; and

(b) Be delivered personally to the Division or mailed to the Division by certified mail, return receipt requested.

6. If the respondent does not file an answer within the time required by subsection 5, the Division may, after giving the respondent written notice of the default, request the Commission or the hearing panel to enter a finding of default against the respondent. The notice of the default must be delivered personally to the respondent or mailed to the respondent by certified mail, return receipt requested, to his or her last known address.

(Added to NRS by 2003, 2215)

**NRS 116.775 Representation by attorney.** Any party to the complaint may be represented by an attorney at any hearing on the complaint.

(Added to NRS by 2003, 2216)

**NRS 116.780 Decisions on complaints.**

1. After conducting its hearings on the complaint, the Commission or the hearing panel shall render a final decision on the merits of the complaint not later than 20 days after the date of the final hearing.

2. The Commission or the hearing panel shall notify all parties to the complaint of its decision in writing by certified mail, return receipt requested, not later than 60 days after the date of the final hearing. The written decision must include findings of fact and conclusions of law.

(Added to NRS by 2003, 2216)

**NRS 116.785 Remedial and disciplinary action: Orders to cease and desist and to correct violations; administrative fines; removal from office or position; payment of costs; exemptions from liability.**

1. If the Commission or the hearing panel, after notice and hearing, finds that the respondent has committed a violation, the Commission or the hearing panel may take any or all of the following actions:

(a) Issue an order directing the respondent to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.

(b) Issue an order directing the respondent to take affirmative action to correct any conditions resulting from the violation.

(c) Impose an administrative fine of not more than $1,000 for each violation.

2. If the respondent is a member of an executive board or an officer of an association, the Commission or the hearing panel may order the respondent removed from his or her office or position if the Commission or the hearing panel, after notice and hearing, finds that:

(a) The respondent has knowingly and willfully committed a violation; and

(b) The removal is in the best interest of the association.

3. If the respondent violates any order issued by the Commission or the hearing panel pursuant to this section, the Commission or the hearing panel, after notice and hearing, may impose an administrative fine of not more than $1,000 for each violation.

4. If the Commission or the hearing panel takes any disciplinary action pursuant to this section, the Commission or the hearing panel may order the respondent to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees.

5. Notwithstanding any other provision of this section, unless the respondent has knowingly and willfully committed a violation, if the respondent is a member of an executive board or an officer of an association:

(a) The association is liable for all fines and costs imposed against the respondent pursuant to this section; and

(b) The respondent may not be held personally liable for those fines and costs.

(Added to NRS by 2003, 2216)

**NRS 116.790 Remedial and disciplinary action: Audit of association; requiring association to hire community manager who holds certificate; appointment of receiver.**

1. If the Commission or a hearing panel, after notice and hearing, finds that the executive board or any person acting on behalf of the association has committed a violation, the Commission or the hearing panel may take any or all of the following actions:

(a) Order an audit of the association, at the expense of the association.

(b) Require the executive board to hire a community manager who holds a certificate.

2. The Commission, or the Division with the approval of the Commission, may apply to a court of competent jurisdiction for the appointment of a receiver for an association if, after notice and a hearing, the Commission or a hearing officer finds that any of the following violations occurred:

(a) The executive board, or any member thereof, has been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs;

(b) The executive board, or any member thereof, has been guilty of misfeasance, malfeasance or nonfeasance; or

(c) The assets of the association are in danger of waste or loss through attachment, foreclosure, litigation or otherwise.

3. In any application for the appointment of a receiver pursuant to this section, notice of a temporary appointment of a receiver may be given to the association alone, by process as in the case of an application for a temporary restraining order or injunction. The hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties.

4. The court may, if good cause exists, appoint one or more receivers pursuant to this section to carry out the business of the association. The members of the executive board who have not been guilty of negligence or active breach of duty must be preferred in making the appointment.

5. The powers of any receiver appointed pursuant to this section may be continued as long as the court deems necessary and proper. At any time, for sufficient cause, the court may order the receivership terminated.

6. Any receiver appointed pursuant to this section has, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided in NRS 78.635, 78.640 and 78.645, whether or not the association is insolvent. Such powers include, without limitation, the powers to:

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

(b) Appoint an agent or agents;

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

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

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

(Added to NRS by 2003, 2217; A 2005, 2621; 2009, 2900)

**NRS 116.795 Injunctions.**

1. If the Commission or the Division has reasonable cause to believe, based on evidence satisfactory to it, that any person violated or is about to violate any provision of this chapter, any regulation adopted pursuant thereto or any order, decision, demand or requirement of the Commission or Division or a hearing panel, the Commission or the Division may bring an action in the district court for the county in which the person resides or, if the person does not reside in this State, in any court of competent jurisdiction within or outside this State, to restrain or enjoin that person from engaging in or continuing to commit the violations or from doing any act in furtherance of the violations.

2. The action must be brought in the name of the State of Nevada. If the action is brought in a court of this State, an order or judgment may be entered, when proper, issuing a temporary restraining order, preliminary injunction or final injunction. A temporary restraining order or preliminary injunction must not be issued without at least 5 days' notice to the opposite party.

3. The court may issue the temporary restraining order, preliminary injunction or final injunction without:

(a) Proof of actual damages sustained by any person.

(b) The filing of any bond.

(Added to NRS by 2003, 2217; A 2005, 2622)

# Addendum “B”
# (Part 1 of 2)

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# CHAPTER 116 - COMMON-INTEREST OWNERSHIP (UNIFORM ACT)

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## ARTICLE 1

## GENERAL PROVISIONS

### Part I

### Definitions and Other General Provisions

**NRS 116.001 Short title.** This chapter may be cited as the Uniform Common-Interest Ownership Act.
(Added to NRS by 1991, 535)—(Substituted in revision for NRS 116.1101)

**NRS 116.003 Definitions.** As used in this chapter and in the declaration and bylaws of an association, the words and terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those sections.
(Added to NRS by 1991, 535; A 2003, 1302, 2221; 2005, 2586; 2009, 1608; 2011, 2415)

**NRS 116.005 "Administrator" defined.** "Administrator" means the Real Estate Administrator.
(Added to NRS by 1999, 2993; A 2003, 1302, 2221)—(Substituted in revision for NRS 116.110305)

**NRS 116.007 "Affiliate of a declarant" defined.** "Affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant. For purposes of this section:
1. A person controls a declarant if the person:
(a) Is a general partner, officer, director or employer of the declarant;
(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the declarant;
(c) Controls in any manner the election of a majority of the directors of the declarant; or
(d) Has contributed more than 20 percent of the capital of the declarant.
2. A person is controlled by a declarant if the declarant:
(a) Is a general partner, officer, director or employer of the person;
(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the person;
(c) Controls in any manner the election of a majority of the directors of the person; or
(d) Has contributed more than 20 percent of the capital of the person.
3. Control does not exist if the powers described in this section are held solely as security for an obligation and are not exercised.
(Added to NRS by 1991, 535; A 2011, 2415)—(Substituted in revision for NRS 116.11031)

**NRS 116.009 "Allocated interests" defined.** "Allocated interests" means the following interests allocated to each unit:
1. In a condominium, the undivided interest in the common elements, the liability for common expenses, and votes in the association;
2. In a cooperative, the liability for common expenses, the ownership interest and votes in the association; and
3. In a planned community, the liability for common expenses and votes in the association.
(Added to NRS by 1991, 536; A 2011, 2416)—(Substituted in revision for NRS 116.110313)

**NRS 116.011 "Association" and "unit-owners' association" defined.** "Association" or "unit-owners' association" means the unit-owners' association organized under NRS 116.3101.
(Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.110315)

**NRS 116.013 "Certificate" defined.** "Certificate" means a certificate for the management of a common-interest community or the management of an association of a condominium hotel issued by the Division pursuant to chapter 116A of NRS.
(Added to NRS by 2003, 2208; A 2005, 2587; 2007, 2268)

**NRS 116.015 "Commission" defined.** "Commission" means the Commission for Common-Interest Communities and Condominium Hotels created by NRS 116.600.
(Added to NRS by 2003, 2208; A 2007, 2268)

**NRS 116.017 "Common elements" defined.** "Common elements" means:
1. In the case of:
(a) A condominium or cooperative, all portions of the common-interest community other than the units, including easements in favor of units or the common elements over other units.
(b) A planned community, any real estate within a planned community which is owned or leased by the association, other than a unit.
2. In all common-interest communities, any other interests in real estate for the benefit of units' owners which are subject to the declaration.
(Added to NRS by 1991, 536; A 1993, 2356; 2011, 2416)—(Substituted in revision for NRS 116.110318)

**NRS 116.019 "Common expenses" defined.** "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.11032)

**NRS 116.021 "Common-interest community" defined.**

1. "Common-interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.
2. The term does not include an agreement described in NRS 116.1209.
3. For purposes of this section, "ownership of a unit" does not include holding a leasehold interest of less than 20 years in a unit, including options to renew.

(Added to NRS by 1991, 536; A 2009, 1608)—(Substituted in revision for NRS 116.110323)

**NRS 116.023 "Community manager" defined.** "Community manager" means a person who provides for or otherwise engages in the management of a common-interest community or the management of an association of a condominium hotel.

(Added to NRS by 2003, 2208; A 2007, 2268)

**NRS 116.025 "Complaint" defined.** "Complaint" means a complaint filed by the Administrator pursuant to NRS 116.765.

(Added to NRS by 2003, 2208)

**NRS 116.027 "Condominium" defined.** "Condominium" means a common-interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common-interest community is not a condominium unless the undivided interests in the common elements are vested in the units' owners.

(Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.110325)

**NRS 116.029 "Converted building" defined.** "Converted building" means a building that at any time before creation of the common-interest community was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.110328)

**NRS 116.031 "Cooperative" defined.** "Cooperative" means a common-interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of the member's ownership in the association to exclusive possession of a unit.

(Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.11033)

**NRS 116.033 "Dealer" defined.** "Dealer" means a person in the business of selling units for his or her own account.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110333)

**NRS 116.035 "Declarant" defined.** "Declarant" means any person or group of persons acting in concert who:

1. As part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of; or
2. Reserves or succeeds to any special declarant's right.

(Added to NRS by 1991, 537; A 2011, 2416)—(Substituted in revision for NRS 116.110335)

**NRS 116.037 "Declaration" defined.** "Declaration" means any instruments, however denominated, that create a common-interest community, including any amendments to those instruments.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110338)

**NRS 116.039 "Developmental rights" defined.** "Developmental rights" means any right or combination of rights reserved by a declarant in the declaration to:

1. Add real estate to a common-interest community;
2. Create units, common elements or limited common elements within a common-interest community;
3. Subdivide units or convert units into common elements; or
4. Withdraw real estate from a common-interest community.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.11034)

**NRS 116.041 "Dispose" and "disposition" defined.** "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110343)

**NRS 116.043 "Division" defined.** "Division" means the Real Estate Division of the Department of Business and Industry.

(Added to NRS by 2003, 1301, 2208)

**NRS 116.045 "Executive board" defined.** "Executive board" means the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association.
(Added to NRS by 1991, 537; A 2011, 2416)—(Substituted in revision for NRS 116.110345)

**NRS 116.047 "Financial statement" defined.** "Financial statement" means a financial statement of an association that is prepared and presented in accordance with the requirements established by the Commission pursuant to NRS 116.31142.
(Added to NRS by 1997, 3110; A 2005, 2587)

**NRS 116.049 "Governing documents" defined.** "Governing documents" means:
1. The declaration for the common-interest community;
2. The articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents that are used to organize the association for the common-interest community;
3. The bylaws and rules of the association; and
4. Any other documents that govern the operation of the common-interest community or the association.
(Added to NRS by 1997, 3111; A 2005, 2587)

**NRS 116.051 "Hearing panel" defined.** "Hearing panel" means a hearing panel appointed by the Commission pursuant to NRS 116.675.
(Added to NRS by 2003, 2208)

**NRS 116.053 "Identifying number" defined.** "Identifying number" means a symbol, address or legally sufficient description of real estate which identifies only one unit in a common-interest community.
(Added to NRS by 1991, 537; A 1993, 2356)—(Substituted in revision for NRS 116.110348)

**NRS 116.055 "Leasehold common-interest community" defined.** "Leasehold common-interest community" means a common-interest community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the common-interest community or reduce its size.
(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.11035)

**NRS 116.057 "Liability for common expenses" defined.** "Liability for common expenses" means the liability for common expenses allocated to each unit pursuant to NRS 116.2107.
(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110353)

**NRS 116.059 "Limited common element" defined.** "Limited common element" means a portion of the common elements allocated by the declaration or by operation of subsection 2 or 4 of NRS 116.2102 for the exclusive use of one or more but fewer than all of the units.
(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110355)

**NRS 116.0605 "Major component of the common elements" defined.** "Major component of the common elements" means any component of the common elements, including, without limitation, any amenity, improvement, furnishing, fixture, finish, system or equipment, that may, within 30 years after its original installation, require repair, replacement or restoration in excess of routine annual maintenance which is included in the annual operating budget of an association.
(Added to NRS by 2005, 2581)

**NRS 116.061 "Management of a common-interest community" defined.** "Management of a common-interest community" means the physical, administrative or financial maintenance and management of a common-interest community, or the supervision of those activities, for a fee, commission or other valuable consideration.
(Added to NRS by 2003, 2209)

**NRS 116.063 "Master association" defined.** "Master association" means an organization described in NRS 116.212, whether or not it is also an association described in NRS 116.3101.
(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110358)

**NRS 116.064 "Nonresidential condominium" defined.** "Nonresidential condominium" means a condominium in which all units are restricted exclusively to nonresidential use.
(Added to NRS by 2009, 1607)

**NRS 116.065 "Offering" defined.** "Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a common-interest community not located in this State, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common-interest community is located. The verb "offer" has a similar meaning.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.11036)

**NRS 116.067 "Ombudsman" defined.** "Ombudsman" means the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels.
(Added to NRS by 2003, 2209; A 2007, 2268)

**NRS 116.069 "Party to the complaint" defined.** "Party to the complaint" means the Division and the respondent.
(Added to NRS by 2003, 2209)

**NRS 116.073 "Person" defined.** "Person" includes a government and governmental subdivision or agency.
(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110363)

**NRS 116.075 "Planned community" defined.** "Planned community" means a common-interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.
(Added to NRS by 1991, 538)—(Substituted in revision for NRS 116.110368)

**NRS 116.077 "Proprietary lease" defined.** "Proprietary lease" means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.
(Added to NRS by 1991, 538)—(Substituted in revision for NRS 116.110373)

**NRS 116.079 "Purchaser" defined.** "Purchaser" means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:
1. A leasehold interest, including options to renew, of less than 20 years; or
2. As security for an obligation.
(Added to NRS by 1991, 538; A 2011, 2416)—(Substituted in revision for NRS 116.110375)

**NRS 116.081 "Real estate" defined.** "Real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests that by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.
(Added to NRS by 1991, 538; A 2011, 2416)—(Substituted in revision for NRS 116.110378)

**NRS 116.083 "Residential use" defined.** "Residential use" means use as a dwelling or for personal, family or household purposes by ordinary customers, whether rented to particular persons or not. Such uses include marina boat slips, piers, stable or agricultural stalls or pens, campground spaces or plots, parking spaces or garage spaces, storage spaces or lockers and garden plots for individual use, but do not include spaces or units primarily used to derive commercial income from, or provide service to, the public.
(Added to NRS by 1991, 538; A 1999, 3355)—(Substituted in revision for NRS 116.11038)

**NRS 116.085 "Respondent" defined.** "Respondent" means a person against whom:
1. An affidavit has been filed pursuant to NRS 116.760.
2. A complaint has been filed pursuant to NRS 116.765.
(Added to NRS by 2003, 2209)

**NRS 116.087 "Security interest" defined.** "Security interest" means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or contract for retention of title intended as security for an obligation.
(Added to NRS by 1991, 538)—(Substituted in revision for NRS 116.110383)

**NRS 116.089 "Special declarant's rights" defined.** "Special declarant's rights" means rights reserved for the benefit of a declarant to:
1. Complete improvements indicated on plats or in the declaration or, in a cooperative, to complete improvements described in the public offering statement pursuant to paragraph (b) of subsection 1 of NRS 116.4103;
2. Exercise any developmental right;
3. Maintain sales offices, management offices, signs advertising the common-interest community and models;
4. Use easements through the common elements for the purpose of making improvements within the common-interest community or within real estate which may be added to the common-interest community;
5. Make the common-interest community subject to a master association;
6. Merge or consolidate a common-interest community with another common-interest community of the same form of ownership; or
7. Appoint or remove any officer of the association or any master association or any member of an executive board during any period of declarant's control.
(Added to NRS by 1991, 538; A 2009, 1608; 2011, 2416)—(Substituted in revision for NRS 116.110385)

**NRS 116.091 "Time share" defined.** "Time share" means the right to use and occupy a unit on a recurrent periodic basis according to an arrangement allocating this right among various owners of time shares whether or not there is an additional charge to the owner for occupying the unit.

(Added to NRS by 1991, 539)—(Substituted in revision for NRS 116.110388)

**NRS 116.093 "Unit" defined.** "Unit" means a physical portion of the common-interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to paragraph (e) of subsection 1 of NRS 116.2105. If a unit in a cooperative is owned by the unit's owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by the unit's owner, the interest in that unit which is owned, sold, conveyed, encumbered or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(Added to NRS by 1991, 539)—(Substituted in revision for NRS 116.11039)

**NRS 116.095 "Unit's owner" defined.** "Unit's owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

(Added to NRS by 1991, 539; A 2011, 2417)—(Substituted in revision for NRS 116.110393)

**NRS 116.1104 Provisions of chapter may not be varied by agreement, waived or evaded; exceptions.** Except as expressly provided in this chapter, its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as otherwise provided in paragraph (b) of subsection 2 of NRS 116.12075, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

(Added to NRS by 1991, 539; A 2011, 2417)

**NRS 116.11045 Provisions of chapter do not invalidate or modify tariffs, rules and standards of public utility; consistency of governing documents.**

1. The provisions of this chapter do not invalidate or modify the tariffs, rules and standards of a public utility.
2. The governing documents of an association must be consistent and not conflict with the tariffs, rules and standards of a public utility. Any provision of the governing documents which conflicts with the tariffs, rules and standards of a public utility is void and may not be enforced against a purchaser.
3. As used in this section, "public utility" has the meaning ascribed to it in NRS 704.020.

(Added to NRS by 2009, 974)

**NRS 116.1105 Categorization of property in certain common-interest communities.** In a cooperative, unless the declaration provides that the interest of a unit's owner in a unit and its allocated interests is real estate for all purposes, that interest is personal property.

(Added to NRS by 1991, 539; A 2005, 1231)

**NRS 116.1106 Applicability of local ordinances, regulations and building codes.**

1. A building code may not impose any requirement upon any structure in a common-interest community which it would not impose upon a physically identical development under a different form of ownership.
2. In condominiums and cooperatives, no zoning, subdivision or other law, ordinance or regulation governing the use of real estate may prohibit the condominium or cooperative as a form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.
3. Except as otherwise provided in subsections 1 and 2, the provisions of this chapter do not invalidate or modify any provision of any building code or zoning, subdivision or other law, ordinance, rule or regulation governing the use of real estate.
4. The provisions of this section do not prohibit a local government from imposing different requirements and standards regarding design and construction on different types of structures in common-interest communities. For the purposes of this subsection, a townhouse in a planned community is a different type of structure from other structures in common-interest communities, including, without limitation, other structures that are or will be owned as condominiums or cooperatives.

(Added to NRS by 1991, 540; A 2005, 2587)

**NRS 116.1107 Eminent domain.**

1. If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit's owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit's owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

2. Except as otherwise provided in subsection 1, if part of a unit is acquired by eminent domain, the award must compensate the unit's owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(b) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

3. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

4. The judicial decree must be recorded in every county in which any portion of the common-interest community is located.

5. The provisions of this section do not authorize an association to exercise the power of eminent domain pursuant to chapter 37 of NRS, and an association may not exercise the power of eminent domain, as provided in NRS 37.0097.

(Added to NRS by 1991, 540; A 2009, 2877)

**NRS 116.1108 Supplemental general principles of law applicable.** The principles of law and equity, including the law of corporations and any other form of organization authorized by law of this State, the law of unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

(Added to NRS by 1991, 541; A 2011, 2417)

**NRS 116.11085 Provisions of chapter prevail over conflicting provisions governing certain business entities generally.** If a matter governed by this chapter is also governed by chapter 78, 81, 82, 86, 87, 87A, 88 or 88A of NRS and there is a conflict between the provisions of this chapter and the provisions of those other chapters, the provisions of this chapter prevail.

(Added to NRS by 2003, 2221; A 2005, 2587; 2007, 485)

**NRS 116.1109 Construction against implicit repeal; uniformity of application and construction.**

1. This chapter being a general act intended as a unified coverage of its subject matter, no part of it may be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

2. This chapter must be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(Added to NRS by 1991, 541)

**NRS 116.1112 Unconscionable agreement or term of contract.**

1. The court, upon finding as a matter of law that a contract or clause of a contract was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause to avoid an unconscionable result.

2. Whenever it is claimed, or appears to the court, that a contract or any clause of a contract is or may be unconscionable, the parties, to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations; and

(b) The effect and purpose of the contract or clause.

(Added to NRS by 1991, 541)

**NRS 116.1113 Obligation of good faith.** Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

(Added to NRS by 1991, 541)

**NRS 116.1114 Remedies to be liberally administered.** The remedies provided by this chapter must be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Consequential, special or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(Added to NRS by 1991, 541; A 2011, 2417)

**NRS 116.1118 Federal Electronic Signatures in Global and National Commerce Act superseded; exceptions.** This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. § 7003(b).

(Added to NRS by 2011, 2414)

## Part II

## Applicability

**NRS 116.1201 Applicability; regulations.**

1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

(a) A limited-purpose association, except that a limited-purpose association:

(1) Shall pay the fees required pursuant to NRS 116.31155, except that if the limited-purpose association is created for a rural agricultural residential common-interest community, the limited-purpose association is not required to pay the fee unless the association intends to use the services of the Ombudsman;

(2) Shall register with the Ombudsman pursuant to NRS 116.31158;

(3) Shall comply with the provisions of:

(I) NRS 116.31038;

(II) NRS 116.31083 and 116.31152, unless the limited-purpose association is created for a rural agricultural residential common-interest community;

(III) NRS 116.31073, if the limited-purpose association is created for maintaining the landscape of the common elements of the common-interest community; and

(IV) NRS 116.31075, if the limited-purpose association is created for a rural agricultural residential common-interest community;

(4) Shall comply with the provisions of NRS 116.4101 to 116.412, inclusive, as required by the regulations adopted by the Commission pursuant to paragraph (b) of subsection 5; and

(5) Shall not enforce any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter or a part of this chapter does apply to that planned community pursuant to NRS 116.12075. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or if the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this State, but NRS 116.4102 and 116.4103, and, to the extent applicable, NRS 116.41035 to 116.4107, inclusive, apply to a contract for the disposition of a unit in that common-interest community signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

(d) A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 55,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992;

(d) Except as otherwise provided in subsection 8 of NRS 116.31105, prohibit a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government, except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives;

(e) Prohibit a master association which governs a time-share plan created pursuant to chapter 119A of NRS from providing for a representative form of government for the time-share plan; or

(f) Prohibit a master association which governs a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted and which is exempt from the provisions of this chapter pursuant to paragraph (b) of subsection 2 from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. The Commission shall establish, by regulation:

(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and

(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.

6. As used in this section, "limited-purpose association" means an association that:

(a) Is created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community; and

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(Added to NRS by 1991, 542; A 1999, 2998; 2001, 2488; 2003, 2223; 2005, 2587; 2009, 1609, 2211, 2863, 2908, 2910; 2011, 1143, 2418)

**NRS 116.1203 Exception for small planned communities.**

1. Except as otherwise provided in subsections 2 and 3, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. The provisions of NRS 116.12065 and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that the definitions are necessary to construe any of those provisions, apply to a residential planned community containing more than 6 units.

3. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, the provisions of NRS 116.3101 to 116.350, inclusive, and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than 6 units.

(Added to NRS by 1991, 542; A 1993, 2357; 1999, 2999; 2001, 528; 2003, 2224, 2266; 2005, 1232, 2589; 2009, 1099, 2864; 2011, 2419; 2013, 1368, 2530)

**NRS 116.1206 Provisions of governing documents in violation of chapter deemed to conform with chapter by operation of law; procedure for certain amendments to governing documents.**

1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter:

(a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

(b) Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

2. In the case of amendments to the declaration, bylaws or plats of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of chapter 117 or 278A of NRS and, except as otherwise provided in subsection 8 of NRS 116.2117, with the procedures and requirements specified by those instruments. If an amendment grants to a person a right, power or privilege permitted by this chapter, any correlative obligation, liability or restriction in this chapter also applies to the person.

(Added to NRS by 1991, 543; A 1999, 2999; 2003, 2224; 2009, 1610, 2877; 2011, 2420)

**NRS 116.12065 Notice of changes to governing documents.** If any change is made to the governing documents of an association, the secretary or other officer specified in the bylaws of the association shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a copy of the change that was made.

(Added to NRS by 1999, 2997)

**NRS 116.12075 Applicability to nonresidential condominiums.**

1. The provisions of this chapter do not apply to a nonresidential condominium except to the extent that the declaration for the nonresidential condominium provides that:

(a) This entire chapter applies to the condominium;

(b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and 116.3116 to 116.31168, inclusive, apply to the condominium; or

(c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, apply to the condominium.

2. If this entire chapter applies to a nonresidential condominium, the declaration may also require, subject to NRS 116.1112, that:

(a) Notwithstanding NRS 116.3105, any management, maintenance operations or employment contract, lease of recreational or parking areas or facilities and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(b) Notwithstanding NRS 116.1104 and subsection 3 of NRS 116.311, purchasers of units must execute proxies, powers of attorney or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

(Added to NRS by 2009, 1607; A 2011, 2420)

**NRS 116.1209 Other exempt real estate arrangements; other exempt covenants.**

1. An agreement between the associations for two or more common-interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate or other activities specified in the agreement or declarations does not create a separate common-interest community. If the declarants of the common-interest communities are affiliates, the agreement may not unreasonably allocate the costs among those common-interest communities.

2. An agreement between an association and the owner of real estate that is not part of a common-interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in the agreement, does not create a separate common-interest community. However, the assessments against the units in the common-interest community required by the agreement must be included in the periodic budget for the common-interest community, and the agreement must be disclosed in all public offering statements and resale certificates required by this chapter.

3. An agreement between the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, road, driveway or well or other similar use does not create a common-interest community unless the owners otherwise agree.

4. As used in this section, "party wall" means any wall or fence constructed along the common boundary line between parcels. The term does not include any shared building structure systems, including, without limitation, foundations, walls and roof structures.

(Added to NRS by 2009, 1608)

## ARTICLE 2

## CREATION, ALTERATION AND TERMINATION OF COMMON-INTEREST COMMUNITIES

**NRS 116.2101 Creation of common-interest communities.** A common-interest community may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be recorded in every county in which any portion of the common-interest community is located and must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of each person executing the declaration.

(Added to NRS by 1991, 543)

**NRS 116.2102 Unit boundaries.** Except as otherwise provided by the declaration:

1. If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.

2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

3. Subject to subsection 2, all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.

4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, pads and mounts for heating and air-conditioning systems, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

(Added to NRS by 1991, 543)

**NRS 116.2103 Construction and validity of declaration and bylaws.**

1. The inclusion in a governing document of an association of a provision that violates any provision of this chapter does not render any other provisions of the governing document invalid or otherwise unenforceable if the other provisions can be given effect in accordance with their original intent and the provisions of this chapter.

2. The rule against perpetuities and NRS 111.103 to 111.1039, inclusive, do not apply to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to NRS 116.3102.

3. If a conflict exists between the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

4. Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

(Added to NRS by 1991, 544; A 2003, 2225; 2011, 2421)

**NRS 116.2104 Description of units.** A description of a unit which sets forth the name of the common-interest community, the file number and book or other information to show where the declaration is recorded, the county in which the common-interest community is located and the identifying number of the unit, is a legally sufficient description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws.

(Added to NRS by 1991, 544; A 1993, 2357)

**NRS 116.2105 Contents of declaration.**

1. The declaration must contain:

(a) The names of the common-interest community and the association and a statement that the common-interest community is either a condominium, cooperative or planned community;

(b) The name of every county in which any part of the common-interest community is situated;

(c) A legally sufficient description of the real estate included in the common-interest community;

(d) A statement of the maximum number of units that the declarant reserves the right to create;

(e) In a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(f) A description of any limited common elements, other than those specified in subsections 2 and 4 of NRS 116.2102, as provided in paragraph (g) of subsection 2 of NRS 116.2109 and, in a planned community, any real estate that is or must become common elements;

(g) A description of any real estate, except real estate subject to developmental rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in subsections 2 and 4 of NRS 116.2102, together with a statement that they may be so allocated;

(h) A description of any developmental rights and other special declarant's rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(i) If any developmental right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(1) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each developmental right or a statement that no assurances are made in those regards; and

(2) A statement whether, if any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right must be exercised in all or in any other portion of the remainder of that real estate;

(j) Any other conditions or limitations under which the rights described in paragraph (h) may be exercised or will lapse;

(k) An allocation to each unit of the allocated interests in the manner described in NRS 116.2107;

(l) Any restrictions:

(1) On use, occupancy and alienation of the units; and

(2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on sale, condemnation or casualty to the unit or to the common-interest community, or on termination of the common-interest community;

(m) The file number and book or other information for recorded easements and licenses appurtenant to or included in the common-interest community or to which any portion of the common-interest community is or may become subject by virtue of a reservation in the declaration; and

(n) All matters required by NRS 116.2106 to 116.2109, inclusive, 116.2115, 116.2116 and 116.31032.

2. The declaration may contain any other matters the declarant considers appropriate.

(Added to NRS by 1991, 544; A 1993, 2357; 2009, 1611; 2011, 2421)

**NRS 116.2106 Leasehold common-interest communities.**

1. Any lease the expiration or termination of which may terminate the common-interest community or reduce its size must be recorded. Every lessor of those leases in a condominium or planned community shall sign the declaration. The declaration must state:

(a) The recording data for the lease or a statement of where the recorded lease may be inspected;

(b) The date on which the lease is scheduled to expire;

(c) A legally sufficient description of the real estate subject to the lease;

(d) Any right of the units' owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the units' owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(f) Any rights of the units' owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

2. After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit's owner who makes timely payment of his or her share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. The leasehold interest of a unit's owner in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

3. Acquisition of the leasehold interest of any unit's owner by the owner of the reversion or remainder does not merge the leasehold and freehold interests unless the leasehold interests of all units' owners subject to that reversion or remainder are acquired.

4. If the expiration or termination of a lease decreases the number of units in a common-interest community, the allocated interests must be reallocated in accordance with subsection 1 of NRS 116.1107 as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

(Added to NRS by 1991, 545; A 2011, 2422)

**NRS 116.2107 Allocation of allocated interests.**

1. The declaration must allocate to each unit:

(a) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association;

(b) In a cooperative, a proportionate ownership in the association, a fraction or percentage of the common expenses of the association and a portion of the votes in the association; and

(c) In a planned community, a fraction or percentage of the common expenses of the association and a portion of the votes in the association.

2. The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

3. If units may be added to or withdrawn from the common-interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common-interest community after the addition or withdrawal.

4. The declaration may provide:

(a) That different allocations of votes are made to the units on particular matters specified in the declaration;

(b) For cumulative voting only for the purpose of electing members of the executive board; and

(c) For class voting on specified issues affecting the class if necessary to protect valid interests of the class.

➥ Except as otherwise provided in NRS 116.31032, a declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter nor may units constitute a class because they are owned by a declarant.

5. Except for minor variations because of rounding, the sum of the liabilities for common expenses and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

6. In a condominium, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

7. In a cooperative, any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

(Added to NRS by 1991, 546; A 1993, 2359; 2011, 2423)

**NRS 116.2108 Limited common elements.**

1. Except for the limited common elements described in subsections 2 and 4 of NRS 116.2102, the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the units' owners whose units are affected.

2. Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the units' owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment must be recorded in the names of the parties and the common-interest community.

3. A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with paragraph (g) of subsection 1 of NRS 116.2105. The allocations must be made by amendments to the declaration.

(Added to NRS by 1991, 547)

**NRS 116.2109 Plats.**

1. Plats are a part of the declaration, and are required for all common-interest communities except cooperatives. Each plat must be clear and legible and contain a certification that the plat contains all information required by this section.

2. Each plat must comply with the provisions of chapter 278 of NRS and show:

(a) The name and a survey of the area which is the subject of the plat;

(b) A sufficient description of the real estate;

(c) The extent of any encroachments by or upon any portion of the property which is the subject of the plat;

(d) The location and dimensions of all easements having a specific location and dimension which serve or burden any portion of the common-interest community;

(e) The location and dimensions, with reference to an established datum, of any vertical unit boundaries and that unit's identifying number;

(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plats recorded pursuant to subsection 3 and that unit's identifying number; and

(g) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in subsections 2 and 4 of NRS 116.2102.

3. The plats must show or project any units in which the declarant has reserved the right to create additional units or common elements (paragraph (h) of subsection 1 of NRS 116.2105), identified appropriately.

4. Unless the declaration provides otherwise, when the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part, the elevations need not be depicted on the plats.

5. Upon exercising any developmental right, the declarant shall record new or amended plats necessary to conform to the requirements of subsection 2.

6. Each plat must be certified by a professional land surveyor.

(Added to NRS by 1991, 547; A 1993, 2360; 2009, 1612)

**NRS 116.211 Exercise of developmental rights.**

1. To exercise any developmental right reserved under paragraph (h) of subsection 1 of NRS 116.2105, the declarant shall prepare, execute and record an amendment to the declaration (NRS 116.2117) and in a condominium or planned community comply with NRS 116.2109. The declarant is the owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection 2, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by NRS 116.2108.

2. Developmental rights may be reserved within any real estate added to the common-interest community if the amendment adding that real estate includes all matters required by NRS 116.2105 or 116.2106, as the case may be, and, in a condominium or planned community, the plats include all matters required by NRS 116.2109. This provision does not extend the time limit on the exercise of developmental rights imposed by the declaration pursuant to paragraph (h) of subsection 1 of NRS 116.2105.

3. Whenever a declarant exercises a developmental right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must convey it to the association or reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain (NRS 116.1107); and

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

4. If the declaration provides, pursuant to paragraph (h) of subsection 1 of NRS 116.2105, that all or a portion of the real estate is subject to a right of withdrawal:

(a) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(b) If any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

(Added to NRS by 1991, 548; A 2009, 1613)

**NRS 116.2111 Alterations of units; access to units.**

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

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

(b) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and

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

2. An association may not:

(a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his or her unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Added to NRS by 1991, 549; A 2003, 2225; 2005, 1819; 2009, 246, 2878)

**NRS 116.2112 Relocation of boundaries between adjoining units.**

1. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those units' owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association.

2. The association:

(a) In a condominium or planned community shall prepare and record plats necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers; and

(b) In a cooperative shall prepare and record amendments to the declaration necessary to show or describe the altered boundaries between adjoining units, and their dimensions and identifying numbers.

(Added to NRS by 1991, 550; A 2009, 1614)

**NRS 116.2113 Subdivision of units.**

1. If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the declaration and law other than this chapter, upon application of the unit's owner to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including, in a condominium or planned community, the plats, subdividing that unit.

2. The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit or on any other basis the declaration requires.

(Added to NRS by 1991, 550; A 2009, 1614; 2011, 2424)

**NRS 116.2114 Monuments as boundaries.** The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit's owner of liability in case of his or her willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats or, in a cooperative, to any representation in the public offering statement.

(Added to NRS by 1991, 550; A 2009, 1614)

**NRS 116.2115 Use for purposes of sales.** A declarant may maintain offices for sales and management, and models in units or on common elements in the common-interest community only if the declaration so provides. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common-interest community. This section is subject to the provisions of other state law and to local ordinances.

(Added to NRS by 1991, 550; A 1993, 2361)

**NRS 116.2116 Easement rights; validity of existing restrictions.**

1. Subject to the declaration, a declarant has an easement through the common elements as may be reasonably necessary to discharge the declarant's obligations or exercise special declarant's rights, whether arising under this chapter or reserved in the declaration.

2. Subject to paragraph (f) of subsection 1 of NRS 116.3102 and NRS 116.3112, the units' owners have an easement in the common elements for purposes of access to their units.

3. Subject to the declaration and any rules adopted by the association, the units' owners have a right to use the common elements that are not limited common elements and all real estate that must become common elements for the purposes for which they were intended.

4. Unless the terms of an easement in favor of an association prohibit a residential use of a servient estate, if the owner of the servient estate has obtained all necessary approvals required by law or any covenant, condition or restriction on the property, the owner may use such property in any manner authorized by law without obtaining any additional approval from the association. Nothing in this subsection authorizes an owner of a servient estate to impede the lawful and contractual use of the easement.

5. The provisions of subsection 4 do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

(Added to NRS by 1991, 551; A 1999, 3355; 2011, 2424)

**NRS 116.2117 Amendment of declaration.**

1. Except as otherwise provided in NRS 116.21175, and except in cases of amendments that may be executed by a declarant under subsection 5 of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by subsections 4, 7 and 8, the declaration, including any plats, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

3. Every amendment to the declaration must be recorded in every county in which any portion of the common-interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to NRS 116.2112, must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of the parties executing the amendment.

4. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit, change the allocated interests of a unit or change the uses to which any unit is restricted, in the absence of unanimous consent of only those units' owners whose units are affected and the consent of a majority of the owners of the remaining units.

5. Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

6. An amendment to the declaration which prohibits or materially restricts the permitted uses of a unit or the number or other qualifications of persons who may occupy units may not be enforced against a unit's owner who was the owner of the unit on the date of the recordation of the amendment as long as the unit's owner remains the owner of that unit.

7. A provision in the declaration creating special declarant's rights that have not expired may not be amended without the consent of the declarant.

8. If any provision of this chapter or of the declaration requires the consent of a holder of a security interest in a unit, or an insurer or guarantor of such interest, as a condition to the effectiveness of an amendment to the declaration, that consent is deemed granted if:

(a) The holder, insurer or guarantor has not requested, in writing, notice of any proposed amendment; or

(b) Notice of any proposed amendment is required or has been requested and a written refusal to consent is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder, insurer or guarantor, by certified mail, return receipt requested, to the address for notice provided by the holder, insurer or guarantor in a prior written request for notice.

(Added to NRS by 1991, 551; A 1993, 2362; 1999, 395, 396; 2005, 2589; 2009, 1615, 1733; 2011, 2424)

**NRS 116.21175 Procedure for seeking confirmation from district court of certain amendments to declaration.**

1. Except as otherwise limited by subsection 4 of NRS 116.2117, if:

(a) To approve an amendment to the declaration pursuant to NRS 116.2117, the declaration requires:

(1) In a single-class voting structure, more than a majority of the total number of votes allocated to the single class to be cast in favor of the amendment; or

(2) In a multiclass voting structure, more than a majority of the total number of votes allocated to one or more of the multiple classes to be cast in favor of the amendment; and

(b) An amendment fails to receive the number of votes required by the declaration to be approved but:

(1) In a single-class voting structure, receives a majority of the total number of votes allocated to the single class; or

(2) In a multiclass voting structure, receives in each of the multiple classes a majority of the total number of votes allocated to that class,

➥ the association or any unit's owner may file a petition with the district court in any county in which any portion of the common-interest community is located asking for an order waiving the supermajority requirements of the declaration and confirming the amendment as validly approved.

2. If the association or any unit's owner files a petition pursuant to subsection 1, the petition:

(a) Must contain sufficient information specifying:

(1) The actions that have been taken to obtain the number of votes required to approve the amendment under the declaration and whether those actions have conformed with the procedures set forth in the declaration;

(2) The amount of time that has been allowed for the units' owners to vote upon the amendment;

(3) The number and percentage of affirmative votes required in each voting class to approve the amendment under the declaration;

(4) The number and percentage of affirmative and negative votes actually received in each voting class with regard to the amendment; and

(5) Any other matters the petitioner considers relevant to the court's determination; and

(b) Must include, as exhibits to the petition, copies of:

(1) The governing documents;

(2) The complete text of the amendment and a statement explaining the need for the amendment and its purposes and objectives;

(3) All notices and materials used in the effort to persuade the units' owners to approve the amendment; and

(4) Any other documents the petitioner considers relevant to the court's determination.

3. Upon receiving the petition, the court shall:

(a) Set the matter for hearing; and

(b) Issue an ex parte order setting forth the manner in which the petitioner must give written notice of the hearing to all the units' owners in the association.

4. The court may grant the petition if it finds that the petitioner has presented evidence establishing that:

(a) The petitioner has given at least 15 days' written notice of the hearing to:

(1) All the units' owners in the association;

(2) Each city, if any, and each county in which any portion of the common-interest community is located; and

(3) All other persons or entities that are entitled to notice under the declaration;

(b) The voting process regarding the amendment was conducted in accordance with all applicable provisions of the governing documents and state law;

(c) A reasonably diligent effort was made to allow all eligible units' owners and, if required by the governing documents, all lenders to vote on the amendment;

(d) The amendment:

(1) In a single-class voting structure, received a majority of the total number of votes allocated to the single class; or

(2) In a multiclass voting structure, received in each of the multiple classes a majority of the total number of votes allocated to that class; and

(e) The amendment is reasonable.

5. If the court grants the petition, the court shall enter an order waiving the supermajority requirements of the declaration and confirming the amendment as validly approved.

6. An amendment confirmed by a final court order pursuant to this section is not effective until a certified copy of the amendment and the final court order have been recorded in each county in which any portion of the common-interest community is located. The amendment must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association, and the final court order must be recorded along with the amendment.

7. After the amendment and the final court order have been recorded pursuant to this section, the declaration, as amended, has the same force and effect as if the amendment had been approved in compliance with every requirement imposed by the governing documents.

8. Not later than 30 days after the date on which the amendment and the final court order are recorded pursuant to this section, the association shall mail to all the units' owners in the association:

(a) A copy of the amendment and the final court order; and

(b) A statement explaining that the amendment and the final court order have been recorded and that the declaration has been amended pursuant to this section.

(Added to NRS by 2005, 2581)

**NRS 116.2118 Termination of common-interest community.**

1. Except in the case of a taking of all the units by eminent domain, in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, or in the circumstances described in NRS 116.2124, a common-interest community may be terminated only by agreement of units' owners to whom at least 80 percent of the votes in the association are allocated, or any larger percentage the declaration specifies, and with any other approvals required by the declaration. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

2. An agreement to terminate must be evidenced by the execution of an agreement to terminate, or ratifications thereof, in the same manner as a deed, by the requisite number of units' owners. The agreement must specify a date after which the agreement will be void unless it is recorded before that date. An agreement to terminate and all ratifications thereof must be recorded in every county in which a portion of the common-interest community is situated and is effective only upon recordation.

3. In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, an agreement to terminate may provide that all of the common elements and units of the common-interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common-interest community is to be sold following termination, the agreement must set forth the minimum terms of the sale.

4. In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, an agreement to terminate may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the units' owners consent to the sale.

5. The association, on behalf of the units' owners, may contract for the sale of real estate in a common-interest community, but the contract is not binding on the units' owners until approved pursuant to subsections 1 and 2. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for

the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to units' owners and lienholders as their interests may appear, in accordance with NRS 116.21183 and 116.21185. Unless otherwise specified in the agreement to terminate, as long as the association holds title to the real estate, each unit's owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit's owner and his or her successors in interest remain liable for all assessments and other obligations imposed on units' owners by this chapter or the declaration.

6. In a condominium or planned community, if the real estate constituting the common-interest community is not to be sold following termination, title to the common elements and, in a common-interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common-interest community, vests in the units' owners upon termination as tenants in common in proportion to their respective interests as provided in NRS 116.21185, and liens on the units shift accordingly. While the tenancy in common exists, each unit's owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

7. Following termination of the common-interest community, the proceeds of a sale of real estate, together with the assets of the association, are held by the association as trustee for units' owners and holders of liens on the units as their interests may appear.

(Added to NRS by 1991, 551; A 2011, 2426)

**NRS 116.21183 Rights of creditors following termination.**

1. Following termination of a condominium or planned community, creditors of the association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

2. In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of units' owners and creditors of units' owners. In that event, following termination, creditors of the association holding liens on the cooperative which were recorded before termination may enforce their liens in the same manner as any lienholder, and any other creditor of the association is to be treated as if the creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

(a) The lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit's owner's interest in the unit as of the date the lien was perfected;

(b) Any other creditor of the association is to be treated upon termination as if the creditor had perfected a lien against each unit's owner's interest immediately before termination;

(c) The amount of the lien of an association's creditor described in paragraphs (a) and (b) against each of the units' owners' interest must be proportionate to the ratio which each unit's liability for common expenses bears to the liability for common expenses of all of the units;

(d) The lien of each creditor of each unit's owner which was perfected before termination continues as a lien against that owner's unit as of the date the lien was perfected; and

(e) The assets of the association must be distributed to all units' owners and all lienholders as their interests may appear in the order described in this section.

➥ Creditors of the association are not entitled to payment from any unit's owner in excess of the amount of the creditor's lien against that owner's interest.

(Added to NRS by 1991, 553)

**NRS 116.21185 Respective interests of units' owners following termination.** The respective interests of units' owners referred to in subsections 5, 6 and 7 of NRS 116.2118 and in NRS 116.21183 are as follows:

1. Except as otherwise provided in subsection 2, the respective interests of units' owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the units' owners and becomes final unless disapproved within 30 days after distribution by units' owners to whom 25 percent of the votes in the association are allocated. The proportion of interest of any unit's owner to that of all units' owners is determined by dividing the fair market value of that unit and its allocated interests by the total fair market values of all the units and their allocated interests.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereto before destruction cannot be made, the interests of all units' owners are:

(a) In a condominium, their respective interests in the common elements immediately before the termination;

(b) In a cooperative, their respective ownerships immediately before the termination; and

(c) In a planned community, their respective liabilities for common expenses immediately before the termination.

(Added to NRS by 1991, 553)

**NRS 116.21188 Effect of foreclosure or enforcement of lien or encumbrance.**

1. In a condominium or planned community, except as otherwise provided in subsection 2, foreclosure or enforcement of a lien or encumbrance against the entire common-interest community does not terminate, of itself, the common-interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common-interest community, other than withdrawable real estate, does not withdraw that portion from the common-interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not withdraw, of itself, that real estate from the common-interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common-interest community.

2. In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common-interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common-interest community.

(Added to NRS by 1991, 554)

**NRS 116.2119 Rights of secured lenders.** The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units approve specified actions of the units' owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to:

1. Deny or delegate control over the general administrative affairs of the association by the units' owners or the executive board;

2. Prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding; or

3. Prevent any trustee or the association from receiving and distributing any proceeds of insurance except pursuant to NRS 116.31133 and 116.31135.

(Added to NRS by 1991, 554)

**NRS 116.212 Master associations.**

1. If the declaration provides that any of the powers described in NRS 116.3102 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of one or more common-interest communities or for the benefit of the units' owners of one or more common-interest communities, or on behalf of a common-interest community and a time-share plan created pursuant to chapter 119A of NRS, all provisions of this chapter applicable to unit-owners' associations apply to any such corporation, except as modified by this section.

2. Unless it is acting in the capacity of an association described in NRS 116.3101, a master association may exercise the powers set forth in paragraph (b) of subsection 1 of NRS 116.3102 only to the extent expressly permitted in:

(a) The declarations of common-interest communities which are part of the master association or expressly described in the delegations of power from those common-interest communities to the master association; or

(b) The declaration of the common-interest community which is a part of the master association and the time-share instrument creating the time-share plan governed by the master association.

3. If the declaration of any common-interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

4. The rights and responsibilities of units' owners with respect to the unit-owners' association set forth in NRS 116.3103, 116.31032, 116.31034, 116.31036, 116.3108, 116.31085, 116.3109, 116.311, 116.31105 and 116.3112 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise units' owners within the meaning of this chapter.

5. Even if a master association is also an association described in NRS 116.3101, the certificate of incorporation or other instrument creating the master association and the declaration of each common-interest community, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of the declarant's control in any of the following ways:

(a) All units' owners of all common-interest communities subject to the master association may elect all members of the master association's executive board.

(b) All members of the executive boards of all common-interest communities subject to the master association may elect all members of the master association's executive board.

(c) All units' owners of each common-interest community subject to the master association may elect specified members of the master association's executive board.

(d) All members of the executive board of each common-interest community subject to the master association may elect specified members of the master association's executive board.

(Added to NRS by 1991, 554; A 1993, 2362; 2001, 2489; 2003, 2226)

**NRS 116.21205 Reallocation of costs of administering common elements of certain master associations.** The executive board of a master association of any common-interest community that was created before January 1, 1975, and is located in a county whose population is 700,000 or more may record an amendment to the declaration pursuant to which the master association reallocates the costs of administering the common elements of the master association among the units of the common-interest community uniformly and based upon the actual costs associated with each unit.

(Added to NRS by 2003, 2220; A 2011, 1144)

**NRS 116.2121 Merger or consolidation of common-interest communities.**

1. Any two or more common-interest communities of the same form of ownership, by agreement of the units' owners as provided in subsection 2, may be merged or consolidated into a single common-interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common-interest community is the legal successor, for all purposes, of all of the preexisting common-interest communities, and the operations and activities of all associations of the preexisting common-interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets and liabilities of all preexisting associations.

2. An agreement of two or more common-interest communities to merge or consolidate pursuant to subsection 1 must be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting common-interest communities following approval by owners of units to which are allocated the percentage of votes in each common-interest community required to terminate that common-interest community. The

agreement must be recorded in every county in which a portion of the common-interest community is located and is not effective until recorded.

3. Every agreement for merger or consolidation must provide for the reallocation of the allocated interests in the new association among the units of the resultant common-interest community either by stating the reallocations or the formulas upon which they are based or by stating the percentage of overall allocated interests of the new common-interest community which are allocated to all of the units comprising each of the preexisting common-interest communities, and providing that the portion of the percentages allocated to each unit formerly constituting a part of the preexisting common-interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting common-interest community.

(Added to NRS by 1991, 555)

**NRS 116.2122 Addition of unspecified real estate.** In a planned community, if the right is originally reserved in the declaration, the declarant, in addition to any other developmental right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of that real estate in the original declaration; but the amount of real estate added to the planned community pursuant to this section may not exceed 10 percent of the real estate described in paragraph (c) of subsection 1 of NRS 116.2105 and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration pursuant to paragraph (d) of that subsection.

(Added to NRS by 1991, 556; A 1993, 2363)

**NRS 116.2124 Termination following catastrophe.** If substantially all the units in a common-interest community have been destroyed or are uninhabitable and the available methods for giving notice under NRS 116.3108 of a meeting of units' owners to consider termination under NRS 116.2118 will not likely result in receipt of the notice, the executive board or any other person holding an interest in the common-interest community may commence an action in the district court of the county in which the common-interest community is located seeking to terminate the common-interest community. During the pendency of the action, the court may issue whatever orders it considers appropriate, including, without limitation, an order for the appointment of a receiver. After a hearing, the court may terminate the common-interest community or reduce its size and may issue any other order the court considers to be in the best interest of the units' owners and persons holding an interest in the common-interest community.

(Added to NRS by 2011, 2414)

## ARTICLE 3

## MANAGEMENT OF COMMON-INTEREST COMMUNITIES

### General Provisions

**NRS 116.3101 Organization of unit-owners' association.**

1. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed.

2. The membership of the association at all times consists exclusively of all units' owners or, following termination of the common-interest community, of all owners of former units entitled to distributions of proceeds under NRS 116.2118, 116.21183 and 116.21185, or their heirs, successors or assigns.

3. Except for a residential planned community containing not more than 12 units, the association must have an executive board.

4. The association must:

(a) Be organized as a profit or nonprofit corporation, association, limited-liability company, trust, partnership or any other form of organization authorized by the law of this State;

(b) Include in its articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents of organization, or any amendment thereof, that the purpose of the corporation, association, limited-liability company, trust or partnership is to operate as an association pursuant to this chapter;

(c) Contain in its name the words "common-interest community," "community association," "master association," "homeowners' association" or "unit-owners' association"; and

(d) Comply with the applicable provisions of chapters 78, 81, 82, 86, 87, 87A, 88 and 88A of NRS when filing with the Secretary of State its articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents of organization, or any amendment thereof.

(Added to NRS by 1991, 556; A 2003, 20th Special Session, 130; 2005, 2590; 2007, 485; 2011, 2427)

**NRS 116.3102 Powers of unit-owners' association; limitations.**

1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:

(a) Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations.

(b) Shall adopt and may amend budgets in accordance with the requirements set forth in NRS 116.31151, may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395.

(c) May hire and discharge managing agents and other employees, agents and independent contractors.

(d) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

(e) May make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.

(f) May regulate the use, maintenance, repair, replacement and modification of common elements.

(g) May cause additional improvements to be made as a part of the common elements.

(h) May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) May grant easements, leases, licenses and concessions through or over the common elements.

(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.

(o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.

(p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) May exercise any other powers conferred by the declaration or bylaws.

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

(s) May direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

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

(t) May exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.

3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

4. The executive board's decision under subsection 3 not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

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

(Added to NRS by 1991, 556; A 1999, 3000; 2003, 2227, 2267; 2005, 2590; 2009, 1009, 2796, 2879, 2911; 2011, 2427)

**NRS 116.3103 Power of executive board to act on behalf of association; members and officers are fiduciaries; duty of care; application of business-judgment rule and conflict of interest rules; limitations on power.**

1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board acts on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. Officers and members of the executive board:

(a) Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule; and

(b) Are subject to conflict of interest rules governing the officers and directors of a nonprofit corporation organized under the law of this State.

2. The executive board may not act to:

(a) Amend the declaration.

(b) Terminate the common-interest community.

(c) Elect members of the executive board, but unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association, the executive board may fill vacancies in its membership for the unexpired portion of any term or until the next regularly scheduled election of executive board members, whichever is earlier. Any executive board member elected to a previously vacant position which was temporarily filled by board appointment may only be elected to fulfill the remainder of the unexpired portion of the term.

(d) Determine the qualifications, powers, duties or terms of office of members of the executive board.

3. The executive board shall adopt budgets as provided in NRS 116.31151.

(Added to NRS by 1991, 557; A 1993, 2364; 2001, 3193; 2003, 225; 2005, 2592; 2009, 1734, 2797; 2011, 2430)

**NRS 116.310305 Power of executive board to impose construction penalties for failure of unit's owner to adhere to certain schedules relating to design, construction, occupancy or use of unit or improvement.**

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

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

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

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

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

2. The association may impose and enforce a construction penalty against a unit's owner who fails to adhere to a schedule as required pursuant to subsection 1 if:

(a) The right to assess and collect a construction penalty is set forth in:

(1) The declaration;

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

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

(b) The association has included notice of the maximum amount of the construction penalty and schedule as part of any public offering statement or resale package required by this chapter; and

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

3. For the purposes of this chapter, a construction penalty is not a fine.

(Added to NRS by 2003, 2221, 2266; A 2011, 2430)

**NRS 116.31031 Power of executive board to impose fines and other sanctions for violations of governing documents; limitations; procedural requirements; continuing violations; collection of past due fines; statement of balance owed.**

1. Except as otherwise provided in this section, if a unit's owner or a tenant or an invitee of a unit's owner or a tenant violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or the invitee of the unit's owner or the tenant from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or the invitee of the unit's owner or the tenant from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or the invitee of the unit's owner or the tenant for each violation, except that:

(1) A fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305; and

(2) A fine may not be imposed against a unit's owner or a tenant or invitee of a unit's owner or a tenant for a violation of the governing documents which involves a vehicle and which is committed by a person who is delivering goods to, or performing services for, the unit's owner or tenant or invitee of the unit's owner or the tenant.

➥ If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed $100 for each violation or a total amount of $1,000, whichever is less. The limitations on the amount of the fine do not apply to any charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

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

(a) Participated in or authorized the violation;

(b) Had prior notice of the violation; or

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

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

4. The executive board may not impose a fine pursuant to subsection 1 unless:

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

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

(1) Written notice:

(I) Specifying in detail the alleged violation, the proposed action to cure the alleged violation, the amount of the fine, and the date, time and location for a hearing on the alleged violation; and

(II) Providing a clear and detailed photograph of the alleged violation, if the alleged violation relates to the physical condition of the unit or the grounds of the unit or an act or a failure to act of which it is possible to obtain a photograph; and

(2) A reasonable opportunity to cure the alleged violation or to contest the alleged violation at the hearing.

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

5. The executive board must schedule the date, time and location for the hearing on the alleged violation so that the unit's owner and, if different, the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

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

(a) Executes a written waiver of the right to the hearing; or

(b) Fails to appear at the hearing after being provided with proper notice of the hearing.

7. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without providing the opportunity to cure the violation and without the notice and an opportunity to be heard required by paragraph (b) of subsection 4.

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

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

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

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

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

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

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

(Added to NRS by 1997, 3112; A 1999, 3001; 2003, 2228, 2268; 2005, 2592; 2009, 2797, 2880, 2913; 2011, 2431; 2013, 267)

**NRS 116.310312 Power of executive board to enter grounds of unit to conduct certain maintenance or remove or abate public nuisance; notice of security interest and hearing required; imposition of fines and costs; lien against unit; limitation on liability.**

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

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

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

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the

unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.

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

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

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

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

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

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

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

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

6. Except as otherwise provided in this subsection, a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the federal regulations of 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 and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

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

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

9. As used in this section:

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

(b) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

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

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

(Added to NRS by 2009, 1007)

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

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

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

3. As used in this section:

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

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

(Added to NRS by 2009, 2795)

**NRS 116.310315 Accounting for fines imposed by association.** If an association has imposed a fine against a unit's owner or a tenant or an invitee of a unit's owner or a tenant pursuant to NRS 116.31031 for violations of the governing documents of the association, the association shall establish a compliance account to account for the fine, which must be separate from any account established for assessments.

(Added to NRS by 1997, 3112; A 2005, 1715; 2009, 2882, 2915)—(Substituted in revision for NRS 116.31145)

**NRS 116.31032 Period of declarant's control of association; representation of units' owners on executive board.**

1. Except as otherwise provided in this section, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by a declarant, may appoint and remove the officers of the association and members of the executive board. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period and, in that event, the declarant may require, for the duration of the period of declarant's control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earliest of:

(a) Sixty days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant or, if the association exercises powers over a common-interest community pursuant to this chapter and a time-share plan pursuant to chapter 119A of NRS, 120 days after conveyance of 80 percent of the units that may be created to units' owners other than a declarant;

(b) Five years after all declarants have ceased to offer units for sale in the ordinary course of business;

(c) Five years after any right to add new units was last exercised; or

(d) The day the declarant, after giving notice to units' owners, records an instrument voluntarily surrendering all rights to control activities of the association.

2. Not later than 60 days after conveyance of 25 percent of the units that may be created to units' owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by units' owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created to units' owners other than a declarant, not less than one-third of the members of the executive board must be elected by units' owners other than the declarant.

(Added to NRS by 1993, 2353; A 2001, 2490; 2011, 2433)

**NRS 116.31034 Election of members of executive board and officers of association; term of office of member of executive board; staggered terms; eligibility to serve on executive board; required disclosures; procedure for conducting elections; certification by member of executive board of understanding of governing documents and provisions of chapter.**

1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, all of whom must be units' owners. The executive board shall elect the officers of the association. Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners. The members of the executive board and the officers of the association shall take office upon election.

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

3. The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an equal number of members of the executive board are elected at each election. The provisions of this subsection do not apply to:

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

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

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

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

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

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

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

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

6. If the notice described in subsection 5 is given and if, at the closing of the prescribed period for nominations for membership on the executive board described in subsection 5, the number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected to the executive board, then:

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

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

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

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

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

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

8. Each person who is nominated as a candidate for membership on the executive board pursuant to subsection 4 or 5 must:

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

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

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

9. Unless a person is appointed by the declarant:

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

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

(1) That master association; or

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

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

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

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

11. Except as otherwise provided in subsection 6 or NRS 116.31105, the election of any member of the executive board must be conducted by secret written ballot in the following manner:

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

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

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

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

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

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

12. An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election as a member of the executive board, except that the candidate's campaign may be limited to 90 days before the date that ballots are required to be returned to the association.

13. A candidate who has submitted a nomination form for election as a member of the executive board may request that the association or its agent either:

(a) Send before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner a candidate informational statement. The candidate informational statement:

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

(2) Must not contain any defamatory, libelous or profane information; and

(3) May be sent with the secret ballot mailed pursuant to subsection 11 or in a separate mailing; or

(b) To allow the candidate to communicate campaign material directly to the units' owners, provide to the candidate, in paper format at a cost not to exceed 25 cents per page for the first 10 pages and 10 cents per page thereafter, in the format of a compact disc at a cost of not more than $5 or by electronic mail at no cost:

(1) A list of the mailing address of each unit, which must not include the names of the units' owners or the name of any tenant of a unit's owner; or

(2) If the members of the association are owners of time shares within a time share plan created pursuant to chapter 119A of NRS and:

(I) The voting rights of those owners are exercised by delegates or representatives pursuant to NRS 116.31105, the mailing address of the delegates or representatives.

(II) The voting rights of those owners are not exercised by delegates or representatives, the mailing address of the association established pursuant to NRS 119A.520. If the mailing address of the association is provided to the candidate pursuant to this sub-subparagraph, the association must send to each owner of a time share within the time share plan the campaign material provided by the candidate. If the campaign material will be sent by mail, the candidate who provides the campaign material must provide to the association a separate copy of the campaign material for each owner and must pay the actual costs of mailing before the campaign material is mailed. If the campaign material will be sent by electronic transmission, the candidate must provide to the association one copy of the campaign material in an electronic format.

➥ The information provided pursuant to this paragraph must not include the name of any unit's owner or any tenant of a unit's owner. If a candidate who makes a request for the information described in this paragraph fails or refuses to provide a written statement signed by the candidate which states that the candidate is making the request to allow the candidate to communicate campaign material directly to units' owners and that the candidate will not use the information for any other purpose, the association or its agent may refuse the request.

14. An association and its directors, officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to subsection 13.

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

(Added to NRS by 1993, 2353; A 1997, 3117; 1999, 3001; 2003, 2229; 2005, 2594; 2009, 1250, 2883, 2915; 2011, 660)

**NRS 116.31035 Publications containing mention of candidate or ballot question: Requirements; limitations.**

1. If an official publication contains any mention of a candidate or ballot question, the official publication must, upon request and under the same terms and conditions, provide equal space to all candidates or to a representative of an organization which supports the passage or defeat of the ballot question.

2. If an official publication contains the views or opinions of the association, the executive board, a community manager or an officer, employee or agent of an association concerning an issue of official interest, the official publication must, upon request and under the same terms and conditions, provide equal space to opposing views and opinions of a unit's owner of the common-interest community.

3. If an association has a closed-circuit television station and that station interviews, or provides time to, a candidate or a representative of an organization which supports the passage or defeat of a ballot question, the closed-circuit television station must, under the same terms and conditions, allow equal time for all candidates or a representative of an opposing view to the ballot question.

4. The association and its officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to subsection 1, 2 or 3.

5. As used in this section:

(a) "Issue of official interest" means:

(1) Any issue on which the executive board or the units' owners will be voting, including, without limitation, elections; and

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

(b) "Official publication" means:

(1) An official website;

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

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

(Added to NRS by 2011, 2414)

**NRS 116.31036 Removal of member of executive board.**

1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section, the number of votes cast in favor of removal constitutes:

(a) At least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election.

2. A removal election may be called by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. To call a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this subsection and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If a removal election is called pursuant to this subsection and:

(a) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to this section:

(1) The secret written ballots for the removal election must be sent in the manner required by this section not less than 15 days or more than 60 days after the date on which the petition is received; and

(2) The executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots and not later than 90 days after the date on which the petition was received.

(b) The voting rights of the owners of time shares will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 90 days after the date on which the petition is received.

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

3. Except as otherwise provided in NRS 116.31105, the removal of any member of the executive board must be conducted by secret written ballot in the following manner:

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

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

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

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

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

(Added to NRS by 1993, 2354; A 2003, 2231; 2005, 2596; 2009, 2799, 2885, 2917; 2011, 2434)

**NRS 116.31037 Indemnification and defense of member of executive board.** If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his or her role as a member of the board, the association shall indemnify the member for his or her losses or claims, and undertake all costs of defense, unless it is proven that the member acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted.

(Added to NRS by 2011, 2414)

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

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

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

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

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

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

4. The association's money or control thereof.

5. All of the declarant's tangible personal property that has been represented by the declarant as property of the association or, unless the declarant has disclosed in the public offering statement that all such personal property used in the common-interest community will remain the declarant's property, all of the declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties.

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

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

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

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

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

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

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

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

(Added to NRS by 1993, 2354; A 1999, 3002; 2001, 2490; 2005, 2597; 2009, 2918)

**NRS 116.31039 Delivery to association of additional common elements constructed by declarant or successor declarant.**

1. If a common-interest community is developed in separate phases and any declarant or successor declarant is constructing any common elements that will be added to the association's common elements after the date on which the units' owners other than the declarant may elect a majority of the members of the executive board, the declarant or successor declarant who is constructing such additional common elements is responsible for:

(a) Paying all expenses related to the additional common elements which are incurred before the conveyance of the additional common elements to the association; and

(b) Except as otherwise provided in NRS 116.31038, delivering to the association that declarant's share of the amount specified in the study of the reserves completed pursuant to subsection 2.

2. Before conveying the additional common elements to the association, the declarant or successor declarant who constructed the additional common elements shall deliver to the association a study of the reserves for the additional common elements which satisfies the requirements of NRS 116.31152.

3. As used in this section, "successor declarant" includes, without limitation, any successor declarant who does not control the association established by the initial declarant.

(Added to NRS by 2003, 2219)

**NRS 116.310395 Delivery to association of converted building reserve deficit.**

1. At the time of each close of escrow of a unit in a converted building, the declarant shall deliver to the association the amount of the converted building reserve deficit allocated to that unit.

2. The allocation to a unit of the amount of any converted building reserve deficit must be made in the same manner as assessments are allocated to that unit.

3. As used in this section, "converted building reserve deficit" means the amount necessary to replace the major components of the common elements needing replacement within 10 years after the date of the first close of escrow of a unit.

(Added to NRS by 2005, 2581; A 2009, 2920)

**NRS 116.3104 Transfer of special declarant's right.**

1. A special declarant's right created or reserved under this chapter may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common-interest community is located. The instrument is not effective unless executed by the transferee.

2. Upon transfer of any special declarant's right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranties imposed upon the transferor by this chapter. Lack of privity does not deprive any unit's owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant's right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the common-interest community.

(c) If a transferor retains any special declarant's rights, but transfers other special declarant's rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant's rights and arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual obligation or warranty arising from the exercise of a special declarant's right by a successor declarant who is not an affiliate of the transferor.

3. Unless otherwise provided in a mortgage, deed of trust or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership, of any units owned by a declarant or real estate in a common-interest community subject to developmental rights, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request, succeeds to all special declarant's rights related to that property held by that declarant, or only to any rights reserved in the declaration pursuant to NRS 116.2115 and held by that declarant to maintain models, offices for sales and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant's rights requested.

4. Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership of all interests in a common-interest community owned by a declarant:

(a) The declarant ceases to have any special declarant's rights; and

(b) The period of declarant's control (NRS 116.31032) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant's rights held by that declarant to a successor declarant.

(Added to NRS by 1991, 560; A 1993, 2366)

**NRS 116.31043 Liabilities and obligations of person who succeeds to special declarant's rights.** The liabilities and obligations of a person who succeeds to special declarant's rights are as follows:

1. A successor to any special declarant's right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.

2. A successor to any special declarant's right, other than a successor described in subsection 3 or 4 or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this chapter or the declaration:

(a) On a declarant which relate to the successor's exercise or nonexercise of special declarant's rights; or

(b) On his or her transferor, other than:

(1) Misrepresentations by any previous declarant;

(2) Warranties on improvements made by any previous declarant, or made before the common-interest community was created;

(3) Breach of any fiduciary obligation by any previous declarant or previous declarant's appointees to the executive board; or

(4) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. A successor to only a right reserved in the declaration to maintain models, offices for sales and signs (NRS 116.2115), may not exercise any other special declarant's right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof.

4. A successor to all special declarant's rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection 3 of NRS 116.3104, may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant's rights to any person acquiring title to any unit or real estate subject to developmental rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his or her transferor to control the executive board in accordance with NRS 116.31032 for the duration of any period of declarant's control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant's rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under NRS 116.31032.

(Added to NRS by 1991, 561; A 1993, 2367)

**NRS 116.31046 Successor not subject to certain claims against or other obligations of transferor of special declarant's right.** NRS 116.3104 and 116.31043 do not subject any successor to a special declarant's right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

(Added to NRS by 1991, 561)

**NRS 116.3105 Termination of contracts and leases of declarant.**

1. Within 2 years after the executive board elected by the units' owners pursuant to NRS 116.31034 takes office, the association may terminate without penalty, upon not less than 90 days' notice to the other party, any of the following if it was entered into before that executive board was elected:

(a) Any management, maintenance, operations or employment contract, or lease of recreational or parking areas or facilities; or

(b) Any other contract or lease between the association and a declarant or an affiliate of a declarant.

2. The association may terminate without penalty, at any time after the executive board elected by the units' owners pursuant to NRS 116.31034 takes office upon not less than 90 days' notice to the other party, any contract or lease that is not in good faith or was unconscionable to the units' owners at the time entered into.

3. This section does not apply to:

(a) Any lease the termination of which would terminate the common-interest community or reduce its size, unless the real estate subject to that lease was included in the common-interest community for the purpose of avoiding the right of the association to terminate a lease under this section; or

(b) A proprietary lease.

(Added to NRS by 1991, 561; A 1993, 2368; 2011, 2435)

**NRS 116.3106 Bylaws.**

1. The bylaws of the association must:

(a) Provide the number of members of the executive board and the titles of the officers of the association;

(b) Provide for election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;

(c) Specify the qualifications, powers and duties, terms of office and manner of electing and removing officers of the association and members of the executive board and filling vacancies;

(d) Specify the powers the executive board or the officers of the association may delegate to other persons or to a community manager;

(e) Specify the officers who may prepare, execute, certify and record amendments to the declaration on behalf of the association;

(f) Provide procedural rules for conducting meetings of the association;
(g) Specify a method for the units' owners to amend the bylaws;
(h) Provide procedural rules for conducting elections;
(i) Contain any provision necessary to satisfy requirements in this chapter or the declaration concerning meetings, voting, quorums and other activities of the association; and
(j) Provide for any matter required by law of this State other than this chapter to appear in the bylaws of organizations of the same type as the association.
2. Except as otherwise provided in this chapter or the declaration, the bylaws may provide for any other necessary or appropriate matters, including, without limitation, matters that could be adopted as rules.
3. The bylaws must be written in plain English.
(Added to NRS by 1991, 562; A 1993, 2368; 1997, 3117; 2003, 2232; 2011, 2436)

**NRS 116.31065 Rules.** The rules adopted by an association:
1. Must be reasonably related to the purpose for which they are adopted.
2. Must be sufficiently explicit in their prohibition, direction or limitation to inform a person of any action or omission required for compliance.
3. Must not be adopted to evade any obligation of the association.
4. Must be consistent with the governing documents of the association and must not arbitrarily restrict conduct or require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association.
5. Must be uniformly enforced under the same or similar circumstances against all units' owners. Any rule that is not so uniformly enforced may not be enforced against any unit's owner.
6. May be enforced by the association through the imposition of a fine only if the association complies with the requirements set forth in NRS 116.31031.
(Added to NRS by 1997, 3111; A 1999, 3004; 2003, 2269)

**NRS 116.31068 Notice to units' owners.**
1. Except as otherwise provided in subsection 3, an association shall deliver any notice required to be given by the association under this chapter to any mailing or electronic mail address a unit's owner designates. Except as otherwise provided in subsection 3, if a unit's owner has not designated a mailing or electronic mail address to which a notice must be delivered, the association may deliver notices by:
(a) Hand delivery to each unit's owner;
(b) Hand delivery, United States mail, postage paid, or commercially reasonable delivery service to the mailing address of each unit;
(c) Electronic means, if the unit's owner has given the association an electronic mail address; or
(d) Any other method reasonably calculated to provide notice to the unit's owner.
2. The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.
3. The provisions of this section do not apply:
(a) To a notice required to be given pursuant to NRS 116.3116 to 116.31168, inclusive; or
(b) If any other provision of this chapter specifies the manner in which a notice must be given by an association.
(Added to NRS by 2011, 2413)

**NRS 116.3107 Upkeep of common-interest community.**
1. Except to the extent provided by the declaration, subsection 2 and NRS 116.31135, the association has the duty to provide for the maintenance, repair and replacement of the common elements, and each unit's owner has the duty to provide for the maintenance, repair and replacement of his or her unit. Each unit's owner shall afford to the association and the other units' owners, and to their agents or employees, access through his or her unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit's owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.
2. In addition to the liability that a declarant as a unit's owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to developmental rights. No other unit's owner and no other portion of the common-interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to developmental rights inures to the declarant.
3. In a planned community, if all developmental rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.
(Added to NRS by 1991, 562; A 1993, 2368; 2009, 2886)

**NRS 116.31073 Maintenance, repair, restoration and replacement of security walls.**
1. Except as otherwise provided in subsection 2 and NRS 116.31135, the association is responsible for the maintenance, repair, restoration and replacement of any security wall which is located within the common-interest community.
2. The provisions of this section do not apply if the governing documents provide that a unit's owner or an entity other than the association is responsible for the maintenance, repair, restoration and replacement of the security wall.
3. For the purpose of carrying out the maintenance, repair, restoration and replacement of a security wall pursuant to this section:

# Addendum “A”

[Rev. 2/10/2015 4:00:02 PM--2014R2]

# CHAPTER 40 - ACTIONS AND PROCEEDINGS IN PARTICULAR CASES CONCERNING PROPERTY

## GENERAL PROVISIONS



## ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY



## ACTIONS FOR NUISANCE, WASTE AND WILLFUL TRESPASS ON REAL PROPERTY



## SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY, RECREATIONAL VEHICLE OR MOBILE HOME

## ACTIONS FOR FORECLOSURE OF REAL MORTGAGES



## FORECLOSURE SALES AND DEFICIENCY JUDGMENTS



## ACTIONS BY HOLDERS OF JUNIOR REAL MORTGAGES AFTER FORECLOSURE SALES



## MAINTENANCE OF PROPERTY ACQUIRED AT FORECLOSURE SALE



## RIGHTS OF GUARANTOR, SURETY OR OBLIGOR IN REAL PROPERTY



## ENVIRONMENTAL IMPAIRMENT OF REAL COLLATERAL OF SECURED LENDER

## PROCEEDINGS TO ESTABLISH TERMINATION OF LIFE ESTATES



## METHODS OF TERMINATION OF INTERESTS OF DECEASED PERSONS IN PROPERTY



## ACTIONS RESULTING FROM CONSTRUCTIONAL DEFECT

### General Provisions



### Conditions and Limitations on Actions



### Repairs

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## GENERAL PROVISIONS

**NRS 40.005 Zoning requirements to be considered by court.** In any proceeding involving disposition of land the court shall consider lot size and other applicable zoning requirements before ordering a physical division of the land.
(Added to NRS by 1977, 1512)

## ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY

**NRS 40.010 Actions may be brought against adverse claimants.** An action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim.
[1911 CPA § 572; RL § 5514; NCL § 9061]

**NRS 40.020 Plaintiff not entitled to costs on default judgment or disclaimer.** If the defendant in such action disclaim in the defendant's answer any interest or estate in the property, or suffer judgment to be taken against the defendant without answer, the plaintiff shall not recover costs.
[1911 CPA § 573; RL § 5515; NCL § 9062]

**NRS 40.030 Plaintiff may recover damages for property withheld where plaintiff's right terminated during pendency of action.** In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced but it appears that the plaintiff's right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.
[1911 CPA § 574; RL § 5516; NCL § 9063]

**NRS 40.040 Value of permanent improvements to be allowed as setoff.** When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant or those under whom the defendant claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a setoff against such damages.

[1911 CPA § 575; RL § 5517; NCL § 9064]

**NRS 40.050 Mortgage not deemed conveyance.** A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to take possession of the real property without a foreclosure and sale.

[1911 CPA § 576; RL § 5518; NCL § 9065]

**NRS 40.060 Court may enjoin injury to property during foreclosure.** The court may by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or after a sale on execution, before a conveyance.

[1911 CPA § 577; RL § 5519; NCL § 9066]

**NRS 40.070 Damages may be recovered for injury to possession after sale and before delivery.** When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to the purchaser's interest, may, after the purchaser's estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance.

[1911 CPA § 578; RL § 5520; NCL § 9067]

**NRS 40.080 Action not to be prejudiced by alienation pending suit.** An action for the recovery of real property against a person in possession cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action.

[1911 CPA § 579; RL § 5521; NCL § 9068]

**NRS 40.090 Action by person in adverse possession: Verified complaint; defendants; notice of pending litigation.**

1. An action may be brought to determine the adverse claims to and clouds upon title to real property by a person who, personally or in combination with the person's predecessors in interest, has been in the actual, exclusive and adverse possession of such property continuously for more than 15 years prior to the filing of the complaint, claiming to own the same in fee, or by any other freehold estate, against the whole world, and who has, personally or through the person's predecessors in interest, paid all taxes of every kind levied or assessed and due against the property during the period of 5 years next preceding the filing of the complaint, except that where clouds upon title to real property have been created by such person, and the action is brought to remove such clouds, or any of them, such period of actual, exclusive and adverse possession of such property shall be for more than 10 years. The action shall be commenced by the filing of a verified complaint averring the matters above enumerated.

2. The complaint must include as defendants in such action, in addition to such persons as appear of record to have some claim, all other persons who are known, or by the exercise of reasonable diligence could be known, to plaintiff to have some claim to an estate, interest, right, title, lien or cloud in or on the land described in the complaint adverse to plaintiff's ownership; and the complaint may also include as defendants any and all other persons, unknown, claiming any estate, right, title, interest or lien in such lands, or cloud upon the title of plaintiff thereto; and the plaintiff may describe such unknown defendants in the complaint as follows: "Also all other persons unknown claiming any right, title, estate, lien or interest in the real property described in the complaint adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto."

3. Within 10 days after the filing of the complaint, plaintiff shall file or cause to be filed in the office of the county recorder of the county where the property is situated, a notice of the pendency of the action containing the matters required by NRS 14.010.

[1911 CPA § 580; RL § 5522; NCL § 9069]—(NRS A 1965, 613)

**NRS 40.100 Action by person in adverse possession: Issuance, service and posting of summons; rights of unknown persons.**

1. Within 1 year after the filing of the complaint, as required by NRS 40.090, a summons must be issued in the manner and form prescribed in the Nevada Rules of Civil Procedure. In addition to other requirements, the summons shall contain a description of the property described in the complaint. In the summons the unknown defendants shall be designated as in the complaint. Service of summons, whether personal or otherwise, shall be effected in the manner prescribed in the Nevada Rules of Civil Procedure; and the times for completion of service and appearance by the defendant shall be as prescribed therein.

2. Within 30 days after the issuance of the summons, the plaintiff shall post or cause to be posted a copy thereof in a conspicuous place, on each separate parcel of the property described in the complaint, and each parcel of the land upon which a copy of the summons is posted shall be deemed to be in the possession of the court for all the purposes of and pending the determination of the action. All such unknown persons so served shall have the same rights as are provided by law in cases of all other defendants named, upon whom service is made by publication or personally, and the action shall proceed against such unknown persons in the same manner as against the defendants who are named, upon whom service is made by publication or personally, and with like effect; and any such unknown person who has or claims to have any right, title, estate, lien or interest in the property, or cloud on the title thereto, adverse to plaintiff, at the time of the commencement of the action, who has been duly served as aforesaid, and anyone claiming title under the unknown person

shall be concluded by the judgment in such action as effectually as if the action had been brought against the person by his or her name and personal service of process obtained, notwithstanding any such unknown person may be under legal disability.

[1911 CPA § 581; A 1937, 23; 1955, 466]

**NRS 40.110 Court to hear case; must not enter judgment by default; effect of final judgment.**

1. When the summons has been served as provided in NRS 40.100 and the time for answering has expired, the court shall proceed to hear the case as in other cases and shall have jurisdiction to examine into and determine the legality of plaintiff's title and of the title and claim of all the defendants and of all unknown persons, and to that end must not enter any judgment by default, but must in all cases require evidence of plaintiff's title and possession and receive such legal evidence as may be offered respecting the claims and title of any of the defendants and must thereafter direct judgment to be entered in accordance with the evidence and the law. The court, before proceeding to hear the case, must require proof to be made that the summons has been served and posted as hereinbefore directed and that the required notice of pendency of action has been filed.

2. The judgment after it has become final shall be conclusive against all the persons named in the summons and complaint who have been served personally, or by publication, and against all unknown persons as stated in the complaint and summons who have been served by publication, but shall not be conclusive against the State of Nevada or the United States. The judgment shall have the effect of a judgment in rem except as against the State of Nevada and the United States; and the judgment shall not bind or be conclusive against any person claiming any recorded estate, title, right, possession or lien in or to the property under the plaintiff or the plaintiff's predecessors in interest, which claim, lien, estate, title, right or possession has arisen or been created by the plaintiff or the plaintiff's predecessor in interest within 10 years prior to the filing of the complaint.

[1911 CPA § 582; RL § 5524; NCL § 9071]

**NRS 40.120 Remedy is cumulative.** The remedy provided in NRS 40.090, 40.100 and 40.110 shall be construed as cumulative and not exclusive of any other remedy, form or right of action or proceeding now allowed by law.

[1911 CPA § 583; RL § 5525; NCL § 9072]

**NRS 40.130 Adverse action on mining claim.** In all actions brought to determine the right of possession of a mining claim, or metalliferous vein or lode, where an application has been made to the proper officers of the Government of the United States by either of the parties to such action for a patent for the mining claim, vein or lode, it shall only be necessary to confer jurisdiction on the court to try the action, and render a proper judgment therein, that it appear that an application for a patent for such mining claim, vein or lode has been made, and that the parties to the action are claiming such mining claim, vein or lode, or some part thereof, or the right of possession thereof.

[1911 CPA § 584; RL § 5526; NCL § 9073]

## ACTIONS FOR NUISANCE, WASTE AND WILLFUL TRESPASS ON REAL PROPERTY

**NRS 40.140 Nuisance defined; action for abatement and damages; exceptions.**

1. Except as otherwise provided in this section:

(a) Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;

(b) A building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog;

(c) A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:

(1) Which has not been deemed safe for habitation by the board of health; or

(2) From which all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed or remediated by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog; or

(d) A building or place regularly and continuously used by the members of a criminal gang to engage in, or facilitate the commission of, crimes by the criminal gang,

➥ is a nuisance, and the subject of an action. The action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

2. It is presumed:

(a) That an agricultural activity conducted on farmland, consistent with good agricultural practice and established before surrounding nonagricultural activities is reasonable. Such activity does not constitute a nuisance unless the activity has a substantial adverse effect on the public health or safety.

(b) That an agricultural activity which does not violate a federal, state or local law, ordinance or regulation constitutes good agricultural practice.

3. A shooting range does not constitute a nuisance with respect to any noise attributable to the shooting range if the shooting range is in compliance with the provisions of all applicable statutes, ordinances and regulations concerning noise:

(a) As those provisions existed on October 1, 1997, for a shooting range in operation on or before October 1, 1997; or

(b) As those provisions exist on the date that the shooting range begins operation, for a shooting range that begins operation after October 1, 1997.

➥ A shooting range is not subject to any state or local law related to the control of noise that is adopted or amended after the date set forth in paragraph (a) or (b), as applicable, and does not constitute a nuisance for failure to comply with any such law.

4. As used in this section:

(a) "Board of health" has the meaning ascribed to it in NRS 439.4797.

(b) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.

(c) "Criminal gang" has the meaning ascribed to it in NRS 193.168.

(d) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

(e) "Shooting range" means an area designed and used for archery or sport shooting, including, but not limited to, sport shooting that involves the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or other similar items.

[1911 CPA § 562; RL § 5504; NCL § 9051]—(NRS A 1985, 873; 1997, 951, 1471, 1472; 2007, 3128; 2009, 825, 1309)

**NRS 40.150 Action for waste; judgment may be for treble damages.** If a guardian, tenant for life or years, joint tenant or tenant in common of real property commit waste thereon, any person aggrieved by the waste may bring an action against the guardian or tenant who committed the waste, in which action there may be judgment for treble damages.

[1911 CPA § 563; RL § 5505; NCL § 9052]

**NRS 40.160 Action for trespass for cutting or carrying away trees or wood; treble damages.**

1. Any person who cuts down or carries off any wood or underwood, tree or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, city or town lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

2. Nothing in subsection 1 of this section authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

[1911 CPA § 564; RL § 5506; NCL § 9053] + [1911 CPA § 565; RL § 5507; NCL § 9054]—(NRS A 1983, 111)

**NRS 40.170 Damages in actions for forcible or unlawful entry may be trebled.**

1. If a person recovers damages for a forcible or unlawful entry in or upon, or detention of, any building or any uncultivated or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

2. As used in this section, "actual damages" means damages to real property and personal property.

[1911 CPA § 566; RL § 5508; NCL § 9055]—(NRS A 1959, 22; 2009, 12)

**NRS 40.180 Manner of working mine or mining claim; assessment of damages.**

1. Any person being the owner of, or in possession under any lease or contract for the working of any mine or mines within this state, shall have the right to institute and maintain an action for the recovery of any damages that may accrue by reason of the manner in which any mine or mines have been or are being worked and managed by any person who may be the owner, or in possession of and working such mine or mines under a lease or contract, and to prevent the continuance of working and managing such mine or mines in such manner as to hinder, injure, or in anywise endanger the safety of any mine or mines adjacent or adjoining thereto.

2. Any such owner of, or person in the possession of, any mine or mining claim, who shall enter upon or into, in any manner, any mine or mining claim, the property of another, and mine, extract, excavate or carry away any valuable mineral therefrom shall be liable to the owner of any such mine or mines trespassed upon in the amount of the value of all such mineral mined, extracted, excavated or carried away, and for all other damages, and in the absence of a showing to the contrary, the value of all such mineral mined, extracted, excavated or carried away shall be presumed to be twice the amount of the gross value of the same ascertained by an average assay of the excavated material or the ledge from which it was taken. If such trespass was made in bad faith, such damages may be trebled.

[1911 CPA § 567; RL § 5509; NCL § 9056]

**NRS 40.190 Continuation of judgment lien.** Any judgment obtained for damages under the provisions of NRS 40.180 shall become a lien upon all the property of the judgment debtor not exempt from execution in the State of Nevada, owned by the judgment debtor, or which may afterwards be acquired, as is now provided for by law, which lien shall continue 2 years, unless the judgment be sooner satisfied.

[1911 CPA § 568; RL § 5510; NCL § 9057]

**NRS 40.200 Application for order of survey; notice and order; report of survey; costs of and damages caused by survey.**

1. Any person named in NRS 40.180 and 40.190 shall have the right to apply for and obtain from any district court, or the judge thereof, an order of survey in the following manner: An application shall be made by filing the affidavit of the person making the application, which affidavit shall state, as near as can be described, the location of the mine or mines of the parties complained of, and as far as known, the names of such parties; also, the location of the mine or mines of the party making such application, and that the party has reason to believe, and does believe, that the parties complained of, their agent, or employees, are or have been trespassing upon the mine or mines of the party complaining, or are working their mine in such manner as to damage or endanger the property of the affiant.

2. Upon the filing of the affidavit as prescribed in subsection 1, the court or judge shall cause a notice to be given to the party complained of, or the agent thereof, which notice shall state the time, place, and before whom the application

will be heard, and shall cite the party to appear in not less than 5 nor more than 10 days from the date thereof, to show cause why an order of survey should not be granted; and upon good cause shown, the court or judge shall grant such order, directed to some competent surveyor or surveyors, or to some competent mechanics, or miners, or both, as the case may be, who shall proceed to make the necessary examination as directed by the court and report the result and conclusions to the court, which report shall be filed with the clerk of the court.

3. The costs of the order and survey shall be paid by the persons making the application, unless such parties shall subsequently maintain an action and recover damages, as provided for in NRS 40.180, by reason of a trespass or damage done or threatened prior to such survey or examination having been made, and in that case, such costs shall be taxed against the defendant as other costs in the suit.

4. The parties obtaining such survey shall be liable for any unnecessary injury done to the property in the making of such survey.

[1911 CPA § 569; RL § 5511; NCL § 9058]

**NRS 40.210 Order allowing party to survey and measure land in dispute; contents and service of order; liability for unnecessary injury.**

1. The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, may, on motion, upon notice by either party for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

2. The order shall describe the property; a copy thereof shall be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make such survey and measurements; but if any unnecessary injury be done to the property the party shall be liable therefor.

[1911 CPA § 570; RL § 5512; NCL § 9059] + [1911 CPA § 571; RL § 5513; NCL § 9060]

## SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY, RECREATIONAL VEHICLE OR MOBILE HOME

**NRS 40.215 Definitions.** As used in NRS 40.215 to 40.425, inclusive, unless the context requires otherwise:

1. "Mobile home" means every vehicle, including equipment, which is constructed, reconstructed or added to in such a way as to have an enclosed room or addition occupied by one or more persons as a dwelling or sleeping place and which has no foundation other than wheels, jacks, skirting or other temporary support.

2. "Mobile home lot" means a portion of land within a mobile home park which is rented or held out for rent to accommodate a mobile home.

3. "Mobile home park" or "park" means an area or tract of land where two or more mobile homes or mobile home lots are rented or held out for rent. "Mobile home park" or "park" does not include those areas or tracts of land, whether within or outside of a park, where the lots are held out for rent on a nightly basis.

4. "Premises" includes a mobile home.

5. "Recreational vehicle" means a vehicular structure primarily designed as temporary living quarters for travel, recreational or camping use, which may be self-propelled or mounted upon or drawn by a motor vehicle.

6. "Recreational vehicle lot" means a portion of land within a recreational vehicle park, or a portion of land so designated within a mobile home park, which is rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

7. "Recreational vehicle park" means an area or tract of land where lots are rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

(Added to NRS by 1969, 264; A 1979, 1877; 1981, 2037; 1989, 1081; 1997, 3510)

**NRS 40.220 Entry to be made only when legal and in peaceable manner.** No entry shall be made into any lands, tenements or other possessions but in cases where entry is given by law; and in such cases, only in a peaceable manner, not with strong hand nor with multitude of people.

[1911 CPA § 643; RL § 5585; NCL § 9132]

**NRS 40.230 Forcible entry defined.** Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstance of terror, enters upon or into any real property; or

2. Who, after entering peaceably upon real property, turns out by force, threats or menacing conduct, the party in natural possession.

[1911 CPA § 644; RL § 5586; NCL § 9133]

**NRS 40.240 Forcible detainer defined.** Every person is guilty of a forcible detainer who either:

1. By force, or by menaces or threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

2. Who, in the nighttime, or during the absence of the occupant of any real property, unlawfully enters thereon, and who, after demand made for the surrender thereof, refuses for a period of 3 days to surrender the same to such former occupant. The occupant of real property within the meaning of this subsection is one who, within 5 days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

[1911 CPA § 645; RL § 5587; NCL § 9134]

**NRS 40.250 Unlawful detainer: Possession after expiration of term.** A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to the tenant. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy terminates without notice at the expiration of the specified term or period.

[1911 CPA § 646; A 1917, 31; 1919 RL § 5588; NCL § 9135]—(NRS A 1969, 262, 574; 1973, 1084; 1977, 1344; 1979, 1877; 1985, 227)

**NRS 40.251 Unlawful detainer: Possession of property leased for indefinite time after notice to quit; older person or person with a disability entitled to extension of period of possession upon request.**

1. A tenant of real property, a recreational vehicle or a mobile home for a term less than life is guilty of an unlawful detainer when having leased:

(a) Real property, except as otherwise provided in this section, or a mobile home for an indefinite time, with monthly or other periodic rent reserved, the tenant continues in possession thereof, in person or by subtenant, without the landlord's consent after the expiration of a notice of:

(1) For tenancies from week to week, at least 7 days;

(2) Except as otherwise provided in subsection 2, for all other periodic tenancies, at least 30 days; or

(3) For tenancies at will, at least 5 days.

(b) A dwelling unit subject to the provisions of chapter 118A of NRS, the tenant continues in possession, in person or by subtenant, without the landlord's consent after expiration of:

(1) The term of the rental agreement or its termination and, except as otherwise provided in subparagraph (2), the expiration of a notice of:

(I) At least 7 days for tenancies from week to week; and

(II) Except as otherwise provided in subsection 2, at least 30 days for all other periodic tenancies; or

(2) A notice of at least 5 days where the tenant has failed to perform the tenant's basic or contractual obligations under chapter 118A of NRS.

(c) A mobile home lot subject to the provisions of chapter 118B of NRS, or a lot for a recreational vehicle in an area of a mobile home park other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215, the tenant continues in possession, in person or by subtenant, without the landlord's consent:

(1) After notice has been given pursuant to NRS 118B.115, 118B.170 or 118B.190 and the period of the notice has expired; or

(2) If the person is not a natural person and has received three notices for nonpayment of rent within a 12-month period, immediately upon failure to pay timely rent.

(d) A recreational vehicle lot, the tenant continues in possession, in person or by subtenant, without the landlord's consent, after the expiration of a notice of at least 5 days.

2. Except as otherwise provided in this section, if a tenant with a periodic tenancy pursuant to paragraph (a) or (b) of subsection 1, other than a tenancy from week to week, is 60 years of age or older or has a physical or mental disability, the tenant may request to be allowed to continue in possession for an additional 30 days beyond the time specified in subsection 1 by submitting a written request for an extended period and providing proof of the tenant's age or disability. A landlord may not be required to allow a tenant to continue in possession if a shorter notice is provided pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Any notice provided pursuant to paragraph (a) or (b) of subsection 1 must include a statement advising the tenant of the provisions of subsection 2.

4. If a landlord rejects a request to allow a tenant to continue in possession for an additional 30 days pursuant to subsection 2, the tenant may petition the court for an order to continue in possession for the additional 30 days. If the tenant submits proof to the court that the tenant is entitled to request such an extension, the court may grant the petition and enter an order allowing the tenant to continue in possession for the additional 30 days. If the court denies the petition, the tenant must be allowed to continue in possession for 5 calendar days following the date of entry of the order denying the petition.

(Added to NRS by 1985, 226; A 1989, 1081; 1999, 3195; 2001, 1946; 2003, 2480)

**NRS 40.2512 Unlawful detainer: Possession after default in payment of rent.** A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing, requiring in the alternative the payment of the rent or the surrender of the detained premises, remains uncomplied with for a period of 5 days, or in the case of a mobile home lot, 10 days after service thereof. The notice may be served at any time after the rent becomes due.

(Added to NRS by 1985, 226)

**NRS 40.2514 Unlawful detainer: Assignment or subletting contrary to lease; waste; unlawful business; nuisance; violations of controlled substances laws.** A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant:

1. Assigns or sublets the leased premises contrary to the covenants of the lease;
2. Commits or permits waste thereon;
3. Sets up or carries on therein or thereon any unlawful business;
4. Suffers, permits or maintains on or about the premises any nuisance that consists of conduct or an ongoing condition which constitutes an unreasonable obstruction to the free use of property and causes injury and damage to other tenants or occupants of that property or adjacent buildings or structures; or
5. Violates any of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, therein or thereon,

➥ and remains in possession after service upon the tenant of 3 days' notice to quit.
(Added to NRS by 1985, 226; A 1989, 1232; 2001, 1065; 2003, 561; 2007, 1287)

**NRS 40.2516 Unlawful detainer: Possession after failure to perform conditions of lease; saving lease from forfeiture.** A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those mentioned in NRS 40.250 to 40.252, inclusive, and NRS 40.254, and after notice in writing, requiring in the alternative the performance of the condition or covenant or the surrender of the property, served upon the tenant, and, if there is a subtenant in actual occupation of the premises, also upon the subtenant, remains uncomplied with for 5 days after the service thereof. Within 3 days after the service, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform the condition or covenant and thereby save the lease from forfeiture; but if the covenants and conditions of the lease, violated by the lessee, cannot afterwards be performed, then no notice need be given.
(Added to NRS by 1985, 226)

**NRS 40.252 Unlawful detainer: Contractual provisions void if contrary to specified periods of notice; notice to quit or surrender by colessor is valid unless showing other colessors did not authorize notice.** For the purposes of NRS 40.250 to 40.252, inclusive, and NRS 40.254:
1. It is unlawful for a landlord to attempt by contract or other agreement to shorten the specified periods of notice and any such contract or agreement is void.
2. Notice to quit or surrender the premises which was given by one colessor of real property or a mobile home is valid unless it is affirmatively shown that one or more of the other colessors did not authorize the giving of the notice.
(Added to NRS by 1985, 227)

**NRS 40.253 Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant for default in payment of rent.**
1. Except as otherwise provided in subsection 10, in addition to the remedy provided in NRS 40.2512 and 40.290 to 40.420, inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or the landlord's agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:
(a) At or before noon of the fifth full day following the day of service; or
(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.
➥ As used in this subsection, "day of service" means the day the landlord or the landlord's agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.
2. A landlord or the landlord's agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice cannot be delivered in person, the landlord or the landlord's agent:
(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and
(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of NRS 40.280. The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when the tenant took possession of the premises, that the landlord or the landlord's agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48 hours after the request for service was made by the landlord or the landlord's agent.
3. A notice served pursuant to subsection 1 or 2 must:
(a) Identify the court that has jurisdiction over the matter; and
(b) Advise the tenant:
(1) Of the tenant's right to contest the matter by filing, within the time specified in subsection 1 for the payment of the rent or surrender of the premises, an affidavit with the court that has jurisdiction over the matter stating that the tenant has tendered payment or is not in default in the payment of the rent;
(2) That if the court determines that the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant, directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order; and
(3) That, pursuant to NRS 118A.390, a tenant may seek relief if a landlord unlawfully removes the tenant from the premises or excludes the tenant by blocking or attempting to block the tenant's entry upon the premises or willfully interrupts or causes or permits the interruption of an essential service required by the rental agreement or chapter 118A of NRS.
4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or the landlord's agent, after receipt of a file-stamped copy of the affidavit which was filed, shall not provide for the nonadmittance of the tenant to the premises by locking or otherwise.
5. Upon noncompliance with the notice:

(a) The landlord or the landlord's agent may apply by affidavit of complaint for eviction to the justice court of the township in which the dwelling, apartment, mobile home, recreational vehicle or commercial premises are located or to the district court of the county in which the dwelling, apartment, mobile home, recreational vehicle or commercial premises are located, whichever has jurisdiction over the matter. The court may thereupon issue an order directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order. The affidavit must state or contain:

(1) The date the tenancy commenced.

(2) The amount of periodic rent reserved.

(3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.

(4) The date the rental payments became delinquent.

(5) The length of time the tenant has remained in possession without paying rent.

(6) The amount of rent claimed due and delinquent.

(7) A statement that the written notice was served on the tenant in accordance with NRS 40.280.

(8) A copy of the written notice served on the tenant.

(9) A copy of the signed written rental agreement, if any.

(b) Except when the tenant has timely filed the affidavit described in subsection 3 and a file-stamped copy of it has been received by the landlord or the landlord's agent, and except when the landlord is prohibited pursuant to NRS 118A.480, the landlord or the landlord's agent may, in a peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the justice court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. If the court determines that there is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive. The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which the tenant may be entitled. If the alleged unlawful detainer was based upon subsection 5 of NRS 40.2514, the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with NRS 40.251.

7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to NRS 118A.460 or 118C.230 for the inventory, moving and storage of personal property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

(a) The tenant has vacated or been removed from the premises; and

(b) A copy of those charges has been requested by or provided to the tenant,

➥ whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

(a) Determine the costs, if any, claimed by the landlord pursuant to NRS 118A.460 or 118C.230 and any accumulating daily costs; and

(b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or the landlord's agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in NRS 118A.240.

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215.

(Added to NRS by 1967, 195; A 1969, 263, 575; 1973, 1085; 1975, 1202; 1977, 418, 1346; 1979, 1398, 1879; 1985, 229; 1987, 1239; 1989, 1082, 1232; 1991, 113; 1995, 1851; 1997, 3511; 1999, 981; 2009, 1966; 2011, 235, 1489; 2013, 2941)

**NRS 40.254 Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant from certain types of property.** Except as otherwise provided by specific statute, in addition to the remedy provided in NRS 40.251 and in NRS 40.290 to 40.420, inclusive, when the tenant of a dwelling unit which is subject to the provisions of chapter 118A of NRS, part of a low-rent housing program operated by a public housing authority, a mobile home or a recreational vehicle is guilty of an unlawful detainer, the landlord is entitled to the summary procedures provided in NRS 40.253 except that:

1. Written notice to surrender the premises must:

(a) Be given to the tenant in accordance with the provisions of NRS 40.280;

(b) Advise the tenant of the court that has jurisdiction over the matter; and

(c) Advise the tenant of the tenant's right to contest the notice by filing within 5 days an affidavit with the court that has jurisdiction over the matter that the tenant is not guilty of an unlawful detainer.

2. The affidavit of the landlord or the landlord's agent submitted to the justice court or the district court must contain:

(a) The date when the tenancy commenced, the term of the tenancy, and, if any, a copy of the rental agreement.

(b) The date when the tenancy or rental agreement allegedly terminated.

(c) The date when the tenant became subject to the provisions of NRS 40.251 to 40.2516, inclusive, together with any supporting facts.

(d) The date when the written notice was given, a copy of the notice and a statement that notice was served in accordance with NRS 40.280.

(e) A statement that the claim for relief was authorized by law.

3. If the tenant is found guilty of unlawful detainer as a result of the tenant's violation of any of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, the landlord is entitled to be awarded any reasonable attorney's fees incurred by the landlord or the landlord's agent as a result of a hearing, if any, held pursuant to subsection 6 of NRS 40.253 wherein the tenant contested the eviction.

(Added to NRS by 1985, 227; A 1989, 1084, 1234; 1991, 115; 1995, 1853; 2001, 1065; 2003, 561)

**NRS 40.255 Removal of person holding over after 3-day notice to quit; circumstances authorizing removal; exception and additional notice required for occupying tenants and subtenants of property sold as residential foreclosure.**

1. Except as otherwise provided in subsections 2 and 7, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon the person may be removed as prescribed in NRS 40.290 to 40.420, inclusive:

(a) Where the property or mobile home has been sold under an execution against the person, or against another person under whom the person claims, and the title under the sale has been perfected;

(b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by the person, or by another person under whom the person claims, and the title under the sale has been perfected;

(c) Where the property or mobile home has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by the person, or by another person under whom the person claims, and the title under such sale has been perfected; or

(d) Where the property or mobile home has been sold by the person, or by another person under whom the person claims, and the title under the sale has been perfected.

2. If the property has been sold as a residential foreclosure, a tenant or subtenant in actual occupation of the premises, other than a person whose name appears on the mortgage or deed, who holds over and continues in possession of real property or a mobile home in any of the cases described in paragraph (b) or (c) of subsection 1 may be removed as prescribed in NRS 40.290 to 40.420, inclusive, after receiving a notice of the change of ownership of the real property or mobile home and after the expiration of a notice period beginning on the date the notice was received by the tenant or subtenant and expiring:

(a) For all periodic tenancies with a period of less than 1 month, after not less than the number of days in the period; and

(b) For all other periodic tenancies or tenancies at will, after not less than 60 days.

3. During the notice period described in subsection 2:

(a) The new owner has the rights, obligations and liabilities of the previous owner or landlord pursuant to chapter 118A of NRS under the lease or rental agreement which the previous owner or landlord entered into with the tenant or subtenant regarding the property; and

(b) The tenant or subtenant continues to have the rights, obligations and liabilities that the tenant or subtenant had pursuant to chapter 118A of NRS under the lease or rental agreement which the tenant or subtenant entered into with the previous owner or landlord regarding the property.

4. The notice described in subsection 2 must contain a statement:

(a) Providing the contact information of the new owner to whom rent should be remitted;

(b) Notifying the tenant or subtenant that the lease or rental agreement the tenant or subtenant entered into with the previous owner or landlord of the property continues in effect through the notice period described in subsection 2; and

(c) Notifying the tenant or subtenant that failure to pay rent to the new owner or comply with any other term of the agreement or applicable law constitutes a breach of the lease or rental agreement and may result in eviction proceedings.

5. If the property has been sold as a residential foreclosure in any of the cases described in paragraph (b) or (c) of subsection 1, no person may enter a record of eviction for a tenant or subtenant who vacates a property during the notice period described in subsection 2.

6. If the property has been sold as a residential foreclosure in any of the cases described in paragraphs (b) or (c) of subsection 1, nothing in this section shall be deemed to prohibit:

(a) The tenant from vacating the property at any time before the expiration of the notice period described in subsection 2 without any obligation to the new owner of a property purchased pursuant to a foreclosure sale or trustee's sale; or

(b) The new owner of a property purchased pursuant to a foreclosure sale or trustee's sale from:

(1) Negotiating a new purchase, lease or rental agreement with the tenant or subtenant; or

(2) Offering a payment to the tenant or subtenant in exchange for vacating the premises on a date earlier than the expiration of the notice period described in subsection 2.

7. This section does not apply to the tenant of a mobile home lot in a mobile home park.

8. As used in this section, "residential foreclosure" means the sale of a single family residence pursuant to NRS 40.430 or under a power of sale granted by NRS 107.080. As used in this subsection, "single family residence" means a structure that is comprised of not more than four units.

(Added to NRS by 1961, 412; A 1969, 263; 1979, 1880; 2009, 2784)

**NRS 40.260 Tenant of agricultural lands may hold over if not notified.** In all cases of tenancy upon agricultural land where the tenant has held over and retained possession for more than 60 days after the expiration of the tenant's term, without any demand of possession or notice to quit by the landlord, or the successor in estate of the landlord, if any there be, the tenant shall be deemed to be holding by permission of the landlord, or the successor in the estate of the landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during the year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of the tenant to hold for another year.

[1911 CPA § 647; RL § 5589; NCL § 9136]

**NRS 40.270 Tenant has similar remedies against subtenant.** A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to any subtenant in case of the subtenant's unlawful detention of the premises let by the tenant to the subtenant.

[1911 CPA § 648; RL § 5590; NCL § 9137]

**NRS 40.280 Service of notices to quit; proof required before issuance of order to remove.**

1. Except as otherwise provided in NRS 40.253, the notices required by NRS 40.251 to 40.260, inclusive, may be served:

(a) By delivering a copy to the tenant personally, in the presence of a witness;

(b) If the tenant is absent from the tenant's place of residence or from the tenant's usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the tenant's place of residence or place of business; or

(c) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the leased property, delivering a copy to a person there residing, if the person can be found, and mailing a copy to the tenant at the place where the leased property is situated.

2. Service upon a subtenant may be made in the same manner as provided in subsection 1.

3. Before an order to remove a tenant is issued pursuant to subsection 5 of NRS 40.253, a landlord shall file with the court a proof of service of any notice required by that section. Before a person may be removed as prescribed in NRS 40.290 to 40.420, inclusive, a landlord shall file with the court proof of service of any notice required pursuant to NRS 40.255. Except as otherwise provided in subsection 4, this proof must consist of:

(a) A statement, signed by the tenant and a witness, acknowledging that the tenant received the notice on a specified date;

(b) A certificate of mailing issued by the United States Postal Service; or

(c) The endorsement of a sheriff, constable or other process server stating the time and manner of service.

4. If service of the notice was not delivered in person to a tenant whose rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, proof of service must include:

(a) A certificate of mailing issued by the United States Postal Service or by a private postal service to the landlord or the landlord's agent; or

(b) The endorsement of a sheriff or constable stating the:

(1) Time and date the request for service was made by the landlord or the landlord's agent;

(2) Time, date and manner of the service; and

(3) Fees paid for the service.

[1911 CPA § 649; RL § 5591; NCL § 9138]—(NRS A 1961, 413; 1967, 196; 1985, 231, 1418; 1987, 701; 1995, 1854; 2007, 1287; 2009, 2786)

**NRS 40.290 Parties defendant; persons bound by judgment.** No person other than the tenant of the premises and the subtenant, if there be one, in actual occupation of the premises when the action is commenced, need be made parties defendant in the proceeding, nor shall any proceeding abate nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made a party defendant; but when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against the party. In case a person has become subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action.

[1911 CPA § 650; RL § 5592; NCL § 9139]

**NRS 40.300 Contents of complaint; issuance and service of summons; temporary writ of restitution; notice, hearing and bond.**

1. The plaintiff in his or her complaint, which shall be in writing, must set forth the facts on which the plaintiff seeks to recover, and describe the premises with reasonable certainty and may set forth therein any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises or both. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent.

2. The summons shall be issued and served as in other cases, but the court, judge or justice of the peace may shorten the time within which the defendant shall be required to appear and defend the action, in which case the officer or person serving the summons shall change the prescribed form thereof to conform to the time of service as ordered; but where publication is necessary the court shall direct publication for a period of not less than 1 week.

3. At any time after the filing of the complaint and issuance of summons, the court, upon application therefor, may issue a temporary writ of restitution; provided:

(a) That the temporary writ of restitution shall not issue ex parte but only after the issuance and service of an order to show cause why a temporary writ of restitution shall not be issued and after the defendant has been given an opportunity to oppose the issuance of the temporary writ of restitution.

(b) That the temporary writ of restitution shall not issue until the court has had an opportunity to ascertain the facts sufficiently to enable it to estimate the probable loss to the defendant and fix the amount of a bond to indemnify the party or parties against whom the temporary writ may be issued.

(c) That the temporary writ of restitution shall not issue until there has been filed with the approval of the court a good and sufficient bond of indemnification in the amount fixed by the court.

[1911 CPA § 651; A 1939, 171; 1951, 251]

**NRS 40.310 Issue of fact to be tried by jury if proper demand made.** Whenever an issue of fact is presented by the pleadings, it shall be tried by a jury, if proper demand is made pursuant to the Nevada Rules of Civil Procedure or the Justice Court Rules of Civil Procedure.

[1911 CPA § 652; RL § 5594; NCL § 9141]—(NRS A 1975, 1203)

**NRS 40.320 Proof required of plaintiff and defendant on trial.**

1. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that the plaintiff was peaceably in the actual possession at the time of the forcible entry, or was entitled to possession at the time of the forcible detainer.

2. The defendant may show in defense that the defendant or the defendant's ancestors, or those whose interest in such premises the defendant claims, have been in the quiet possession thereof for the space of 1 whole year together next before the commencement of the proceedings, and that the defendant's interest therein is not then ended or determined, and such showing is a bar to the proceedings.

[1911 CPA § 653; RL § 5595; NCL § 9142]

**NRS 40.330 Amendment of complaint to conform to proof; continuance.** When, upon the trial of any proceeding under NRS 40.220 to 40.420, inclusive, it appears from the evidence that the defendant has been guilty of either a forcible entry or forcible or unlawful detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance must be permitted upon account of such amendment, unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

[1911 CPA § 654; RL § 5596; NCL § 9143]

**NRS 40.340 Adjournments.** The court or justice of the peace may for good cause shown adjourn the trial of any cause under NRS 40.220 to 40.420, inclusive, not exceeding 5 days; and when the defendant, or the defendant's agent or attorney, shall make oath that the defendant cannot safely proceed to trial for want of some material witness, naming that witness, stating the evidence that the defendant expects to obtain, showing that the defendant has used due diligence to obtain such witness and believes that if an adjournment be allowed the defendant will be able to procure the attendance of such witness, or the witness's deposition, in time to produce the same upon the trial, in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the court or justice of the peace shall adjourn the cause for such reasonable time as may appear necessary, not exceeding 30 days.

[1911 CPA § 655; RL § 5597; NCL § 9144]

**NRS 40.350 Trial not to be adjourned when complainant admits evidence in affidavit would be given.** If the complainant admit that the evidence stated in the affidavit mentioned in NRS 40.340 would be given by such witness, and agree that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be adjourned.

[1911 CPA § 656; RL § 5598; NCL § 9145]

**NRS 40.360 Judgment; damages; execution and enforcement.**

1. Judgment. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and, if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

2. Damages. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, and any amount found due the plaintiff by reason of waste of the premises by the defendant during the tenancy, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for the rent and for three times the amount of the damages thus assessed.

3. Execution and enforcement. When the proceeding is for an unlawful detainer after default in the payment of the rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant be restored to the tenant's estate; but, if payment, as herein provided, be not made within the 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

[1911 CPA § 657; RL § 5599; NCL § 9146]

**NRS 40.370 Verification of complaint and answer.** The complaint and answer must be verified.

[1911 CPA § 658; RL § 5600; NCL § 9147]

**NRS 40.380 Provisions governing appeals.** Either party may, within 10 days, appeal from the judgment rendered. But an appeal by the defendant shall not stay the execution of the judgment, unless, within the 10 days, the defendant shall execute and file with the court or justice the defendant's undertaking to the plaintiff, with two or more sureties, in an amount to be fixed by the court or justice, but which shall not be less than twice the amount of the judgment and costs, to the effect that, if the judgment appealed from be affirmed or the appeal be dismissed, the appellant will pay the judgment and the cost of appeal, the value of the use and occupation of the property, and damages justly accruing to the plaintiff during the pendency of the appeal. Upon taking the appeal and filing the undertaking, all further proceedings in the case shall be stayed.

[1911 CPA § 659; RL § 5601; NCL § 9148]

**NRS 40.385 Stay of execution upon appeal; duty of tenant who retains possession of premises to pay rent during stay.** Upon an appeal from an order entered pursuant to NRS 40.253:

1. Except as otherwise provided in this subsection, a stay of execution may be obtained by filing with the trial court a bond in the amount of $250 to cover the expected costs on appeal. A surety upon the bond submits to the jurisdiction of the appellate court and irrevocably appoints the clerk of that court as the surety's agent upon whom papers affecting the surety's liability upon the bond may be served. Liability of a surety may be enforced, or the bond may be released, on motion in the appellate court without independent action. A tenant of commercial property may obtain a stay of execution only upon the issuance of a stay pursuant to Rule 8 of the Nevada Rules of Appellate Procedure and the posting of a supersedeas bond in the amount of 100 percent of the unpaid rent claim of the landlord.

2. A tenant who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due. If the tenant fails to pay such rent, the landlord may initiate new proceedings for a summary eviction by serving the tenant with a new notice pursuant to NRS 40.253.

(Added to NRS by 1997, 3510; A 2011, 1492)

**NRS 40.390 Appellate court not to dismiss or quash proceedings for want of form.** In all cases of appeal under NRS 40.220 to 40.420, inclusive, the appellate court shall not dismiss or quash the proceedings for want of form, provided the proceedings have been conducted substantially according to the provisions of NRS 40.220 to 40.420, inclusive; and amendments to the complaint, answer or summons, in matters of form only, may be allowed by the court at any time before final judgment upon such terms as may be just; and all matters of excuse, justification or avoidance of the allegations in the complaint may be given in evidence under the answer.

[1911 CPA § 660; RL § 5602; NCL § 9149]

**NRS 40.400 Rules of practice.** The provisions of NRS, Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relative to civil actions, appeals and new trials, so far as they are not inconsistent with the provisions of NRS 40.220 to 40.420, inclusive, apply to the proceedings mentioned in those sections.

[1911 CPA § 661; RL § 5603; NCL § 9150]

**NRS 40.420 Form of writ of restitution; execution.**

1. The writ of restitution issued by a justice of the peace must be substantially in the following form:

> The State of Nevada to the sheriff or constable of the county of ....., greeting: Whereas, A.B., of the county of ....., at a court of inquiry of an unlawful holding over of (lands) (tenements) (a mobile home), and other possessions, held at my office (stating the place), in the county aforesaid, on the ..... day of ....., A.D. ....., before me, a justice of the peace for the county aforesaid, by the consideration of the court, has recovered judgment against C.D., to have restitution of (here describe the premises as in the complaint). You are therefore commanded, that taking with you the force of the county, if necessary, you cause C.D. to be immediately removed from the premises, and A.B. to have peaceable restitution of the premises. You are also commanded that of the goods and chattels of C.D., within said county, which are not exempt from execution, you cause to be made the sum of ..... dollars for the plaintiff, together with the costs of suit endorsed hereon, and make return of this writ within 30 days after this date. Given under my hand, this ..... day of ....., A.D. ..... E.F., justice of the peace.

2. The sheriff or constable shall execute the writ in the same manner as required by the provisions of chapter 21 of NRS for writs of execution.

[1911 CPA § 663; RL § 5605; NCL § 9152]—(NRS A 1969, 264; 1989, 1144)

**NRS 40.425 Notice of execution on writ of restitution.**

1. Execution on the writ of restitution may occur only if the sheriff serves the judgment debtor with notice of the execution and a copy of the writ in the manner described in NRS 21.076. The notice must describe the types of property exempt from execution and explain the procedure for claiming those exemptions. The clerk of the court shall attach the notice to the writ at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be in the form and served in the manner provided for execution on judgments pursuant to NRS 21.075 and 21.076.

(Added to NRS by 1989, 1144)

## ACTIONS FOR FORECLOSURE OF REAL MORTGAGES

**NRS 40.430 Action for recovery of debt secured by mortgage or other lien; "action" defined.**

1. Except in cases where a person proceeds under subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, and except as otherwise provided in NRS 118C.220, there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of NRS 40.430 to 40.459, inclusive. In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in NRS 40.462.

2. This section must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.

3. At any time not later than 5 business days before the date of sale directed by the court, if the deficiency resulting in the action for the recovery of the debt has arisen by failure to make a payment required by the mortgage or other lien, the deficiency may be made good by payment of the deficient sum and by payment of any costs, fees and expenses incident to making the deficiency good. If a deficiency is made good pursuant to this subsection, the sale may not occur.

4. A sale directed by the court pursuant to subsection 1 must be conducted in the same manner as the sale of real property upon execution, by the sheriff of the county in which the encumbered land is situated, and if the encumbered land is situated in two or more counties, the court shall direct the sheriff of one of the counties to conduct the sale with like proceedings and effect as if the whole of the encumbered land were situated in that county.

5. Within 30 days after a sale of property is conducted pursuant to this section, the sheriff who conducted the sale shall record the sale of the property in the office of the county recorder of the county in which the property is located.

6. As used in this section, an "action" does not include any act or proceeding:

(a) To appoint a receiver for, or obtain possession of, any real or personal collateral for the debt or as provided in NRS 32.015.

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property.

(c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the State which does not, except as required under the laws of that jurisdiction, result in a personal judgment against the debtor.

(d) For the recovery of damages arising from the commission of a tort, including a recovery under NRS 40.750, or the recovery of any declaratory or equitable relief.

(e) For the exercise of a power of sale pursuant to NRS 107.080.

(f) For the exercise of any right or remedy authorized by chapter 104 of NRS or by the Uniform Commercial Code as enacted in any other state.

(g) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.

(h) To draw under a letter of credit.

(i) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the mailing of notice to the surety or guarantor pursuant to subsection 1 of NRS 107.095.

(j) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.

(l) For filing a claim pursuant to chapter 147 of NRS or to enforce such a claim which has been disallowed.

(m) Which does not include the collection of the debt or realization of the collateral securing the debt.

(n) Pursuant to NRS 40.507 or 40.508.

(o) Pursuant to an agreement entered into pursuant to NRS 361.7311 between an owner of the property and the assignee of a tax lien against the property, or an action which is authorized by NRS 361.733.

(p) Which is exempted from the provisions of this section by specific statute.

(q) To recover costs of suit, costs and expenses of sale, attorneys' fees and other incidental relief in connection with any action authorized by this subsection.

[1911 CPA § 559; RL § 5501; NCL § 9048]—(NRS A 1965, 915; 1969, 572; 1987, 1345; 1989, 888, 1768; 1993, 151; 2009, 1005, 1329; 2011, 1492; 2013, 1566, 2201)

**NRS 40.433 "Mortgage or other lien" defined.** As used in NRS 40.430 to 40.459, inclusive, unless the context otherwise requires, a "mortgage or other lien" includes a deed of trust, but does not include a lien which arises pursuant to

chapter 108 of NRS, pursuant to an assessment under chapter 116, 117, 119A or 278A of NRS or pursuant to a judgment or decree of any court of competent jurisdiction.

(Added to NRS by 1989, 1767; A 1991, 580; 2013, 2202)

**NRS 40.435 Judicial proceedings in violation of NRS 40.430; provisions of NRS 40.430 as an affirmative defense.**

1. The commencement of or participation in a judicial proceeding in violation of NRS 40.430 does not forfeit any of the rights of a secured creditor in any real or personal collateral, or impair the ability of the creditor to realize upon any real or personal collateral, if the judicial proceeding is:

(a) Stayed or dismissed before entry of a final judgment; or

(b) Converted into an action which does not violate NRS 40.430.

2. If the provisions of NRS 40.430 are timely interposed as an affirmative defense in such a judicial proceeding, upon the motion of any party to the proceeding the court shall:

(a) Dismiss the proceeding without prejudice; or

(b) Grant a continuance and order the amendment of the pleadings to convert the proceeding into an action which does not violate NRS 40.430.

3. The failure to interpose, before the entry of a final judgment, the provisions of NRS 40.430 as an affirmative defense in such a proceeding waives the defense in that proceeding. Such a failure does not affect the validity of the final judgment, but entry of the final judgment releases and discharges the mortgage or other lien.

4. As used in this section, "final judgment" means a judgment which imposes personal liability on the debtor for the payment of money and which may be appealed under the Nevada Rules of Appellate Procedure.

(Added to NRS by 1989, 1767)

**NRS 40.437 Additional requirements for action affecting owner-occupied housing: Notice; form; election of mediation; rules concerning mediation; applicability.**

1. If a civil action for a foreclosure sale pursuant to NRS 40.430 affecting owner-occupied housing is commenced in a court of competent jurisdiction:

(a) The copy of the complaint served on the mortgagor must include a separate document containing:

(1) Contact information which the mortgagor may use to reach a person with authority to negotiate a loan modification on behalf of the plaintiff;

(2) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(3) A notice provided by the Mediation Administrator indicating that the mortgagor has the right to seek mediation pursuant to this section; and

(4) A form upon which the mortgagor may indicate an election to enter into mediation or to waive mediation pursuant to this section and one envelope addressed to the plaintiff and one envelope addressed to the Mediation Administrator, which the mortgagor may use to comply with the provisions of subsection 2; and

(b) The plaintiff must submit a copy of the complaint to the Mediation Administrator.

2. The mortgagor shall, not later than the date on which an answer to the complaint is due, complete the form required by subparagraph (4) of paragraph (a) of subsection 1 and file the form with the court and return a copy of the form to the plaintiff by certified mail, return receipt requested. If the mortgagor indicates on the form an election to enter into mediation, the plaintiff shall notify any person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the election of the mortgagor to enter into mediation and file the form with the Mediation Administrator, who shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. The judicial foreclosure action must be stayed until the completion of the mediation. If the mortgagor indicates on the form an election to waive mediation or fails to file the form with the court and return a copy of the form to the plaintiff as required by this subsection, no mediation is required in the action.

3. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 11 of NRS 107.086. The plaintiff or a representative, and the mortgagor or his or her representative, shall attend the mediation. If the plaintiff is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the plaintiff or have access at all times during the mediation to a person with such authority.

4. If the plaintiff or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not have the authority or access to a person with the authority required by subsection 3, the mediator shall prepare and submit to the Mediation Administrator and the court a petition and recommendation concerning the imposition of sanctions against the plaintiff or the representative. The court may issue an order imposing such sanctions against the plaintiff or the representative as the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

5. If the mortgagor elected to enter into mediation and fails to attend the mediation, no mediation is required and the judicial foreclosure action must proceed as if the mortgagor had not elected to enter into mediation.

6. If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the court and the Mediation Administrator a recommendation that the mediation be terminated. The court may terminate the mediation and proceed with the judicial foreclosure action.

7. The rules adopted by the Supreme Court pursuant to subsection 11 of NRS 107.086 apply to a mediation conducted pursuant to this section, and the Supreme Court may adopt any additional rules necessary to carry out the provisions of this section.

8. Except as otherwise provided in subsection 10, the provisions of this section do not apply if:

(a) The mortgagor has surrendered the property, as evidenced by a letter confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust or the mortgagee, or an authorized agent thereof; or

(b) A petition in bankruptcy has been filed with respect to the defendant under 11 U.S.C. Chapter 7, 11, 12 or 13 and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

9. A noncommercial lender is not excluded from the application of this section.

10. The Mediation Administrator and each mediator who acts pursuant to this section in good faith and without gross negligence are immune from civil liability for those acts.

11. As used in this section:

(a) "Mediation Administrator" has the meaning ascribed to it in NRS 107.086.

(b) "Noncommercial lender" has the meaning ascribed to it in NRS 107.086.

(c) "Owner-occupied housing" has the meaning ascribed to it in NRS 107.086.

(Added to NRS by 2013, 2199)

**NRS 40.440 Disposition of surplus money.** If there is surplus money remaining after payment of the amount due on the mortgage or other lien, with costs, the court may cause the same to be paid to the person entitled to it pursuant to NRS 40.462, and in the meantime may direct it to be deposited in court.

[1911 CPA § 560; RL § 5502; NCL § 9049]—(NRS A 1989, 888, 1769)

**NRS 40.450 Proceedings when debt secured falls due at different times.** If the debt for which the mortgage or other lien on real property is held is not all due, as soon as a sufficient amount of the property has been sold to pay the amount due, with costs, the sale shall cease. Afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. However, if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, with a rebate of interest where such a rebate is proper.

[1911 CPA § 561; RL § 5503; NCL § 9050]—(NRS A 1989, 1769)

## FORECLOSURE SALES AND DEFICIENCY JUDGMENTS

**NRS 40.451 "Indebtedness" defined.** As used in NRS 40.451 to 40.463, inclusive, "indebtedness" means the principal balance of the obligation secured by a mortgage or other lien on real property, together with all interest accrued and unpaid prior to the time of foreclosure sale, all costs and fees of such a sale, all advances made with respect to the property by the beneficiary, and all other amounts secured by the mortgage or other lien on the real property in favor of the person seeking the deficiency judgment. Such amount constituting a lien is limited to the amount of the consideration paid by the lienholder.

(Added to NRS by 1969, 572; A 1989, 1769)

**NRS 40.453 Waiver of rights in documents relating to sale of real property against public policy and unenforceable; exception.** Except as otherwise provided in NRS 40.495:

1. It is hereby declared by the Legislature to be against public policy for any document relating to the sale of real property to contain any provision whereby a mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness secured thereby, waives any right secured to the person by the laws of this state.

2. A court shall not enforce any such provision.

(Added to NRS by 1969, 573; A 1973, 911; 1985, 371; 1987, 1643; 1993, 152)

**NRS 40.455 Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust; exceptions.**

1. Except as otherwise provided in subsection 3, upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee's sale held pursuant to NRS 107.080, respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

2. If the indebtedness is secured by more than one parcel of real property, more than one interest in the real property or more than one mortgage or deed of trust, the 6-month period begins to run after the date of the foreclosure sale or trustee's sale of the last parcel or other interest in the real property securing the indebtedness, but in no event may the application be filed more than 2 years after the initial foreclosure sale or trustee's sale.

3. If the judgment creditor or the beneficiary of the deed of trust is a financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust, even if there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust, if:

(a) The real property is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or trustee's sale;

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust; and

(d) The debtor or grantor did not refinance the mortgage or deed of trust after securing it.

4. As used in this section, "financial institution" has the meaning ascribed to it in NRS 363A.050.

(Added to NRS by 1969, 573; A 1979, 450; 1985, 371; 1987, 1345; 2009, 1330)

**NRS 40.457 Hearing before award of deficiency judgment; appraisal of property sold.**

1. Before awarding a deficiency judgment under NRS 40.455, the court shall hold a hearing and shall take evidence presented by either party concerning the fair market value of the property sold as of the date of foreclosure sale or trustee's sale. Notice of such hearing shall be served upon all defendants who have appeared in the action and against whom a deficiency judgment is sought, or upon their attorneys of record, at least 15 days before the date set for hearing.

2. Upon application of any party made at least 10 days before the date set for the hearing the court shall, or upon its own motion the court may, appoint an appraiser to appraise the property sold as of the date of foreclosure sale or trustee's sale. Such appraiser shall file with the clerk the appraisal, which is admissible in evidence. The appraiser shall take an oath that the appraiser has truly, honestly and impartially appraised the property to the best of the appraiser's knowledge and ability. Any appraiser so appointed may be called and examined as a witness by any party or by the court. The court shall fix a reasonable compensation for the appraiser, but the appraiser's fee shall not exceed similar fees for similar services in the county where the encumbered land is situated.

(Added to NRS by 1969, 573)

**NRS 40.458 Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust prohibited under certain circumstances.**

1. If the judgment creditor or the beneficiary of the deed of trust who applies for a deficiency judgment is a banking or other financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if:

(a) The real property is a single-family dwelling and the debtor or the grantor of the deed of trust was the owner of the real property at the time of the sale in lieu of a foreclosure sale;

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust;

(d) The debtor or grantor and the banking or other financial institution entered into an agreement to sell the real property secured by the mortgage or deed of trust to a third party for an amount less than the indebtedness secured thereby; and

(e) The agreement entered into pursuant to paragraph (d):

(1) Does not state the amount of money still owed to the banking or other financial institution by the debtor or grantor or does not authorize the banking or other financial institution to recover that amount from the debtor or grantor; and

(2) Contains a conspicuous statement that has been acknowledged by the signature of the banking or other financial institution and the debtor or grantor which provides that the banking or other financial institution has waived its right to recover the amount owed by the debtor or grantor and which sets forth the amount of recovery that is being waived.

2. As used in this section:

(a) "Banking or other financial institution" means any bank, savings and loan association, savings bank, thrift company, credit union or other financial institution that is licensed, registered or otherwise authorized to do business in this State.

(b) "Sale in lieu of a foreclosure sale" means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of foreclosure.

(Added to NRS by 2011, 2051; A 2013, 1016)

**NRS 40.459 Limitations on amount of money judgment.**

1. After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

(a) The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale;

(b) The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale; or

(c) If the person seeking the judgment acquired the right to obtain the judgment from a person who previously held that right, the amount by which the amount of the consideration paid for that right exceeds the fair market value of the property sold at the time of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs,

➥ whichever is the lesser amount.

2. For the purposes of this section, the "amount of the indebtedness" does not include any amount received by, or payable to, the judgment creditor or beneficiary of the deed of trust pursuant to an insurance policy to compensate the judgment creditor or beneficiary for any losses incurred with respect to the property or the default on the debt.

(Added to NRS by 1969, 573; A 1985, 371; 1987, 1644; 1989, 1770; 1993, 152; 2011, 1743)

**NRS 40.462 Distribution of proceeds of foreclosure sale.**

1. Except as otherwise provided by specific statute, this section governs the distribution of the proceeds of a foreclosure sale. The provisions of NRS 40.455, 40.457 and 40.459 do not affect the right to receive those proceeds, which vests at the time of the foreclosure sale. The purchase of any interest in the property at the foreclosure sale, and the subsequent disposition of the property, does not affect the right of the purchaser to the distribution of proceeds pursuant to

paragraph (c) of subsection 2 of this section, or to obtain a deficiency judgment pursuant to NRS 40.455, 40.457 and 40.459.

2. The proceeds of a foreclosure sale must be distributed in the following order of priority:

(a) Payment of the reasonable expenses of taking possession, maintaining, protecting and leasing the property, the costs and fees of the foreclosure sale, including reasonable trustee's fees, applicable taxes and the cost of title insurance and, to the extent provided in the legally enforceable terms of the mortgage or lien, any advances, reasonable attorney's fees and other legal expenses incurred by the foreclosing creditor and the person conducting the foreclosure sale.

(b) Satisfaction of the obligation being enforced by the foreclosure sale.

(c) Satisfaction of obligations secured by any junior mortgages or liens on the property, in their order of priority.

(d) Payment of the balance of the proceeds, if any, to the debtor or the debtor's successor in interest.

➥ If there are conflicting claims to any portion of the proceeds, the person conducting the foreclosure sale is not required to distribute that portion of the proceeds until the validity of the conflicting claims is determined through interpleader or otherwise to the person's satisfaction.

3. A person who claims a right to receive the proceeds of a foreclosure sale pursuant to paragraph (c) of subsection 2 must, upon the written demand of the person conducting the foreclosure sale, provide:

(a) Proof of the obligation upon which the claimant claims a right to the proceeds; and

(b) Proof of the claimant's interest in the mortgage or lien, unless that proof appears in the official records of a county in which the property is located.

➥ Such a demand is effective upon personal delivery or upon mailing by registered or certified mail, return receipt requested, to the last known address of the claimant. Failure of a claimant to provide the required proof within 15 days after the effective date of the demand waives the claimant's right to receive those proceeds.

4. As used in this section, "foreclosure sale" means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee's power of sale pursuant to NRS 107.080.

(Added to NRS by 1989, 887)

**NRS 40.463 Agreement for assistance in recovering proceeds of foreclosure sale due to debtor or successor in interest; requirements for enforceable agreement; fee must be reasonable.**

1. Except as otherwise provided in this section, a debtor or the debtor's successor in interest may enter into an agreement with a third party that provides for the third party to assist in the recovery of any balance of the proceeds of a foreclosure sale due to the debtor or the debtor's successor in interest pursuant to paragraph (d) of subsection 2 of NRS 40.462.

2. An agreement pursuant to subsection 1:

(a) Must:

(1) Be in writing;

(2) Be signed by the debtor or the debtor's successor in interest; and

(3) Contain an acknowledgment of the signature of the debtor or the debtor's successor in interest by a notary public; and

(b) May not be entered into less than 30 days after the date on which the foreclosure sale was conducted.

3. Any agreement entered into pursuant to this section that does not comply with subsection 2 is void and unenforceable.

4. Any fee charged by a third party for services provided pursuant to an agreement entered into pursuant to this section must be reasonable. A fee that exceeds $2,500, excluding attorney's fees and costs, is presumed to be unreasonable. A court shall not enforce an obligation to pay any unreasonable fee, but may require a debtor to pay a reasonable fee that is less than the amount set forth in the agreement.

5. A third party may apply to the court for permission to charge a fee that exceeds $2,500. Any third party applying to the court pursuant to this subsection has the burden of establishing to the court that the fee is reasonable.

6. This section does not preclude a debtor or the debtor's successor in interest from contesting the reasonableness of any fee set forth in an agreement entered into pursuant to this section.

7. As used in this section:

(a) "Creditor" means a person due an obligation being enforced by a foreclosure sale conducted pursuant to NRS 40.451 to 40.463, inclusive.

(b) "Debtor" means a person, or the successor in interest of a person, who owes an obligation being enforced by a foreclosure sale conducted pursuant to NRS 40.451 to 40.463, inclusive.

(c) "Third party" means a person who is neither the debtor nor the creditor of a particular obligation being enforced by a foreclosure sale conducted pursuant to NRS 40.451 to 40.463, inclusive.

(Added to NRS by 2007, 107)

## ACTIONS BY HOLDERS OF JUNIOR REAL MORTGAGES AFTER FORECLOSURE SALES

**NRS 40.4631 Definitions.** As used in NRS 40.4631 to 40.4639, inclusive, unless the context otherwise requires, the words and terms defined in NRS 40.4632, 40.4633 and 40.4634 have the meanings ascribed to them in those sections.

(Added to NRS by 2011, 1742)

**NRS 40.4632 "Foreclosure sale" defined.** "Foreclosure sale" has the meaning ascribed to it in NRS 40.462.

(Added to NRS by 2011, 1742)

**NRS 40.4633 "Mortgage or other lien" defined.** "Mortgage or other lien" has the meaning ascribed to it in NRS 40.433.

(Added to NRS by 2011, 1742)

**NRS 40.4634 "Sale in lieu of a foreclosure sale" defined.** "Sale in lieu of a foreclosure sale" means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of a foreclosure sale.

(Added to NRS by 2011, 1742)

**NRS 40.4636 Limitations on amount of money judgment.**

1. If a person to whom an obligation secured by a junior mortgage or lien on real property is owed:

(a) Files a civil action to obtain a money judgment against the debtor under that obligation after a foreclosure sale or a sale in lieu of a foreclosure sale; and

(b) Such action is not barred by NRS 40.430,

➥ in determining the amount owed by the debtor, the court shall not include the amount of any proceeds received by, or payable to, the person pursuant to an insurance policy to compensate the person for losses incurred with respect to the property or the default on the obligation.

2. If:

(a) A person acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from a person who previously held that right;

(b) The person files a civil action to obtain a money judgment against the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale; and

(c) Such action is not barred by NRS 40.430,

➥ the court shall not render judgment for more than the amount of the consideration paid for that right, plus interest from the date on which the person acquired the right and reasonable costs.

3. As used in this section, "obligation secured by a junior mortgage or lien on real property" includes, without limitation, an obligation which is not currently secured by a mortgage or lien on real property if the obligation:

(a) Is incurred by the debtor under an obligation which was secured by a mortgage or lien on real property; and

(b) Has the effect of reaffirming the obligation which was secured by a mortgage or lien on real property.

(Added to NRS by 2011, 1742)

**NRS 40.4638 Circumstances under which action to enforce obligation is prohibited.**

1. A person to whom an obligation secured by a junior mortgage or lien on real property is owed may not bring any action to enforce that obligation after a foreclosure sale of the real property which secured that obligation or a sale in lieu of a foreclosure sale if:

(a) The person is a financial institution;

(b) The real property which secured the obligation is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or sale in lieu of a foreclosure sale;

(c) The debtor or grantor used the amount of the obligation to purchase the real property;

(d) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the obligation; and

(e) The debtor or grantor did not refinance the obligation after securing it.

2. As used in this section, "financial institution" has the meaning ascribed to it in NRS 363A.050.

(Added to NRS by 2011, 1743)

**NRS 40.4639 Period of limitation on commencement of civil action.** A civil action not barred by NRS 40.430 or 40.4638 by a person to whom an obligation secured by a junior mortgage or lien on real property is owed to obtain a money judgment against the debtor after a foreclosure sale of the real property or a sale in lieu of a foreclosure sale may only be commenced within 6 months after the date of the foreclosure sale or sale in lieu of a foreclosure.

(Added to NRS by 2011, 1743)

## MAINTENANCE OF PROPERTY ACQUIRED AT FORECLOSURE SALE

**NRS 40.464 Duty to maintain vacant residential property acquired at foreclosure sale; notice of violation; proceedings for enforcement; civil penalties.**

1. Any vacant residential property purchased or acquired by a person at a foreclosure sale pursuant to NRS 40.430 must be maintained by that person in accordance with subsection 2.

2. In addition to complying with any other ordinance or rule as required by the applicable governmental entity, the purchaser shall care for the exterior of the property, including, without limitation:

(a) Limiting the excessive growth of foliage which would otherwise diminish the value of that property or of the surrounding properties;

(b) Preventing trespassers from remaining on the property;

(c) Preventing mosquito larvae from growing in standing water; and

(d) Preventing any other condition that creates a public nuisance.

3. If a person violates subsection 2, the applicable governmental entity shall mail to the last known address of the person, by certified mail, a notice:

(a) Describing the violation;

(b) Informing the person that a civil penalty may be imposed pursuant to this section unless the person acts to correct the violation within 14 days after the date of receipt of the notice and completes the correction within 30 days after the date of receipt of the notice; and

(c) Informing the person that the person may contest the allegation pursuant to subsection 4.

4. If a person, within 5 days after a notice is mailed to the person pursuant to subsection 3, requests a hearing to contest the allegation of a violation of subsection 2, the applicable governmental entity shall apply for a hearing before a court of competent jurisdiction.

5. Except as otherwise provided in subsection 8, in addition to any other penalty, the applicable governmental entity may impose a civil penalty of not more than $1,000 per day for a violation of subsection 2:

(a) Commencing on the day following the expiration of the period of time described in subsection 3; or

(b) If the person requested a hearing pursuant to subsection 4, commencing on the day following a determination by the court in favor of the applicable governmental entity.

6. The applicable governmental entity may waive or extend the period of time described in subsection 3 if:

(a) The person to whom a notice is sent pursuant to subsection 3 makes a good faith effort to correct the violation; and

(b) The violation cannot be corrected in the period of time described in subsection 3.

7. Any penalty collected by the applicable governmental entity pursuant to this section must be directed to local nuisance abatement programs.

8. The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by a local ordinance. This section shall not be deemed to preempt any local ordinance.

9. If the applicable governmental entity assesses any penalty pursuant to this section, any lien related thereto must be recorded in the office of the county recorder.

10. As used in this section, "applicable governmental entity" means:

(a) If the property is within the boundaries of a city, the governing body of the city; and

(b) If the property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.

(Added to NRS by 2009, 2783)

## RIGHTS OF GUARANTOR, SURETY OR OBLIGOR IN REAL PROPERTY

**NRS 40.465 "Indebtedness" defined.** As used in NRS 40.475, 40.485 and 40.495, "indebtedness" means the principal balance of the obligation, together with all accrued and unpaid interest, and those costs, fees, advances and other amounts secured by the mortgage or lien upon real property.

(Added to NRS by 1987, 1643; A 1989, 1001)

**NRS 40.475 Remedy against mortgagor or grantor; assignment of creditor's rights to guarantor, surety or obligor.** Upon full satisfaction by a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor is entitled to enforce every remedy which the creditor then has against the mortgagor or grantor of the mortgage or lien upon real property, and is entitled to an assignment from the creditor of all of the rights which the creditor then has by way of security for the performance of the indebtedness.

(Added to NRS by 1987, 1643)

**NRS 40.485 Interest in proceeds of secured indebtedness upon partial satisfaction of indebtedness.** Immediately upon partial satisfaction by a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor automatically, by operation of law and without further action, receives an interest in the proceeds of the indebtedness secured by the mortgage or lien to the extent of the partial satisfaction, subject only to the creditor's prior right to recover the balance of the indebtedness owed by the mortgagor or grantor.

(Added to NRS by 1987, 1643)

**NRS 40.495 Waiver of rights; separate action to enforce obligation; limitation on amount of judgment; available defenses.**

1. The provisions of NRS 40.475 and 40.485 may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection 5, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of NRS 40.430. If a guarantor, surety or other obligor waives the provisions of NRS 40.430, an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

(a) An action on the debt;

(b) The exercise of any power of sale;

(c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and

(d) Any other proceeding against a mortgagor or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of NRS 40.451 to 40.4639, inclusive.

4. If, before a foreclosure sale of real property, the obligee commences an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon the real property:

(a) The court must hold a hearing and take evidence presented by either party concerning the fair market value of the property as of the date of the commencement of the action. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing.

(b) After the hearing, if the court awards a money judgment against the guarantor, surety or other obligor who is personally liable for the debt, the court must not render judgment for more than:

(1) The amount by which the amount of the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action; or

(2) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured,

whichever is the lesser amount.

5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

(a) Secures an indebtedness for which the principal balance of the obligation was never greater than $500,000;

(b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;

(c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or

(d) Is secured by real property upon which:

(1) The owner maintains the owner's principal residence;

(2) There is not more than one residential structure; and

(3) Not more than four families reside.

6. As used in this section, "foreclosure sale" has the meaning ascribed to it in NRS 40.462.

(Added to NRS by 1987, 1643; A 1989, 1001; 2011, 1743; 2013, 3810)

## ENVIRONMENTAL IMPAIRMENT OF REAL COLLATERAL OF SECURED LENDER

**NRS 40.501 Definitions.** As used in NRS 40.501 to 40.512, inclusive, the words and terms defined in NRS 40.502 to 40.506, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.502 "Environmental provision" defined.** "Environmental provision" means any written representation, warranty, indemnity, promise or covenant relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, future or threatened release of any hazardous substance from, in, into or onto real collateral, or to past, present or future compliance with any law relating thereto, made by a debtor in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor, whether or not the representation, warranty, indemnity, promise or covenant is or was contained in or secured by the mortgage and whether or not the mortgage has been discharged, reconveyed or foreclosed upon.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.503 "Environmentally impaired" defined.** Real collateral is "environmentally impaired" if the estimated costs to clean up and remedy a past, present or threatened release of any hazardous substance from, in, into or onto it exceeds 10 percent of the total indebtedness owed to the secured lender secured by the collateral.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.504 "Hazardous substance" defined.** "Hazardous substance" means:

1. An element, compound, mixture, solution, material or substance whose use, possession, transportation, storage, release, discharge or disposal is regulated pursuant to chapter 444, 445A, 445B, 459, 477, 590 or 618 of NRS or the Uniform Fire Code (1988 edition);

2. An element, compound, mixture, solution, material or substance designated as a hazardous substance pursuant to 42 U.S.C. § 9602 and an element, compound, mixture, solution, material or substance described in 42 U.S.C. § 9601(14);

3. An element, compound, mixture, solution, material or substance listed as a hazardous waste in, or having the characteristics identified in, 42 U.S.C. § 6921 on January 1, 1993, except any waste for which regulation under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.) has been suspended by an act of Congress; and

4. Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, synthetic oil, synthetic gas usable for fuel or any mixture thereof.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.505 "Release" defined.** "Release" means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, dumping or disposing of a hazardous substance into the environment, including continuing migration into or through the soil, surface water or groundwater.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.506 "Secured lender" defined.** "Secured lender" means the holder of an obligation secured by a mortgage.

(Added to NRS by 1993, 154; A 1995, 510)

**NRS 40.507 Right of entry and inspection of real collateral.**

1. A secured lender may enter and inspect real collateral for the purpose of determining the existence, location, nature and magnitude of any past, present or threatened release or presence of a hazardous substance from, in, into or onto it:

(a) Upon reasonable belief of the existence of a past, present or threatened release or the presence of any hazardous substance from, in, into or onto it not previously disclosed in writing to the secured lender in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor; or

(b) After the commencement of a trustee's sale or judicial foreclosure proceedings against the real collateral.

2. A secured lender shall not abuse the right of entry and inspection or use it to harass the debtor or tenant of the property. Except in case of an emergency, when the debtor or tenant of the property has abandoned the premises, or if it is impracticable to do so, a secured lender shall give the debtor or tenant of the property reasonable notice of intent to enter, and enter only during the debtor's or tenant's normal business hours. Twenty-four hours' notice is presumed to be reasonable in the absence of evidence to the contrary.

3. If a secured lender is refused the right of entry and inspection by the debtor or tenant of the property, or is otherwise unable to enter and inspect the property without a breach of the peace, the secured lender may, upon petition, obtain an order from a court of competent jurisdiction to exercise the secured lender's rights under subsection 1.

(Added to NRS by 1993, 154; A 1995, 510)

**NRS 40.508 Action by secured lender concerning environmental provision.** A secured lender may bring a separate action for a breach of an environmental provision, to recover damages for the breach or for the enforcement of an environmental provision.

(Added to NRS by 1993, 154; A 1995, 510)

**NRS 40.509 Limitation on amount of damages recoverable in action concerning environmental provision; recovery of interest.**

1. Unless the environmental provision expressly permits a different or greater recovery or subsection 2 permits the addition of interest, the damages recoverable by a secured lender in an action pursuant to NRS 40.508 are limited to the sum of reimbursement or indemnification for:

(a) If the secured lender acted pursuant to an order of any federal, state or local governmental agency relating to the cleaning up, remedying or other responsive action required by applicable law which is anticipated by the environmental provision, all amounts reasonably advanced in good faith by the secured lender in connection therewith;

(b) If the secured lender did not act pursuant to such an order, those costs relating to a reasonable cleaning up, remedying or other responsive action concerning hazardous substances, performed in good faith, which is anticipated by the environmental provision;

(c) All liabilities of the secured lender to any third party relating to the breach, unless the secured lender had actual knowledge of the environmental condition which is the basis of the claim for indemnification before entering into the transaction in which the environmental provision was given; and

(d) Costs, attorney's fees and other incidental relief.

2. If the parties have so agreed, the secured lender may recover interest on the amount advanced by the secured lender to cure or mitigate the breach.

(Added to NRS by 1993, 154; A 1995, 510)

**NRS 40.511 Exceptions to applicability of NRS 40.507 and 40.508.** NRS 40.507 and 40.508 do not apply if the real collateral is a unit put to residential use in a common-interest community or is real property upon which:

1. The owner maintains the owner's principal residence;
2. There is not more than one residential structure; and
3. Not more than four families reside.

(Added to NRS by 1993, 155; A 1995, 510)

**NRS 40.512 Environmental impairment of real collateral: Waiver of lien; notice of waiver; exception; recording of waiver.**

1. If real collateral is environmentally impaired and the debtor's obligation is in default, a secured lender may:

(a) Waive the secured lender's lien as to all of the real collateral and proceed as an unsecured creditor, including reduction of the secured lender's claim against the debtor to judgment and any other rights and remedies permitted by law; or

(b) Waive the secured lender's lien in accordance with paragraph (a) as to that part of the real collateral which is environmentally impaired and proceed against the unimpaired real collateral.

2. To waive the secured lender's lien against all or part of the environmentally impaired real collateral, the secured lender must, before commencement of any action, record with the county recorder of the county where the real collateral is located a notice of intent to waive the lien and mail a copy thereof, by registered or certified mail, return receipt requested, with postage prepaid, to the debtor, to the person who holds the title of record on the date of the notice, and to those persons with an interest, as defined in NRS 107.090, whose interest or claimed interest is subordinate to the secured lender's lien, at their respective addresses, if known, otherwise to the address of the real collateral. In the case of a partial waiver the notice of intent to waive may be contained in a notice of default and election to sell. The notice of intent to waive must contain:

(a) A legal description of the environmentally impaired real collateral;

(b) A statement that the secured lender intends to proceed against the debtor under the applicable paragraph of subsection 1; and

(c) If the secured lender is proceeding under paragraph (b) of subsection 1, a statement that the secured lender will proceed against the unimpaired property, which may result in a judgment for deficiency against the debtor as a result of diminution in value of the collateral because of the exclusion of the environmentally impaired portion.

3. A secured lender may not waive the secured lender's lien as a result of any environmental impairment if the secured lender had actual knowledge of the environmental impairment at the time the lien was created. In determining whether a secured lender had such knowledge, the report of any person legally entitled to prepare the report with respect to the existence or absence of any environmental impairment is prima facie evidence of the existence or absence, as the case may be, of any environmental impairment.

4. A waiver made by a secured lender pursuant to this section is not final or conclusive until a final judgment, as defined in subsection 4 of NRS 40.435, has been obtained. If the waiver covers the full extent of the collateral, the secured lender shall immediately thereafter cause the secured lender's lien to be released by recording the waiver in the same manner as the lien was recorded.

(Added to NRS by 1993, 155; A 1995, 510)

## PROCEEDINGS TO ESTABLISH TERMINATION OF LIFE ESTATES

**NRS 40.515 Petition, notice, hearing and order.** If any person has died, or shall hereafter die, who at the time of the person's death was the owner of a life estate which terminates by reason of the person's death, any person interested in the property, or in the title thereto, in which such life estate was held, may file in the district court of the county in which the property is situated, the person's verified petition, setting forth such facts, and thereupon and after such notice by publication or otherwise, as the court or judge may order, the court or judge shall hear such petition and the evidence offered in support thereof, and if upon such hearing it shall appear that such life estate of such deceased person absolutely terminated by reason of the person's death, the court or judge shall make an order to that effect, and thereupon a certified copy of such order may be recorded in the office of the county recorder.

[1911 CPA § 642; RL § 5584; NCL § 9131]

## METHODS OF TERMINATION OF INTERESTS OF DECEASED PERSONS IN PROPERTY

**NRS 40.525 Petition; notice; hearing and order; alternative method.**

1. If title or an interest in real or personal property is affected by the death of any person, any other person who claims any interest in the real or personal property, if the other person's interest is affected by the death of the deceased person, or the State of Nevada, may file in the district court of any county in which any part of the real or personal property is situated a verified petition setting forth those facts and particularly describing the real or personal property, the interest of the petitioner and the interest of the deceased person therein.

2. The clerk shall set the petition for hearing by the court. Notice of hearing of the petition must be mailed, by certified mail, return receipt requested, postage prepaid, to the heirs at law of the deceased person at their places of business or residences, if known, and if not, by publication for at least 3 successive weeks in such newspaper as the court orders. The clerk shall send a copy of the notice of hearing or of the affidavit to the Department of Health and Human Services by certified mail, return receipt requested, postage prepaid, if the State is not the petitioner, at the time notice is mailed to the heirs at law or the notice is published. Failure on the part of any such heir at law to contest the petition precludes any such heir at law from thereafter contesting the validity of the joint interest or its creation or termination.

3. The court shall take evidence for or against the petition, and may render judgment thereon establishing the fact of the death and the termination of the interest of the deceased person in the real or personal property described in the petition.

4. A certified copy of the decree may be recorded in the office of the recorder of each county in which any part of the real or personal property is situated.

5. As an alternative method of terminating the interest of the deceased person, if title or an interest in real or personal property held in joint tenancy or as community property with right of survivorship is affected by the death of a joint tenant or spouse, any person who has knowledge of the facts may record in the office of the county recorder in the county where the property is situated an affidavit meeting the requirements of NRS 111.365, accompanied by a certified copy of the death certificate of the deceased person.

[1:18:1939; A 1951, 172]—(NRS A 1963, 802; 1965, 665, 1004; 1983, 666; 1991, 457; 1995, 2569; 2001, 1750; 2003, 876)

**NRS 40.535 Affidavit or petition may be filed in probate proceeding.** Any affidavit or petition, such as described in NRS 40.525, may be filed as a part of any probate proceeding.

[1(a):18:1939; added 1951, 172]—(NRS A 1965, 665)

## ACTIONS RESULTING FROM CONSTRUCTIONAL DEFECT

### General Provisions

**NRS 40.600 Definitions.** As used in NRS 40.600 to 40.695, inclusive, unless the context otherwise requires, the words and terms defined in NRS 40.603 to 40.634, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1995, 2539; A 1997, 2716; 1999, 1440; 2001 Special Session, 67; 2003, 2041)

**NRS 40.603 "Amend a complaint to add a cause of action for a constructional defect" defined.** "Amend a complaint to add a cause of action for a constructional defect" means any act by which a claimant seeks to:

1. Add to the pleadings a defective component that is not otherwise included in the pleadings and for which a notice was not previously given; or
2. Amend the pleadings in such a manner that the practical effect is the addition of a constructional defect that is not otherwise included in the pleadings.

➥ The term does not include amending a complaint to plead a different cause for a constructional defect which is included in the same action.

(Added to NRS by 2003, 2034)

**NRS 40.605 "Appurtenance" defined.**

1. "Appurtenance" means a structure, installation, facility, amenity or other improvement that is appurtenant to or benefits one or more residences, but is not a part of the dwelling unit. The term includes, without limitation, the parcel of real property, recreational facilities, golf courses, walls, sidewalks, driveways, landscaping, common elements and limited common elements other than those described in NRS 116.2102, and other structures, installations, facilities and amenities associated with or benefiting one or more residences.
2. As used in this section:

(a) "Common elements" has the meaning ascribed to it in NRS 116.017.

(b) "Limited common element" has the meaning ascribed to it in NRS 116.059.

(Added to NRS by 1995, 2539; A 1997, 2716; 1999, 1440)

**NRS 40.610 "Claimant" defined.** "Claimant" means:

1. An owner of a residence or appurtenance;
2. A representative of a homeowner's association that is responsible for a residence or appurtenance and is acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS; or
3. Each owner of a residence or appurtenance to whom a notice applies pursuant to subsection 4 of NRS 40.645.

(Added to NRS by 1995, 2539; A 1997, 2717; 2003, 2041)

**NRS 40.615 "Constructional defect" defined.** "Constructional defect" means a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance:

1. Which is done in violation of law, including, without limitation, in violation of local codes or ordinances;
2. Which proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed;
3. Which is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of design, construction, manufacture, repair or landscaping; or
4. Which presents an unreasonable risk of injury to a person or property.

(Added to NRS by 1995, 2539; A 2003, 2041)

**NRS 40.620 "Contractor" defined.** "Contractor" means a person who, with or without a license issued pursuant to chapter 624 of NRS, by himself or herself or through the person's agents, employees or subcontractors:

1. Develops, constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof;
2. Develops a site for a residence, appurtenance or any part thereof; or
3. Sells a residence or appurtenance, any part of which the person, by himself or herself or through the person's agents, employees or subcontractors, has developed, constructed, altered, repaired, improved or landscaped.

(Added to NRS by 1995, 2539; A 1997, 2717)

**NRS 40.623 "Design professional" defined.** "Design professional" means a person who holds a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS.

(Added to NRS by 2003, 2034)

**NRS 40.625 "Homeowner's warranty" defined.** "Homeowner's warranty" means a warranty or policy of insurance:

1. Issued or purchased by or on behalf of a contractor for the protection of a claimant; or
2. Purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive.

➥ The term includes a warranty contract issued by a risk retention group that operates in compliance with chapter 695E of NRS and insures all or any part of the liability of a contractor for the cost to repair a constructional defect in a residence.

(Added to NRS by 1995, 2540; A 1997, 2717; 1999, 1440)

**NRS 40.630 "Residence" defined.** "Residence" means any dwelling in which title to the individual units is transferred to the owners.

(Added to NRS by 1995, 2540; A 1997, 2717)

**NRS 40.632 "Subcontractor" defined.** "Subcontractor" means a contractor who performs work on behalf of another contractor in the construction of a residence or appurtenance.

(Added to NRS by 2003, 2034)

**NRS 40.634 "Supplier" defined.** "Supplier" means a person who provides materials, equipment or other supplies for the construction of a residence or appurtenance.
(Added to NRS by 2003, 2034)

**NRS 40.635 Applicability; effect on other defenses.** NRS 40.600 to 40.695, inclusive:
1. Apply to any claim that arises before, on or after July 1, 1995, as the result of a constructional defect, except a claim for personal injury or wrongful death, if the claim is the subject of an action commenced on or after July 1, 1995.
2. Prevail over any conflicting law otherwise applicable to the claim or cause of action.
3. Do not bar or limit any defense otherwise available, except as otherwise provided in those sections.
4. Do not create a new theory upon which liability may be based, except as otherwise provided in those sections.
(Added to NRS by 1995, 2540; A 1997, 2717; 2003, 2041)

### Conditions and Limitations on Actions

**NRS 40.640 Liability of contractor.** In a claim to recover damages resulting from a constructional defect, a contractor is liable for the contractor's acts or omissions or the acts or omissions of the contractor's agents, employees or subcontractors and is not liable for any damages caused by:
1. The acts or omissions of a person other than the contractor or the contractor's agent, employee or subcontractor;
2. The failure of a person other than the contractor or the contractor's agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;
3. Normal wear, tear or deterioration;
4. Normal shrinkage, swelling, expansion or settlement; or
5. Any constructional defect disclosed to an owner before the owner's purchase of the residence, if the disclosure was provided in language that is understandable and was written in underlined and boldfaced type with capital letters.
(Added to NRS by 1995, 2540; A 1997, 2718)

**NRS 40.645 Notice of defect: Required before commencement of or addition to certain actions; content; reliance on expert opinion based on representative sample; notice regarding similarly situated owners; persons authorized to provide notice; exceptions.**
1. Except as otherwise provided in this section and NRS 40.670, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant:
(a) Must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's address listed in the records of the State Contractors' Board or in the records of the office of the county or city clerk or at the contractor's last known address if the contractor's address is not listed in those records; and
(b) May give written notice by certified mail, return receipt requested, to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect, if the claimant knows that the contractor is no longer licensed in this State or that the contractor no longer acts as a contractor in this State.
2. The notice given pursuant to subsection 1 must:
(a) Include a statement that the notice is being given to satisfy the requirements of this section;
(b) Specify in reasonable detail the defects or any damages or injuries to each residence or appurtenance that is the subject of the claim; and
(c) Describe in reasonable detail the cause of the defects if the cause is known, the nature and extent that is known of the damage or injury resulting from the defects and the location of each defect within each residence or appurtenance to the extent known.
3. Notice that includes an expert opinion concerning the cause of the constructional defects and the nature and extent of the damage or injury resulting from the defects which is based on a valid and reliable representative sample of the components of the residences or appurtenances may be used as notice of the common constructional defects within the residences or appurtenances to which the expert opinion applies.
4. Except as otherwise provided in subsection 5, one notice may be sent relating to all similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects if:
(a) An expert opinion is obtained concerning the cause of the common constructional defects and the nature and extent of the damage or injury resulting from the common constructional defects;
(b) That expert opinion concludes that based on a valid and reliable representative sample of the components of the residences and appurtenances included in the notice, it is the opinion of the expert that those similarly situated residences and appurtenances may have such common constructional defects; and
(c) A copy of the expert opinion is included with the notice.
5. A representative of a homeowner's association may send notice pursuant to this section on behalf of an association that is responsible for a residence or appurtenance if the representative is acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS.
6. Notice is not required pursuant to this section before commencing an action if:
(a) The contractor, subcontractor, supplier or design professional has filed an action against the claimant; or
(b) The claimant has filed a formal complaint with a law enforcement agency against the contractor, subcontractor, supplier or design professional for threatening to commit or committing an act of violence or a criminal offense against the claimant or the property of the claimant.
(Added to NRS by 1995, 2540; A 1997, 2718; 1999, 1440; 2003, 2042)

**NRS 40.6452 Common constructional defects within single development: Response to notice of defect by contractor; disclosure to unnamed owners; effect of contractor failing to provide disclosure to unnamed owners.**

1. Except as otherwise provided in subsection 2, not later than 60 days after a contractor receives a notice pursuant to subsection 4 of NRS 40.645 which alleges common constructional defects to residences or appurtenances within a single development and which complies with the requirements of subsection 4 of NRS 40.645 for giving such notice, the contractor may respond to the named owners of the residences or appurtenances in the notice in the manner set forth in NRS 40.6472.

2. The contractor may provide a disclosure of the notice of the alleged common constructional defects to each unnamed owner of a residence or appurtenance within the development to whom the notice may apply in the manner set forth in this section. The disclosure must be sent by certified mail, return receipt requested, to the home address of each such owner. The disclosure must be mailed not later than 60 days after the contractor receives the notice of the alleged common constructional defects, except that if the common constructional defects may pose an imminent threat to health and safety, the disclosure must be mailed as soon as reasonably practicable, but not later than 20 days after the contractor receives the notice.

3. The disclosure of a notice of alleged common constructional defects provided by a contractor to the unnamed owners to whom the notice may apply pursuant to subsection 2 must include, without limitation:

(a) A description of the alleged common constructional defects identified in the notice that may exist in the residence or appurtenance;

(b) A statement that notice alleging common constructional defects has been given to the contractor which may apply to the owner;

(c) A statement advising the owner that the owner has 30 days within which to request the contractor to inspect the residence or appurtenance to determine whether the residence or appurtenance has the alleged common constructional defects;

(d) A form which the owner may use to request such an inspection or a description of the manner in which the owner may request such an inspection;

(e) A statement advising the owner that if the owner fails to request an inspection pursuant to this section, no notice shall be deemed to have been given by the owner for the alleged common constructional defects; and

(f) A statement that if the owner chooses not to request an inspection of the owner's residence or appurtenance, the owner is not precluded from sending a notice pursuant to NRS 40.645 individually or commencing an action or amending a complaint to add a cause of action for a constructional defect individually after complying with the requirements set forth in NRS 40.600 to 40.695, inclusive.

4. If an unnamed owner requests an inspection of the owner's residence or appurtenance in accordance with subsection 3, the contractor must provide the response required pursuant to NRS 40.6472 not later than 45 days after the date on which the contractor receives the request.

5. If a contractor who receives a notice pursuant to subsection 4 of NRS 40.645 does not provide a disclosure to unnamed owners as authorized pursuant to this section, the owners of the residences or appurtenances to whom the notice may apply may commence an action for the constructional defect without complying with any other provision set forth in NRS 40.600 to 40.695, inclusive. This subsection does not establish or prohibit the right to maintain a class action.

6. If a contractor fails to provide a disclosure to an unnamed owner to whom the notice of common constructional defects was intended to apply:

(a) The contractor shall be deemed to have waived the contractor's right to inspect and repair any common constructional defect that was identified in the notice with respect to that owner; and

(b) The owner is not required to comply with the provisions set forth in NRS 40.645 or 40.647 before commencing an action or amending a complaint to add a cause of action based on that common constructional defect.

(Added to NRS by 2003, 2034)

**NRS 40.646 Notice of defect to be forwarded by contractor to subcontractor, supplier or design professional; effect of failure to forward notice; inspection of alleged defect; election to repair.**

1. Except as otherwise provided in subsection 2, not later than 30 days after the date on which a contractor receives notice of a constructional defect pursuant to NRS 40.645, the contractor shall forward a copy of the notice by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice.

2. If a contractor does not provide notice as required pursuant to subsection 1, the contractor may not commence an action against the subcontractor, supplier or design professional related to the constructional defect unless the contractor demonstrates that, after making a good faith effort, the contractor was unable to identify the subcontractor, supplier or design professional whom the contractor believes is responsible for the defect within the time provided pursuant to subsection 1.

3. Except as otherwise provided in subsection 4, not later than 30 days after receiving notice from the contractor pursuant to this section, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 1 of NRS 40.6462 and provide the contractor with a written statement indicating:

(a) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and

(b) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.

4. If the notice of a constructional defect forwarded by the contractor was given pursuant to subsection 4 of NRS 40.645 and the contractor provides a disclosure of the notice of the alleged common constructional defects to the unnamed owners to whom the notice may apply pursuant to NRS 40.6452:

(a) The contractor shall, in addition to the notice provided pursuant to subsection 1, upon receipt of a request for an inspection, forward a copy of the request to or notify each subcontractor, supplier or design professional who may be responsible for the alleged defect of the request not later than 5 working days after receiving such a request; and

(b) Not later than 20 days after receiving notice from the contractor of such a request, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 2 of NRS 40.6462 and provide the contractor with a written statement indicating:

(1) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and

(2) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.

5. If a subcontractor, supplier or design professional elects to repair the constructional defect, the contractor or claimant may hold the subcontractor liable for any repair which does not eliminate the defect.

(Added to NRS by 2003, 2035)

**NRS 40.6462 Access to residence or appurtenance with alleged defect after notice of defect is given; effect on owners who did not provide notice.**

1. Except as otherwise provided in subsection 2, after notice of a constructional defect is given to a contractor pursuant to NRS 40.645, the claimant shall, upon reasonable notice, allow the contractor and each subcontractor, supplier or design professional who may be responsible for the alleged defect reasonable access to the residence or appurtenance that is the subject of the notice to determine the nature and extent of a constructional defect and the nature and extent of repairs that may be necessary. To the extent possible, the persons entitled to inspect shall coordinate and conduct the inspections in a manner which minimizes the inconvenience to the claimant.

2. If notice is given to the contractor pursuant to subsection 4 of NRS 40.645, the contractor and each subcontractor, supplier or design professional who may be responsible for the defect do not have the right to inspect the residence or appurtenance of an owner who is not named in the notice unless the owner requests the inspection in the manner set forth in NRS 40.6452. If the owner does not request the inspection, the owner shall be deemed not to have provided notice pursuant to NRS 40.645.

(Added to NRS by 2003, 2036)

**NRS 40.647 Claimant required to allow inspection of and reasonable opportunity to repair defect; effect of noncompliance.**

1. Except as otherwise provided in NRS 40.6452, after notice of a constructional defect is given pursuant to NRS 40.645, before a claimant may commence an action or amend a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must:

(a) Allow an inspection of the alleged constructional defect to be conducted pursuant to NRS 40.6462; and

(b) Allow the contractor, subcontractor, supplier or design professional a reasonable opportunity to repair the constructional defect or cause the defect to be repaired if an election to repair is made pursuant to NRS 40.6472.

2. If a claimant commences an action without complying with subsection 1 or NRS 40.645, the court shall:

(a) Dismiss the action without prejudice and compel the claimant to comply with those provisions before filing another action; or

(b) If dismissal of the action would prevent the claimant from filing another action because the action would be procedurally barred by the statute of limitations or statute of repose, the court shall stay the proceeding pending compliance with those provisions by the claimant.

(Added to NRS by 2003, 2039)

**NRS 40.6472 Response to notice of defect: Time for sending; content; effect of election to repair or not to repair.**

1. Except as otherwise provided in NRS 40.6452, 40.670 and 40.672, a written response must be sent by certified mail, return receipt requested, to a claimant who gives notice of a constructional defect pursuant to NRS 40.645:

(a) By the contractor not later than 90 days after the contractor receives the notice; and

(b) If notice was sent to a subcontractor, supplier or design professional, by the subcontractor, supplier or design professional not later than 90 days after the date that the subcontractor, supplier or design professional receives the notice.

2. The written response sent pursuant to subsection 1 must respond to each constructional defect in the notice and:

(a) Must state whether the contractor, subcontractor, supplier or design professional has elected to repair the defect or cause the defect to be repaired. If an election to repair is included in the response and the repair will cause the claimant to move from the claimant's home during the repair, the election must also include monetary compensation in an amount reasonably necessary for temporary housing or for storage of household items, or for both, if necessary.

(b) May include a proposal for monetary compensation, which may include contribution from a subcontractor, supplier or design professional.

(c) May disclaim liability for the constructional defect and state the reasons for such a disclaimer.

3. If the claimant is a homeowners' association, the association shall send a copy of the response to each member of the association not later than 30 days after receiving the response.

4. If the contractor, subcontractor, supplier or design professional has elected not to repair the constructional defect, the claimant or contractor may bring a cause of action for the constructional defect or amend a complaint to add a cause of action for the constructional defect.

5. If the contractor, subcontractor, supplier or design professional has elected to repair the constructional defect, the claimant must provide the contractor, subcontractor, supplier or design professional with a reasonable opportunity to repair the constructional defect.

(Added to NRS by 2003, 2037)

**NRS 40.648 Election to repair defect: Who may repair; manner for performing repairs; deadline for repair; extension of deadline; written statement of repairs performed.**

1. If the response provided pursuant to NRS 40.6472 includes an election to repair the constructional defect:

(a) The repairs may be performed by the contractor, subcontractor, supplier or design professional, if such person is properly licensed, bonded and insured to perform the repairs and, if such person is not, the repairs may be performed by another person who meets those qualifications.

(b) The repairs must be performed:

(1) On reasonable dates and at reasonable times agreed to in advance with the claimant;

(2) In compliance with any applicable building code and in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of repair; and

(3) In a manner which will not increase the cost of maintaining the residence or appurtenance than otherwise would have been required if the residence or appurtenance had been constructed without the constructional defect, unless the contractor and the claimant agree in writing that the contractor will compensate the claimant for the increased cost incurred as a result of the repair.

(c) Any part of the residence or appurtenance that is not defective but which must be removed to correct the constructional defect must be replaced.

(d) The contractor, subcontractor, supplier or design professional shall prevent, remove and indemnify the claimant against any mechanics' liens and materialmen's liens.

2. Unless the claimant and the contractor, subcontractor, supplier or design professional agree to extend the time for repairs, the repairs must be completed:

(a) If the notice was sent pursuant to subsection 4 of NRS 40.645 and there are four or fewer owners named in the notice, for the named owners, not later than 105 days after the date on which the contractor received the notice.

(b) If the notice was sent pursuant to subsection 4 of NRS 40.645 and there are five or more owners named in the notice, for the named owners, not later than 150 days after the date on which the contractor received the notice.

(c) If the notice was sent pursuant to subsection 4 of NRS 40.645, not later than 105 days after the date on which the contractor provides a disclosure of the notice to the unnamed owners to whom the notice applies pursuant to NRS 40.6452.

(d) If the notice was not sent pursuant to subsection 4 of NRS 40.645:

(1) Not later than 105 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice of a constructional defect was received from four or fewer owners; or

(2) Not later than 150 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice was received from five or more owners or from a representative of a homeowners' association.

3. If repairs reasonably cannot be completed within the time set forth in subsection 2, the claimant and the contractor, subcontractor, supplier or design professional shall agree to a reasonable time within which to complete the repair. If the claimant and contractor, subcontractor, supplier or design professional cannot agree on such a time, any of them may petition the court to establish a reasonable time for completing the repair.

4. Any election to repair made pursuant to NRS 40.6472 may not be made conditional upon a release of liability.

5. Not later than 30 days after the repairs are completed, the contractor, subcontractor, supplier or design professional who repaired or caused the repair of a constructional defect shall provide the claimant with a written statement describing the nature and extent of the repair, the method used to repair the constructional defect and the extent of any materials or parts that were replaced during the repair.

(Added to NRS by 2003, 2037)

**NRS 40.649 Notice of defect may be presented to insurer; duties of insurer.**

1. If a contractor, subcontractor, supplier or design professional receives written notice of a constructional defect, the contractor, subcontractor, supplier or design professional may present the claim to an insurer which has issued a policy of insurance that covers all or any portion of the business of the contractor, subcontractor, supplier or design professional.

2. If the contractor, subcontractor, supplier or design professional presents the claim to the insurer pursuant to this section, the insurer:

(a) Must treat the claim as if a civil action has been brought against the contractor, subcontractor, supplier or design professional; and

(b) Must provide coverage to the extent available under the policy of insurance as if a civil action has been brought against the contractor, subcontractor, supplier or design professional.

3. A contractor, subcontractor, supplier or design professional is not required to present a claim to the insurer pursuant to this section, and the failure to present such a claim to the insurer does not relieve the insurer of any duty under the policy of insurance to the contractor, subcontractor, supplier or design professional.

(Added to NRS by 2003, 2040)

**NRS 40.650 Effect of rejecting reasonable offer of settlement; effect of failing to take certain actions concerning defect; effect of coverage available under homeowner's warranty.**

1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response pursuant to paragraph (b) of subsection 2 of NRS 40.6472 and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, the court in which the action is commenced may:

(a) Deny the claimant's attorney's fees and costs; and

(b) Award attorney's fees and costs to the contractor.

➥ Any sums paid under a homeowner's warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the contractor, must be deducted from any recovery.

2. If a contractor, subcontractor, supplier or design professional fails to:

(a) Comply with the provisions of NRS 40.6472;

(b) Make an offer of settlement;

(c) Make a good faith response to the claim asserting no liability;

(d) Agree to a mediator or accept the appointment of a mediator pursuant to NRS 40.680; or

(e) Participate in mediation,

➥ the limitations on damages and defenses to liability provided in NRS 40.600 to 40.695, inclusive, do not apply and the claimant may commence an action or amend a complaint to add a cause of action for a constructional defect without satisfying any other requirement of NRS 40.600 to 40.695, inclusive.

3. If a residence or appurtenance that is the subject of the claim is covered by a homeowner's warranty that is purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive, a claimant shall diligently pursue a claim under the contract. If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor, subcontractor, supplier or design professional have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.

4. Nothing in this section prohibits an offer of judgment pursuant to Rule 68 of the Nevada Rules of Civil Procedure or NRS 17.115 if the offer of judgment includes all damages to which the claimant is entitled pursuant to NRS 40.655.

(Added to NRS by 1995, 2541; A 1997, 2719; 1999, 1442; 2003, 2044)

**NRS 40.655 Limitation on recovery.**

1. Except as otherwise provided in NRS 40.650, in a claim governed by NRS 40.600 to 40.695, inclusive, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

(a) Any reasonable attorney's fees;

(b) The reasonable cost of any repairs already made that were necessary and of any repairs yet to be made that are necessary to cure any constructional defect that the contractor failed to cure and the reasonable expenses of temporary housing reasonably necessary during the repair;

(c) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

(d) The loss of the use of all or any part of the residence;

(e) The reasonable value of any other property damaged by the constructional defect;

(f) Any additional costs reasonably incurred by the claimant, including, but not limited to, any costs and fees incurred for the retention of experts to:

(1) Ascertain the nature and extent of the constructional defects;

(2) Evaluate appropriate corrective measures to estimate the value of loss of use; and

(3) Estimate the value of loss of use, the cost of temporary housing and the reduction of market value of the residence; and

(g) Any interest provided by statute.

2. The amount of any attorney's fees awarded pursuant to this section must be approved by the court.

3. If a contractor complies with the provisions of NRS 40.600 to 40.695, inclusive, the claimant may not recover from the contractor, as a result of the constructional defect, anything other than that which is provided pursuant to NRS 40.600 to 40.695, inclusive.

4. This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.

5. As used in this section, "structural failure" means physical damage to the load-bearing portion of a residence or appurtenance caused by a failure of the load-bearing portion of the residence or appurtenance.

(Added to NRS by 1995, 2541; A 1997, 2720; 2003, 2045)

**NRS 40.660 Nonacceptance of offer of settlement deemed rejection.** An offer of settlement made pursuant to paragraph (b) of subsection 2 of NRS 40.6472 that is not accepted within 35 days after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of the claimant's failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.

(Added to NRS by 1995, 2542; A 1999, 1442; 2003, 2045)

**NRS 40.665 Settlement by repurchase; certain offers of settlement deemed reasonable.** In addition to any other method provided for settling a claim pursuant to NRS 40.600 to 40.695, inclusive, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include provisions which reimburse the claimant for:

1. The market value of the residence as if no constructional defect existed, except that if a residence is less than 2 years of age and was purchased from the contractor against whom the claim is brought, the market value is the price at which the residence was sold to the claimant;

2. The value of any improvements made to the property by a person other than the contractor;

3. Reasonable attorney's fees and fees for experts; and
4. Any costs, including costs and expenses for moving and costs, points and fees for loans.

➥ Any offer of settlement made that includes the items listed in this section shall be deemed reasonable for the purposes of subsection 1 of NRS 40.650.

(Added to NRS by 1995, 2542; A 1997, 2721; 2003, 2046)

**NRS 40.667 Effect of written waiver or settlement agreement when contractor fails to correct or repair defect properly; conditions to bringing action; effect of failure to prevail in action.**

1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a claim for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.
2. The provisions of subsection 1 do not apply to any written waiver or settlement agreement described in subsection 1, unless:
(a) The claimant has obtained the opinion of an expert concerning the constructional defect;
(b) The claimant has provided the contractor with a written notice of the defect pursuant to NRS 40.645 and a copy of the expert's opinion; and
(c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in NRS 40.600 to 40.695, inclusive.
3. The provisions of this section do not apply to repairs which are made pursuant to an election to repair pursuant to NRS 40.6472.
4. If a claimant does not prevail in any action which is not barred pursuant to this section, the court may:
(a) Deny the claimant's attorney's fees, fees for an expert witness or costs; and
(b) Award attorney's fees and costs to the contractor.

(Added to NRS by 1995, 2544; A 1997, 2723; 1999, 1442; 2003, 2046)

**NRS 40.668 Action against subdivider or master developer for defect in appurtenance in planned unit development: Conditions and limitations; tolling of statutes of limitation or repose; applicability.**

1. Notwithstanding the provisions of NRS 40.600 to 40.695, inclusive, a claimant may not commence an action against a subdivider or master developer for a constructional defect in an appurtenance constructed on behalf of the subdivider or master developer in a planned unit development, to the extent that the appurtenance was constructed by or through a licensed general contractor, unless:
(a) The subdivider or master developer fails to provide to the claimant the name, address and telephone number of each contractor hired by the subdivider or master developer to construct the appurtenance within 30 days of the receipt by the subdivider or master developer of a request from the claimant for such information; or
(b) After the claimant has made a good faith effort to obtain full recovery from the contractors hired by the subdivider or master developer to construct the appurtenance, the claimant has not obtained a full recovery.
2. All statutes of limitation or repose applicable to a claim governed by this section are tolled from the time the claimant notifies a contractor hired by the subdivider or master developer of the claim until the earlier of the date:
(a) A court determines that the claimant cannot obtain a full recovery against those contractors; or
(b) The claimant receives notice that those contractors are bankrupt, insolvent or dissolved.

➥ Tolling pursuant to this subsection applies only to the subdivider or master developer. Notwithstanding any applicable statute of limitation or repose, the claimant may commence an action against the subdivider or master developer for the claim within 1 year after the end of the tolling described in this subsection.

3. Nothing in this section prohibits the commencement of an action against a subdivider or master developer for a constructional defect in a residence sold, designed or constructed by or on behalf of the subdivider or master developer.
4. Nothing in this section prohibits a person other than the claimant from commencing an action against a subdivider or master developer to enforce the person's own rights.
5. The provisions of this section do not apply to a subdivider or master developer who acts as a general contractor or uses the subdivider's or master developer's license as a general contractor in the course of constructing the appurtenance that is the subject of the action.
6. As used in this section:
(a) "Master developer" means a person who buys, sells or develops a planned unit development, including, without limitation, a person who enters into a development agreement pursuant to NRS 278.0201.
(b) "Planned unit development" has the meaning ascribed to it in NRS 278A.065.
(c) "Subdivider" has the meaning ascribed to it in NRS 278.0185.

(Added to NRS by 1999, 1438)

**Repairs**

**NRS 40.670 Defect which creates imminent threat to health or safety: Duty to cure; effect of failure to cure; exceptions.**

1. A contractor, subcontractor, supplier or design professional who receives written notice of a constructional defect resulting from work performed by the contractor, subcontractor, supplier or design professional which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. The contractor, subcontractor, supplier or design professional shall not cure the defect by making any repairs for which such person is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs. If the contractor, subcontractor, supplier or design professional fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor, subcontractor, supplier or design

professional the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.

2. A contractor, subcontractor, supplier or design professional who does not cure a defect pursuant to this section because such person has determined, in good faith and after a reasonable inspection, that there is not an imminent threat to the health or safety of the inhabitants is not liable for attorney's fees and costs pursuant to this section, except that if a building inspector, building official or other similar authority employed by a governmental body with jurisdiction certifies that there is an imminent threat to the health and safety of the inhabitants of the residence, the contractor, subcontractor, supplier or design professional is subject to the provisions of subsection 1.

(Added to NRS by 1995, 2542; A 1997, 2721; 2001, 1249; 2003, 2046)

**NRS 40.672 Defect in new residence: Duty to repair; deadline for repair; extensions; disciplinary action for failure to comply.** Except as otherwise provided in NRS 40.670, if a contractor, subcontractor, supplier or design professional receives written notice of a constructional defect not more than 1 year after the close of escrow of the initial purchase of the residence, the contractor, subcontractor, supplier or design professional shall make the repairs within 45 days after receiving the written notice unless completion is delayed by the claimant or by other events beyond the control of the contractor, subcontractor, supplier or design professional, or timely completion of repairs is not reasonably possible. The contractor, subcontractor, supplier or design professional and claimant may agree in writing to extend the period prescribed by this section. If a contractor or subcontractor fails to comply with this section, the contractor or subcontractor is immediately subject to discipline pursuant to NRS 624.300.

(Added to NRS by 1999, 1437; A 2003, 2047)

**NRS 40.675 Inspection of repairs.**

1. A contractor who makes or provides for repairs under NRS 40.600 to 40.695, inclusive, may take reasonable steps to prove that the repairs were made and to have them inspected.

2. The provisions of NRS 40.600 to 40.695, inclusive, regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

(Added to NRS by 1995, 2542)

**Special Procedures**

**NRS 40.680 Mediation of certain claims required before action commenced or complaint amended; procedure; appointment of special master; effect of failure to mediate in good faith.**

1. Except as otherwise provided in this chapter, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor, subcontractor, supplier or design professional and the claimant.

2. The claimant and each party alleged to have caused the constructional defect must select a mediator by agreement. If the claimant and the other parties fail to agree upon a mediator within 20 days after a mediator is first selected by the claimant, any party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator. A mediator so appointed may discover only those documents or records which are necessary to conduct the mediation. The mediator shall convene the mediation within 30 days after the matter is submitted to the mediator and shall complete the mediation within 45 days after the matter is submitted to the mediator, unless the parties agree to extend the time.

3. Before the mediation begins:

(a) The claimant shall deposit $50 with the mediation service; and

(b) Each other party shall deposit with the mediation service, in equal shares, the remaining amount estimated by the mediation service as necessary to pay the fees and expenses of the mediator for the first session of mediation and shall deposit additional amounts demanded by the mediation service as incurred for that purpose.

4. Unless otherwise agreed, the total fees for each day of mediation and the mediator must not exceed $750 per day.

5. If the parties do not reach an agreement concerning the matter during mediation or if any party who is alleged to have caused the constructional defect fails to pay the required fees and appear, the claimant may commence an action or amend a complaint to add a cause of action for the constructional defect in court and:

(a) The reasonable costs and fees of the mediation are recoverable by the prevailing party as costs of the action.

(b) Any party may petition the court in which the action is commenced for the appointment of a special master.

6. A special master appointed pursuant to subsection 5 may:

(a) Review all pleadings, papers or documents filed with the court concerning the action.

(b) Coordinate the discovery of any books, records, papers or other documents by the parties, including the disclosure of witnesses and the taking of the deposition of any party.

(c) Order any inspections on the site of the property by a party and any consultants or experts of a party.

(d) Order settlement conferences and attendance at those conferences by any representative of the insurer of a party.

(e) Require any attorney representing a party to provide statements of legal and factual issues concerning the action.

(f) Refer to the judge who appointed the special master or to the presiding judge of the court in which the action is commenced any matter requiring assistance from the court.

➥ The special master shall not, unless otherwise agreed by the parties, personally conduct any settlement conferences or engage in any ex parte meetings regarding the action.

7. Upon application by a party to the court in which the action is commenced, any decision or other action taken by a special master appointed pursuant to this section may be appealed to the court for a decision.

8. A report issued by a mediator or special master that indicates that a party has failed to appear before the mediator or special master or to mediate in good faith is admissible in the action, but a statement or admission made by a party in the course of mediation is not admissible.

(Added to NRS by 1995, 2543; A 1997, 2721; 2003, 2047)

**NRS 40.681 Premediation discovery.** Not later than 15 days before the commencement of mediation required pursuant to NRS 40.680 and upon providing 15 days' notice, each party shall provide to the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the claim that are not privileged.

(Added to NRS by 2003, 2041)

**NRS 40.684 Duties of insurer with respect to settlement conference.**

1. If a settlement conference is held concerning a claim for a constructional defect, the special master, if any, or the judge presiding over the claim may order a representative of an insurer of a party to attend the settlement conference. If a representative of an insurer is ordered to attend the settlement conference, the insurer shall ensure that the representative is authorized, on behalf of the insurer, to:

(a) Bind the insurer to any settlement agreement relating to the claim;

(b) Enter into any agreement relating to coverage that may be available under the party's policy of insurance which is required to carry out any settlement relating to the claim; and

(c) Commit for expenditure money or other assets available under the party's policy of insurance.

2. If a representative of an insurer who is ordered to attend a settlement conference pursuant to subsection 1 fails to attend the settlement conference or attends but is substantially unprepared to participate, or fails to participate in good faith, the special master or the judge may, on the special master's or the judge's own motion or that of a party, issue any order with regard thereto that is just under the circumstances.

3. In lieu of or in addition to any other sanction, the special master or the judge may require the insurer to pay any reasonable expenses or attorney's fees incurred by a party because of the failure of the insurer or its representative to comply with the provisions of this section or any order issued pursuant to this section, unless the special master or the judge finds that the failure to comply was substantially justified or that any other circumstances make the award of such expenses or fees unjust.

4. Any insurer which conducts business in this State and which insures a party against liability for the claim shall be deemed to have consented to the jurisdiction of the special master or the judge for the purposes of this section.

5. The authority conferred upon the special master or the judge pursuant to this section is in addition to any other authority conferred upon the special master or the judge pursuant to any other statute or any court rule.

(Added to NRS by 2003, 2040)

**Disclosures**

**NRS 40.687 Disclosure of information concerning warranties after action is commenced; disclosure of information concerning insurance agreements; compelled production of information.** Notwithstanding any other provision of law:

1. A claimant shall, within 10 days after commencing an action against a contractor, disclose to the contractor all information about any homeowner's warranty that is applicable to the claim.

2. The contractor shall, no later than 10 days after a response is made pursuant to this chapter, disclose to the claimant any information about insurance agreements that may be obtained by discovery pursuant to rule 26(b)(2) of the Nevada Rules of Civil Procedure. Such disclosure does not affect the admissibility at trial of the information disclosed.

3. Except as otherwise provided in subsection 4, if either party fails to provide the information required pursuant to subsection 1 or 2 within the time allowed, the other party may petition the court to compel production of the information. Upon receiving such a petition, the court may order the party to produce the required information and may award the petitioning party reasonable attorney's fees and costs incurred in petitioning the court pursuant to this subsection.

4. The parties may agree to an extension of time to produce the information required pursuant to this section.

5. For the purposes of this section, "information about insurance agreements" is limited to any declaration sheets, endorsements and contracts of insurance issued to the contractor from the commencement of construction of the residence of the claimant to the date on which the request for the information is made and does not include information concerning any disputes between the contractor and an insurer or information concerning any reservation of rights by an insurer.

(Added to NRS by 1997, 2716; A 1999, 1443)

**NRS 40.688 Disclosure of defects by claimant to prospective purchaser of residence required; timing and contents of disclosure; duty of attorney to inform claimant of disclosure requirement.**

1. If a claimant attempts to sell a residence that is or has been the subject of a claim governed by NRS 40.600 to 40.695, inclusive, the claimant shall disclose, in writing, to any prospective purchaser of the residence, not less than 30 days before the close of escrow for the sale of the residence or, if escrow is to close less than 30 days after the execution of the sales agreement, then immediately upon the execution of the sales agreement or, if a claim is initiated less than 30 days before the close of escrow, within 24 hours after giving written notice to the contractor pursuant to NRS 40.645:

(a) All notices given by the claimant to the contractor pursuant to NRS 40.600 to 40.695, inclusive, that are related to the residence;

(b) All opinions the claimant has obtained from experts regarding a constructional defect that is or has been the subject of the claim;

(c) The terms of any settlement, order or judgment relating to the claim; and

(d) A detailed report of all repairs made to the residence by or on behalf of the claimant as a result of a constructional defect that is or has been the subject of the claim.

2. Before taking any action on a claim pursuant to NRS 40.600 to 40.695, inclusive, the attorney for a claimant shall notify the claimant in writing of the provisions of this section.

(Added to NRS by 1999, 1439; A 2003, 2048)

**Additional Requirement for Actions Against Design Professionals**

**NRS 40.6882 "Complainant" defined.** As used in NRS 40.6884 and 40.6885, unless the context otherwise requires, "complainant" means a person who makes a claim or files an action against a design professional pursuant to NRS 40.600 to 40.695, inclusive.

(Added to NRS by 2001 Special Session, 66; A 2003, 2049)

**NRS 40.6884 Attorney required to consult expert; required affidavit of attorney; required report of expert.**

1. Except as otherwise provided in subsection 2, in an action governed by NRS 40.600 to 40.695, inclusive, that is commenced against a design professional or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture, including, without limitation, an action for professional negligence, the attorney for the complainant shall file an affidavit with the court concurrently with the service of the first pleading in the action stating that the attorney:

(a) Has reviewed the facts of the case;

(b) Has consulted with an expert;

(c) Reasonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and

(d) Has concluded on the basis of the attorney's review and the consultation with the expert that the action has a reasonable basis in law and fact.

2. The attorney for the complainant may file the affidavit required pursuant to subsection 1 at a later time if the attorney could not consult with an expert and prepare the affidavit before filing the action without causing the action to be impaired or barred by the statute of limitations or repose, or other limitations prescribed by law. If the attorney must submit the affidavit late, the attorney shall file an affidavit concurrently with the service of the first pleading in the action stating the attorney's reason for failing to comply with subsection 1 and the attorney shall consult with an expert and file the affidavit required pursuant to subsection 1 not later than 45 days after filing the action.

3. In addition to the statement included in the affidavit pursuant to subsection 1, a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the report must be prepared by the expert consulted by the attorney and include, without limitation:

(a) The resume of the expert;

(b) A statement that the expert is experienced in each discipline which is the subject of the report;

(c) A copy of each nonprivileged document reviewed by the expert in preparing the expert's report, including, without limitation, each record, report and related document that the expert has determined is relevant to the allegations of negligent conduct that are the basis for the action;

(d) The conclusions of the expert and the basis for the conclusions; and

(e) A statement that the expert has concluded that there is a reasonable basis for filing the action.

4. In an action brought by a claimant in which an affidavit is required to be filed pursuant to subsection 1:

(a) The report required pursuant to subsection 3 is not required to include the information set forth in paragraphs (c) and (d) of subsection 3 if the claimant or the claimant's attorney files an affidavit, at the time that the affidavit is filed pursuant to subsection 1, stating that the claimant or the claimant's attorney made reasonable efforts to obtain the nonprivileged documents described in paragraph (c) of subsection 3, but was unable to obtain such documents before filing the action;

(b) The claimant or the claimant's attorney shall amend the report required pursuant to subsection 3 to include any documents and information required pursuant to paragraph (c) or (d) of subsection 3 as soon as reasonably practicable after receiving the document or information; and

(c) The court may dismiss the action if the claimant and the claimant's attorney fail to comply with the requirements of paragraph (b).

5. An expert consulted by an attorney to prepare an affidavit pursuant to this section must not be a party to the action.

6. As used in this section, "expert" means a person who is licensed in a state to engage in the practice of professional engineering, land surveying, architecture or landscape architecture.

(Added to NRS by 2001 Special Session, 66)

**NRS 40.6885 Effect of compliance with or failure to comply with NRS 40.6884.**

1. The court shall dismiss an action governed by NRS 40.600 to 40.695, inclusive, that is commenced against a design professional or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture, including, without limitation, an action for professional negligence, if the attorney for the complainant fails to:

(a) File an affidavit required pursuant to NRS 40.6884;

(b) File a report required pursuant to subsection 3 of NRS 40.6884; or

(c) Name the expert consulted in the affidavit required pursuant to subsection 1 of NRS 40.6884.

2. The fact that an attorney for a complainant has complied or failed to comply with the provisions of NRS 40.6884 is admissible in the action.

(Added to NRS by 2001 Special Session, 67)

### Miscellaneous Provisions

**NRS 40.6887 Submission of questions or disputes concerning defects to State Contractors' Board; regulations.**

1. A claimant or any contractor, subcontractor, supplier or design professional may submit a question or dispute to the State Contractors' Board concerning any matter which may affect or relate to a constructional defect, including, without limitation, questions concerning the need for repairs, the appropriate method for repairs, the sufficiency of any repairs that have been made and the respective rights and responsibilities of homeowners, claimants, contractors, subcontractors, suppliers and design professionals.

2. If a question or dispute is submitted to the State Contractors' Board pursuant to this section, the State Contractors' Board shall, pursuant to its regulations, rules and procedures, respond to the question or investigate the dispute and render a decision. Nothing in this section authorizes the State Contractors' Board to require the owner of a residence or appurtenance to participate in any administrative hearing which is held pursuant to this section.

3. Not later than 30 days after a question or dispute is submitted to the State Contractors' Board pursuant to subsection 1, the State Contractors' Board shall respond to the question or render its decision. The response or decision of the State Contractors' Board:

(a) Is not binding and is not subject to judicial review pursuant to the provisions of chapters 233B and 624 of NRS; and

(b) Is not admissible in any judicial or administrative proceeding brought pursuant to the provisions of this chapter.

4. The provisions of this chapter do not preclude a claimant or a contractor, subcontractor, supplier or design professional from pursuing any remedy otherwise available from the State Contractors' Board pursuant to the provisions of chapter 624 of NRS concerning a constructional defect.

5. If an action for a constructional defect has been commenced, the court shall not stay or delay any proceedings before the court pending an answer to a question or decision concerning a dispute submitted to the State Contractors' Board.

6. The State Contractors' Board shall adopt regulations necessary to carry out the provisions of this section and may charge and collect reasonable fees from licensees to cover the cost of carrying out its duties pursuant to this section.

(Added to NRS by 2003, 2039; A 2005, 477)

**NRS 40.689 Preference given to action; action may be assigned to senior judge; assessment of additional expenses.**

1. Upon petition by a party:

(a) The court shall give preference in setting a date for the trial of an action commenced pursuant to NRS 40.600 to 40.695, inclusive; and

(b) The court may assign an action commenced pursuant to NRS 40.600 to 40.695, inclusive, to a senior judge.

2. If the action is assigned to a senior judge upon petition by a party:

(a) Any additional expenses caused by the assignment must be borne equally by each party involved; or

(b) The judge may distribute any additional expenses among the parties as the judge deems appropriate.

(Added to NRS by 1997, 2716)

**NRS 40.690 Limitation on bringing claim against governmental entity during period for resolution; effect of settlement; contractor or claimant may require party to appear and participate.**

1. A claim governed by NRS 40.600 to 40.695, inclusive, may not be brought by a claimant or contractor against a government, governmental agency or political subdivision of a government, during the period in which a claim for a constructional defect is being settled, mediated or otherwise resolved pursuant to NRS 40.600 to 40.695, inclusive. The settlement of such a claim does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party.

2. A contractor or claimant may require a party against whom the contractor or claimant asserts a claim governed by NRS 40.600 to 40.695, inclusive, to appear and participate in proceedings held pursuant to those sections as if the party were a contractor and the party requiring the appearance were a claimant. The party must receive notice of the proceedings from the contractor or claimant.

(Added to NRS by 1995, 2544; A 1997, 2723; 1999, 1443)

**NRS 40.692 Notice not required to be given to intervener in action.** A claimant who commences an action for a constructional defect is not required to give written notice of a defect pursuant to NRS 40.645 to any person who intervenes in the action as a party after it is commenced. If such a person becomes a party to the action:

1. For the purposes of NRS 40.645, the person shall be deemed to have been given notice of the defect by the claimant on the date on which the person becomes a party to the action; and

2. The provisions of NRS 40.600 to 40.695, inclusive, apply to the person after that date.

(Added to NRS by 1999, 1438; A 2003, 2049)

**NRS 40.695 Tolling of statutes of limitation or repose; applicability.**

1. Except as otherwise provided in subsection 2, statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, are tolled from the time notice of the claim is given, until 30 days after mediation is concluded or waived in writing pursuant to NRS 40.680.

2. Tolling under this section applies to a third party regardless of whether the party is required to appear in the proceeding.

(Added to NRS by 1995, 2544; A 1997, 2723; 1999, 1444; 2003, 2049)

## MISCELLANEOUS PROVISIONS

**NRS 40.750 Fraud against financial institution or other lender for purpose of obtaining loan secured by lien on real property.**

1. As used in this section, "financial institution" means a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, or any subsidiary or affiliate of a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, which is authorized to transact business in this State and which makes or acquires, in whole or in part, any loan of the kind described in subsection 2.

2. Except as otherwise provided in subsection 5, a person who, for the purpose of obtaining a loan secured by a lien on real property, knowingly conceals a material fact, or makes a false statement concerning a material fact knowing that the statement is false, is liable to any financial institution or other lender which relied upon the absence of that concealed fact or on that false statement for any damages it sustains because of the fraud.

3. In addition to its actual damages, a financial institution or other lender may recover exemplary or punitive damages in an amount not to exceed 50 percent of the actual damages awarded.

4. The cause of action provided by this section:

(a) Is not, for the purposes of NRS 40.430, an action for the recovery of any debt or an action for the enforcement of any right secured by mortgage or lien upon real estate.

(b) Is in addition to and not in substitution for any right of foreclosure existing in favor of the financial institution or other lender. Any recovery pursuant to this section does not limit the amount of a judgment awarded pursuant to NRS 40.459, but the financial institution or other lender is not entitled to recover actual damages more than once for the same loss.

5. The provisions of this section do not apply to any loan which is secured by a lien on real property used for residential purposes if:

(a) The residence is a single-family dwelling occupied by the person obtaining the loan, as represented by the person in connection with the person's application for the loan; and

(b) The loan is for the principal amount of $150,000 or less.

(Added to NRS by 1987, 1346; A 1999, 3802; 2003, 3570; 2007, 2850)

**NRS 40.760 Summary eviction of person using space in facility for storage as residence.** Repealed. (See chapter 278, Statutes of Nevada 2013, at page 1258.)

**NRS 40.770 Limitation on liability of seller, seller's agent and buyer's agent for failure to disclose certain facts concerning property.**

1. Except as otherwise provided in subsection 6, in any sale, lease or rental of real property, the fact that the property is or has been:

(a) The site of a homicide, suicide or death by any other cause, except a death that results from a condition of the property;

(b) The site of any crime punishable as a felony other than a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine; or

(c) Occupied by a person exposed to the human immunodeficiency virus or suffering from acquired immune deficiency syndrome or any other disease that is not known to be transmitted through occupancy of the property,

➥ is not material to the transaction.

2. In any sale, lease or rental of real property, the fact that a sex offender, as defined in NRS 179D.095, resides or is expected to reside in the community is not material to the transaction, and the seller, lessor or landlord or any agent of the seller, lessor or landlord does not have a duty to disclose such a fact to a buyer, lessee or tenant or any agent of a buyer, lessee or tenant.

3. In any sale, lease or rental of real property, the fact that a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS is located near the property being sold, leased or rented is not material to the transaction.

4. A seller, lessor or landlord or any agent of the seller, lessor or landlord is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the seller, lessor or landlord or agent of the seller, lessor or landlord had no actual knowledge.

5. Except as otherwise provided in an agreement between a buyer, lessee or tenant and that person's agent, an agent of the buyer, lessee or tenant is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the agent of the buyer, lessee or tenant had no actual knowledge.

6. For purposes of this section, the fact that the property is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine is not material to the transaction if:

(a) All materials and substances involving methamphetamine have been removed from or remediated on the property by an entity certified or licensed to do so; or

(b) The property has been deemed safe for habitation by the board of health.

7. As used in this section:

(a) "Board of health" has the meaning ascribed to it in NRS 439.4797.

(b) "Facility for transitional living for released offenders" has the meaning ascribed to it in NRS 449.0055.

(Added to NRS by 1989, 629; A 1995, 845; 1997, 1674; 2003, 1338; 2005, 2353; 2007, 2772; 2009, 826)

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

| | |
|---|---|
| U.S. HOME CORPORATION, a Delaware corporation,<br><br>Appellant,<br><br>v.<br><br>THE MICHAEL BALLESTEROS TRUST, RODRIGO ASANION, individually; FEDERICO AGUAYO, individually; FELIPE ENRIQUEZ, individually; JIMMY FOSTER, JR., individually; THE GARCIA FAMILY TRUST, ARNULFO ORTEGA-GOMEZ and ELVIRA GOMEZ-ORTEGA, individually; JOHN J. and IRMA A. OLSON, individually; OMAR PONCE, individually; BRANDON WEAVER, individually; JON YATES, individually; and MINTESNOT WOLDETSADIK, individually,<br><br>Respondents. | CASE NO. 68810<br><br>Eighth Judicial District Case No. A-15-713587-D |

# RESPONDENTS' ANSWERING BRIEF

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## NRAP 26.1 DISCLOSURE

The undersigned counsel of record hereby certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

The law firm of Shinnick, Ryan & Ransavage P.C., and two attorneys thereof (Duane E. Shinnick and Courtney K. Lee), who represent Respondents in the district court and in this proceeding.

DATED this 7th day of December, 2015.

COURTNEY K. LEE, ESQ.

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# RESPONDENTS' ANSWERING BRIEF

## STATEMENT OF FACTS

Respondents' Answering Brief is being filed pursuant to NRAP 28. The Joint Appendix ("JA") filed on October 20, 2015 will be referenced. The Nevada state district court case concerns a construction defect action involving twelve (12) homes of claimants ("Subject Homes") located in the Azure Manor/Rancho de Paz subdivision of North Las Vegas, Nevada. U.S. Home Corporation ("U.S. Home") was the developer and/or general contractor of the Azure Manor/Rancho de Paz subdivision. Residential construction defect claims are governed under NEV. REV. STAT. §§ 40.600-40.695 or Chapter 40 ("NRS 40.600-40.695"). (Add. A)

On or about February 20, 2015, homeowner Respondents filed the original lawsuit against U.S. Home. (Vol. I, JA1-15)

On April 30, 2015, U.S. Home filed its Motion to Compel Arbitration ("MTCA") based upon the Homeowners' Association's Covenants, Conditions, and Restrictions ("CC&Rs"), and the Purchase and Sales Agreements ("PSAs"). (Vol. I, JA29-162) Common interest communities are governed by NEV. REV. STAT. §§ 116.1201-116.795 ("NRS 116.1201-116.795"). (Add. B)

U.S. Home's MTCA was directed at all homeowner Respondents[1] involved in the construction defect matter based upon arbitration agreements contained in the Association's CC&Rs, and two (2) PSAs allegedly executed by and between U.S. Home and original homeowners.

Respondents filed their Opposition to U.S. Home's MTCA on May 15, 2015. (Vols. I, II, JA163-355)

U.S. Home filed a Reply in support of their MTCA on May 27, 2015. (Vol. II, JA362-396)

On June 3, 2015, the Honorable Joanna Kishner, District Court Judge for the Eighth Judicial District heard oral arguments on U.S. Home's MTCA. (Vol. II, JA398-431). On June 26, 2015, Judge Kishner entered a minute order regarding the MTCA. (Vol. II, JA432-434) Competing orders were submitted to Judge Kishner for her consideration. (Vol. II, JA435-454) However, Judge Kishner executed U.S. Home's Findings of Facts, Conclusions of Law, and Order

[1] U.S. Home did not move to compel arbitration against any subsequent purchasing homeowner for arbitration provisions contained in PSAs, but only as they related to the Association's CC&Rs. It should be noted that Plaintiffs will seek leave to amend their complaint to remove the breach of contract and express warranties claims in state district court and that Plaintiffs/Respondents never intended for breach of contract or express warranties to apply to any subsequent purchasing homeowner claimant.

("FFCLO"), instead of homeowner Respondents' proposed FFCLO. (Vol. II, JA455-464) Judge Kishner, in this FFCLO, stated that the arbitration provisions were procedurally and substantively unconscionable, *inter alia*. (Vol. II, JA460-463)

On September 10, 2015, U.S. Home filed its Notice of Appeal of the denial of its MTCA. (Vol. II, JA478-480)

It is requested that this Court sustain the ruling of the Honorable Joanna Kishner of the Eighth Judicial District Court and deny compelling arbitration based upon lack of agreement to arbitrate, the unconscionability of the arbitration provisions in the Association's CC&Rs and/or U.S. Home's PSAs.

## SUMMARY OF ARGUMENTS

### I. ARBITRATION CANNOT BE COMPELLED AGAINST RESPONDENTS WHO NEVER AGREED TO ARBITRATE CLAIMS

Arbitration is a matter of contract. The Association's CC&Rs are not "contracts" but covenants that run with the land. As such, U.S. Home cannot compel arbitration against those Respondents who never agreed to arbitrate their claims by way of arbitration provisions inserted within an Association's CC&Rs.

/ / /

## II. FEDERAL ARBITRATION ACT DOES NOT APPLY

The Federal Arbitration Act ("FAA") provides that a "written provisions in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA generally does not apply to common-interest communities exclusively within the state of Nevada or residential real estate transactions that have no substantial or direct connection to interstate commerce, regardless of whether said transactions involve out-of-state purchasers (presumably also sellers).

## III. EVEN IF THE FAA APPLIES, ARBITRATION PROVISIONS ARE UNCONSCIONABLE AND THEREFORE UNENFORCEABLE

Although public policy favors arbitration because arbitration generally avoids the higher costs and longer time periods associated with traditional litigation, courts may invalidate unconscionable arbitration provisions. *See Burch v. Dist. Ct.*, 118 Nev. 438, 442-43, 49 P.3d 647, 650 (2002); *see also Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468,

474, 109 S. Ct. 1248, 103 L.Ed.2d 488 (1989). The arbitration provisions in the present matter are unconscionable.

## ARGUMENTS

### I. U.S. HOME CANNOT COMPEL ARBITRATION WHERE THERE ARE NO AGREEMENTS TO ARBITRATE

U.S. Home must show, as a threshold matter, that there is a valid and enforceable **agreement** between the parties to arbitrate in order to compel such arbitration. *See Mitri, et al v. Arnel Management Company, et al.*, 157 Cal.App. 4th 1164, 69 Cal.Rptr. 3d 223 (Cal.Ct.App. 2007). Since arbitration is a matter of contract, a party cannot be required to submit a dispute to arbitration which he/she has not agreed to submit. *See AT & T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 648, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986); *see also Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574, 582, 80 S.Ct. 1347, 1353, 4 L.Ed.2d 1409, __ (1960). U.S. Home seeks to compel arbitration for all Respondents regarding their Subject Homes in the state district court matter by virtue of arbitration provisions contained within the Association's CC&Rs. However, the Association's CC&Rs are not "contracts", but covenants that run with the land. U.S. Home cannot compel arbitration based upon the CC&Rs,

which are not "contracts" between the individual homeowners and the Declarant. Even if the CC&Rs are deemed "contracts", the "contracts" or CC&Rs are meant to be binding between the Declarant and the homeowner's association[2], or between the homeowner's association and the individual homeowners[3], not between the Declarant and individual homeowners directly.

U.S. Home argues that the CC&Rs set forth "any other matters the declarant considers appropriate." U.S. Home's Opening Brief at 16, *citing* NRS 116.2105(2). If the Court determines that the CC&Rs are "contracts" between the Declarant/U.S. Home and individual homeowner Respondents, then the appropriateness of any provision has to be germane and reasonable to the creation, maintenance, and governance of common-interest community. (Add. B) The statutory presumption of reasonableness requires that the recorded covenants and restrictions be enforced "unless they are wholly arbitrary, violate a fundamental public policy, or impose a burden on the use of affected land that far outweighs

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[2] *See Villa Milano Homeowners Assn. v. Il Davorge*, 84 Cal.App.4th 819, 824-26, 102 Cal.Rptr.2d 1 (Cal.App. 2000), *disapproved on other grounds* (CC&Rs as "contract" between developer and homeowners association).

[3] *See Frances T. v. Village Green Owners Assn.*, 42 Cal.3d 490, 512-13, 229 Cal.Rptr. 456, 723 P.2d 573 (Cal. 1986) (CC&Rs as "contract" between condominium owners association and unit owner).

any benefit". *Nahrstedt v. Lakeside Village Condominium Assn.*, 8 Cal.4th 361, 382, 33 Cal.Rptr.2d 63, 878 P.2d 1275 (Cal. 1994).

The arbitration provisions within these CC&Rs are wholly arbitrary, violate state public policy of allowing claimants to bring construction defect complaints under Nevada's Chapter 40 provisions, not under a different set of procedural and substantive provisions that U.S. Home asserts to be appropriate.

The legislature certainly did not intend for declarants to place self-serving and unfair provisions within the CC&Rs binding any homeowner who purchases within the community to arbitrate claims for construction defects. This is true if these claims are unrelated to the creation, maintenance, governance of a common-interest community. Mandatory arbitration provisions embedded within the CC&Rs are certainly not "appropriate" with regard to individual claims for constructional defects. Nevada Chapter 40 provisions were meant to occupy the field of state residential construction defect claims and the individual Respondents did not agree to be bound by other varying and self-serving provisions inserted by developers. (Adds. A and B)

Further, U.S. Home cites to *Pinnacle Museum Tower Assn v. Pinnacle Mkt. Dev.*, 282 P.3d 1217, 1227-28 (Cal. 2012), to support its contention that the

enforcement of arbitration agreements even when the homeowners did not negotiate the CC&Rs with the declarant developer. *See* U.S. Home's Opening Brief at 16. However, the *Pinnacle Museum Tower Assn.* case is based upon the Davis-Stirling Act under California's Civil Code concerning common-interest communities, which is different from Nevada's common-interest community statutes, NRS 116.1201-116.795 in key ways. For example, California's Davis-Stirling Act contains a specific provision for construction defect litigation as it relates to an Association and Declarant for common area defects in Chapter 11 of CAL. CIV. CODE §§ 4000-6150, and Nevada does not have a similar provision within NRS Chapter 116.

In addition, article XVIII in the *Pinnacle* CC&Rs provided that "[t] he arbitrator is authorized to provide all recognized remedies available at law in equity for any cause of action" so that the CC&Rs "were drafted so that the parties' remedies would *not* change." *Pinnacle*, 282 P.3d at 1234. The present CC&Rs do not have a provision which guarantees NRS Chapter 40 remedies. Also, the required form of information statement does not include a provision that any prospective homeowner will have to arbitrate claims for construction defects under NRS 116.1201-116.795 as residential constructional defects in the state of

Nevada are exclusively governed under NRS 40.600-40.695. The California legislature enacted CAL. CIV. CODE §§ 895-945.5 for constructional defects, which is different from Nevada's Chapter 40. Furthermore, the *Pinnacle* case is distinguishable from the case at bar because the court held that the arbitration provision may be enforced by a developer, or declarant, against an ***owners' association***, not against the individual unit owners as in the present matter. *See Pinnacle*, 55 Cal.4th at 232.

U.S. Home has not demonstrated that the Association's CC&Rs contain valid agreements to arbitrate. As such, U.S. Home has not proven agreements to arbitrate in the CC&Rs prior to compelling arbitration for all Respondents.

## II. EVEN IF AGREEMENTS TO ARBITRATE ARE FOUND, THE FEDERAL ARBITRATION ACT WAS NOT MEANT TO APPLY TO ARBITRATION PROVISIONS WITHIN THE CC&Rs OR PSAs

U.S. Home argues that the arbitration provisions in the CC&Rs and PSAs are subject to the terms of the Federal Arbitration Act ("FAA") (9 U.S.C. §§ 1-16) because the CC&Rs and PSAs containing arbitration agreements involve interstate commerce. *See* U.S. Home's Opening Brief at 18.

The United States Congress enacted the FAA in 1925 in response to widespread judicial hostility to arbitration agreements. *See AT & T Mobility, LLC*

*v. Concepcion*, __ U.S. __, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011). The FAA provides that a "written provisions in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, **save upon such grounds as exist at law or in equity for the revocation of any contract**." 9 U.S.C. § 2 (Emphasis added). The United States Supreme Court has described 9 U.S.C. § 2 as reflecting a "liberal federal policy favoring arbitration". *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24, 103 S.Ct. 927, __, 74 L.Ed.2d 765, __ (1983). Further, the FAA recognizes the "fundamental principal that arbitration is a matter of contract". *Rent-A-Center, West Inc. v. Jackson*, 561 U.S. 63, __, 130 S.Ct. 2772, 2776, 177 L.Ed.2d 403, __ (2010).

### *A. The FAA does not apply to Arbitration Provisions within the Association's CC&Rs*

The CC&Rs do not state that the FAA is to apply, nor does it substantively apply. (Vol. I, JA49-139) The CC&Rs specifically indicate that NRS Chapter 116 shall apply, which is a Nevada statute governing common-interest communities exclusively within the state of Nevada. (Vol. I, JA54; Add. B) The CC&Rs are not "agreements" or contracts to actually construct or build the community or the

individual homes, but covenants regarding use restrictions, governance, management, and payment of association fees for the common-interest community (although, at times, land or property may be annexed to the community by the CC&Rs and/or amendments thereto). (Vol. I, JA49-139; Add. B) The FAA would certainly not apply to any arbitration provisions contained within CC&Rs as the community use restrictions, governance, community assessments, and management are all within the purview of state law, NRS Chapter 116, which do not involve interstate commerce. (Add. B)

### *B. The FAA does not apply to the Arbitration Provisions within U.S. Home's PSAs*

U.S. Home produced two (2) PSAs containing arbitration provisions for Respondents John and Irma Olson, owners of the property located at 2921 Kildare Cove Court, and The Michael Ballesteros Trust (Michael Ballesteros as trustee), owner of the property located at 6137 Darnley Street, (collectively "Subject Homes"). (Vol. I, JA144-151)

U.S. Home states that the PSAs indicate that the FAA applies and that homeowner Respondents "*stipulated* that the FAA applies to their claims." U.S. Home's Opening Brief at 19. However, any stipulation which is untrue or contrary to public policy should not be enforced.

Although U.S. Home appears to argue that any "construction of the homes" evidence transactions that involve or affect interstate commerce, nothing was offered as evidence at the district court level to prove that equipment and/or materials were/will be furnished from outside the state of Nevada nor list any subcontractors to be utilized who were located outside the confines of the state of Nevada (other than a Declaration by counsel, Sarah Odia, Esq., indicating the subcontractors' names and domicile states). (Vol. I, JA153-155) U.S. Home's Opening Brief at 20. Notwithstanding, the PSAs were not "construction agreements", but agreements for the purchase and sale of completed homes within the state of Nevada as between U.S. Home and homebuyer Respondents. The "transaction" in the present matter is the purchase and sale of a completed home, not the actual construction agreement. The construction agreements were between the developer, U.S. Home, and subcontractors, who actually contracted to build the Subject Homes, specified the materials and quantities necessary to construct the Subject Homes, payments for such construction services, *etc.*

The FAA is not implicated in a state constructional defect claim. The present action is not a commercial construction industry dispute, or one that affects interstate commerce, but a case which involves the sale of homes constructed

within the state of Nevada. (Vol. I, JA1-15)

U.S. Home states that "construction always involves goods and materials being shipped in commerce, often out-of states-parties, and the involvement of loans or escrow accounts that concern out-of-state sources." U.S. Home's Opening Brief at 20 (citations omitted). As previously stated, the PSAs by and between U.S. Home and homebuyer Respondents were not "construction agreements" or loan agreements, but purchase and sale agreements for completed individual homes. The FAA generally does not apply to residential real estate transactions that have no substantial or direct connection to interstate commerce, regardless of whether said transactions involve out-of-state purchasers [and presumably out-of-state Sellers, such as U.S. Home]. *See, e.g., Saneii v. Robards*, 289 F.Supp.2d 855 (W.D.Ky. 2003); *see also SI V, LLC v. FMC Corp.*, 223 F.Supp. 2d 1059 (N.D.Cal. 2002); *Cecala v. Moore*, 982 F.Supp. 609, 612 (N.D.Ill.1997) (held that a contract for the purchase and sale of a house did not involve interstate commerce as defined by the FAA); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 595, 553 S.E.2d 110, 117-18 (S.C. 2001) ("The development of land within South Carolina borders is the quintessential example of a purely intrastate activity"). Indeed, homeowner Respondents in the present case contracted for the purchase of

completed homes located within the state of Nevada (not the component parts which may or may not have been manufactured in the state of Nevada). The *Saneii* court stated that notwithstanding its congenial effects on interstate commerce, the sale of residential real estate is inherently intrastate. *See Saneii*, 289 F.Supp.2d at 858. Contracts strictly for the sale of residential real estate focus entirely on a commodity – the land – which is firmly planted in one particular state. *See id.* The citizenship of immediate parties (the buyer and the seller) or their movements to or from that state are incidental to the real estate transaction. *See id.* Single residential real estate transactions of this type have no substantial or direct connection to interstate commerce. *See id.* The Subject Homes are all located within the state of Nevada, constructed in the state of Nevada, and sold within the state of Nevada. The homes and the land upon which the Subject Homes are situated are firmly planted within the state of Nevada. All of the legal relationships concerning the land are bound by state law principles. The purchase and sale of the Subject Homes in question have no substantial or direct connection to interstate commerce. Therefore, the FAA would not apply to a state constructional defect action which does not involve commerce.

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## III. ARBITRATION PROVISIONS ARE CONTRARY TO NEVADA LAW

Although Nevada law favors arbitration, this Court has held that arbitration provisions in home sales contracts that abrogate a homeowner's NRS Chapter 40 rights are not enforceable as they are unconscionable and violate the public policy behind NRS Chapter 40. *See Gonski v. Second Judicial Dist. Ct.*, 245 P.3d 1164 (Nev. 2010); NRS 38.219(1). In *Gonski,* the homeowners signed a purchase agreement with a purported arbitration provision substantially the same as the one U.S. Home attempts to enforce. The provision provided that arbitration was to occur in "accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") and the Federal Arbitration Act (Title 9 of the United States Code)". *Id.* at 1167. In *Gonski,* the builder was to advance the fees necessary for the arbitration "even though each party is responsible for its own attorney fees and costs." *Id.* at 1171. This Court noted that the circumstances at closing concerning the execution of the purchase agreement along with a number of other documents amounted to slight but "not overwhelming" procedural unconscionability. *Id.* at 1171. Further, it was the abrogation of NRS Chapter 40 rights primarily with regard to recovery of fees and costs which created such "significant substantive unconscionability" that it "tips the balance so that the

arbitration clauses....must be declared unconscionable." *Gonski*, 245 P.3d at 1173.

The CC&Rs abrogate Nevada's Chapter 40 in requiring different and/or additional procedures in order to bring construction defect claims. (Vol. I, JA129) The CC&Rs state that "[a]ny dispute . . . shall be resolved by submitting such dispute to arbitration . . . arbitrator who will render a decision binding on the parties which can be entered as a judgment . . ." (Vol. I, JA129). This required "arbitration" is presumably in addition to the required mediation under NRS 40.680. (Vol. I, JA129; Add. A). The right to bring claims after NRS Chapter 40 is satisfied in a court of law is waived. NRS Chapter 40 requires a claimant to give the developer notice, and opportunity to inspect and repair, and conduct mediation, unless waived in writing, prior to filing a complaint in district court. (Add. A) Mandated mediation, unless waived in writing, is the only dispute resolution required prior to filing a complaint in state district court. *See* NRS 40.680. The CC&Rs' arbitration provisions, are waivers of substantive rights, without the necessary attention being brought to a reasonable person that important rights are being waived. The CC&Rs' arbitration provisions provide that the "costs of arbitration shall be borne equally by the parties". (Vol. I, JA129) The CC&Rs' arbitration provisions are contrary to the construction defect provisions

and procedures promulgated under Chapter 40. Further, Section 17.15 of the CC&Rs states that giving Declarant notice of claims "shall not be deemed to modify or toll any applicable statute of limitation or repose", which is contrary to the tolling provisions of NRS 40.668 and NRS 40.695. (Vol. I, JA129; Add. A)

U.S. Home's arbitration provisions in the PSAs are also contrary to NRS Chapter 40 as they require an arbitration in addition to a mediation if the dispute is not resolved. (Vol. I, JA145-146, JA149-150). NRS Chapter 40 only mandates mediation unless waived in writing. *See* NRS 40.680. The arbitration in the PSAs also require each party to pay their own attorneys' fees and costs in arbitration and/or mediation in abrogation of NRS Chapter 40 right to recovery of fees and costs. *See* NRS 40.655. (Vol. I, JA145-146, JA149-150)

The arbitration provisions contained in the CC&Rs and PSAs seek to insert different rules, timelines, *etc.* and nullify the Chapter 40 rights to fees, costs and interest, without advising the home buyers that they are waiving such substantial rights that pertain directly to these kinds of claims, and without any showing of a knowing waiver by the home buyers of these rights. Similarly, in the present case, the homeowners did not realize that the arbitration provision impacted their statutory rights under Chapter 40. (Vol. II, JA352-355)

## IV. ARBITRATION PROVISIONS ARE PROCEDURALLY AND SUBSTANTIVELY UNCONSCIONABLE

Even if the FAA applies, the strong presumption in favor of arbitration "does not confer a right to compel arbitration of any dispute at any time." *Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468, 474, 109 S. Ct. 1248, 103 L.Ed.2d 488 (1989). The FAA provides that arbitration agreements are unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Accordingly, arbitration agreements may be invalidated by "generally applicable contract defenses, such as fraud, duress, or unconscionability" without contravening the FAA. *Doctor's Assoc., Inc. v. Casarotto*, 517 U.S. 681, 687, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996).

In the leading case of *D.R. Horton, Inc. v. Green,* this Court began its analysis by citing to the long held premise that an arbitration clause in a contract may be unenforceable if it is both procedurally and substantively unconscionable. *See D.R. Horton, Inc. v. Green*, 120 Nev. 549, ___, 96 P.3d 1159, 1160 (2004); *see also Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal.4th 83 (Cal. 2000). The arbitration provisions in the present matter are unconscionable,

therefore unenforceable.

### *A. The District Court Correctly Determined that the Arbitration Provisions are Procedurally Unconscionable*

Procedural unconscionability involves the "use of fine print or complicated, incomplete or misleading language that fails to inform a reasonable person of the contractual language's consequences." *D.R. Horton*, 96 P.3d at 1162, *citing American Airlines, Inc. v. Wolens*, 513 U.S. 219, 249, 115 S.Ct. 817, 130 L.Ed.2d 715 (1995) (O'Connor, J., *concurring*). This Court held that the arbitration provision was procedurally unconscionable when there was nothing that highlighted the arbitration provision or separated it from other provisions in the contract. *D.R. Horton*, 96 P.3d at 1164. In accord, the *Gonski* court found that the arbitration clause was inconspicuous because nothing drew the reader's attention to its importance - "it is printed in normal-sized font and located on page 15 of an 18-page document and in the midst of identically formatted paragraphs, even though other paragraphs and sentences, including ones describing 'buyer structural/non structural changes,' punch list items, . . . are called out through the use of all capital letters and holding [*sic* bolding] and/or required the buyers to specially initial." *Gonski*, 245 P.3d at 1170.

The district court correctly found that the arbitration provisions were procedurally unconscionable. (Vol. II, JA460-462)

1. The Arbitration Provisions within the Association's CC&Rs are Procedurally Unconscionable

U.S. Home argues that the arbitration provisions in the CC&Rs are not procedurally unconscionable because the arbitration provision is identified in the table of contents at the front of the CC&Rs. *See* U.S. Home's Opening Brief at 32-33. However, the arbitration provisions contained within the CC&Rs are procedurally unconscionable and the listing of the arbitration provision, along with all of the other provisions, in a table of contents does not transform the provision into a conscionable one. The CC&Rs are given to the purchaser of a unit within the homeowners association. The new or subsequent homeowner does not execute the "agreement" nor can he/she individually negotiate to change its terms. It is an adhesion contract (if even considered a "contract" at all). None of the arbitration provisions are conspicuous, provided in bold print, or in all capital letters. The arbitration provisions, Section 17.16 is buried within the CC&Rs on page 76 of 86 pages (including exhibits and amendment), and is in the same small type font as the other provisions of the CC&Rs. (Vol. I, JA129) U.S. Home stated that "Section 17.16 is entitled, in bold, underlined font, '**Arbitration**.'". U.S.

Home's Opening Brief at 32. The Arbitration provision is not bolded as indicated by U.S. Home. (Vol. I, JA129) Although the Arbitration provision is underlined, so are all of the other subheading provisions of the CC&Rs. (Vol. I, JA49-139; JA129) Further, the Arbitration provisions are placed under Article 17, "General Provisions", so would not draw an average homebuyer's attention to the waiver of important legal rights. (Vol. I, JA122-129; Vol. II, JA352-355). The homeowner Respondents did not read all of the extensive CC&Rs, and did not realize that arbitration provisions beginning on page 76 were part of the CC&Rs. (Vol. II, JA352-355) The arbitration provisions are therefore inconspicuous as to placement within the voluminous CC&Rs and because of the use of the same font and type as other provisions of the CC&Rs - which would not draw attention to an average person about the important rights he/she is waiving. (Vol. I, JA49-139) The Nevada Supreme Court has invalidated an arbitration clause in contracts because of the inconspicuous nature of the clause. *See D.R. Horton, Inc. v. Green*, 120 Nev. 549, 96 P.3d 1159, 1165 (2004).

2. The Arbitration Provisions within U.S. Home's PSAs are Procedurally Unconscionable

The arbitration provisions contained with U.S. Home's PSAs are also procedurally unconscionable.

This Court held that the arbitration provision was procedurally unconscionable when there was nothing to draw the reader's attention to the importance of the arbitration provisions. *See Gonski v. Second Judicial Dist. Ct.*, 245 P.3d 1164, 1170 (Nev. 2010). This Court indicated that there was nothing that highlighted the arbitration provision or separated it from other provisions in the contract. *D.R. Horton*, 96 P.3d at 1164. Furthermore, there was nothing that would have "adequately advise[d] an average person that important rights were being waived by agreeing to arbitrate any disputes under the contract." *Id.* at 1165.

In the present matter, U.S. Home argues that the arbitration provisions are not inconspicuous. *See* U.S. Home's Opening Brief at 32. However, the arbitration provisions in U.S.Home's PSAs are located on page 2 of 4 total pages, the middle of the PSAs, and in the same small font as the other provisions of the PSAs. (Vol. I, JA144-151) As stated in *Gonski v. Second Judicial Dist. Ct.,* 245 P.3d 1164 (Nev. 2010), this Court found that the arbitration provisions to be inconspicuous as they were printed in "normal-sized font and located on page 15 of an 18-page document and in the midst of identically formatted paragraphs, even though other paragraphs and sentences, including ones describing 'buyer structural/non structural changes,' punch list items, inspection and cancellation, limitations on

liability, and a termites and environmental notice/disclaimer, are called out through the use of all capital letters and holding [*sic* bolding], and/or required the buyers to specially initial." *Gonski*, 245 P.3d at 1170. Essentially, there was nothing that drew attention to the importance of what those pages contained. *Id.* Similarly, in the present matter, there is nothing highlighting the arbitration provisions or separating them from the other provisions of the PSAs. (Vol. I, JA145-146, JA149-150) U.S. Home's arbitration provisions are in the same font and formatting as other provisions of the PSAs, even though some other provisions, like the Home Warranty, are printed in all capital letters. (Vol. I, JA144-151) Nothing draws attention to the arbitration paragraph and the arbitration paragraph does not even use the term "construction defects" to alert a homebuyer to the topics intended to be covered by the arbitration paragraph. (Vol. I, JA145-146, JA149-150)

In addition, the arbitration provisions in paragraph 18 of U.S. Home's PSAs are confusing because they state that claims should "shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration", and "not by or in a court of law." (Vol. I, JA145-146, JA149-150). However, shortly thereafter the provisions state that "in the event the

Homeowner's Warranty provided by Seller does not provide for binding arbitration, a claim under, or covered by, the warranty will be administered as provided in the warranty prior to submission to binding arbitration." (Vol. I, JA146, JA150). So it is uncertain whether Respondents must first proceed through a Homeowner's Warranty process prior to seeking mediation and/or arbitration for any claim. Also, the arbitration provisions are seemingly contradictory in that the arbitrator "shall have the right to award reasonable attorneys' fees and expenses, including those incurred in mediation, arbitration, trial or on appeal." (Vol. I, JA146, JA150) Even had Respondents been aware that there were arbitration provisions and read them, it would be difficult understand these confusing and apparently contradictory arbitration provisions (an arbitrator would presumably only have the authority to award reasonable attorneys' fees at or during arbitration, but not at trial or on appeal). Notwithstanding, Respondents were unaware that there were arbitration provisions in the PSAs. (Vol. II, JA352-355) Moreover there was nothing in the provisions that advised adequately to an average person that important rights were being waived or that impacted their statutory rights under NRS Chapter 40. (Vol. I, JA145-146, JA149-150)

Lastly, this Court noted that the circumstances under which the homeowner signed purchase documents at closing, along with a number of other documents, amounted to slight but "not overwhelming" procedural unconscionability. *Gonski*, 245 P.3d at 1171. In the case at bar, Respondent(s) were given a high stack of paperwork to sign and/or were given incentives to close "quickly". (Vol. II, JA352, JA354) The arbitration provisions in the PSAs are therefore procedurally unconscionable.

Judge Kishner properly found that nothing "draw[s] attention to the arbitration provisions." (Vol. II, JA461) The arbitration clauses, like many others within the PSA, are inconspicuous on page 2 of 4. There is nothing to highlight the importance of the arbitration provisions. (Vol. II, JA461) Judge Kishner appropriately stated that "the arbitration provisions do not clearly state that the purchaser is waiving his right to a jury trial [by agreeing to arbitrate], nor does it mention any impact on the purchaser's rights under NRS Chapter 40." (Vol. II, JA462)

In *Burch v. Second Judicial Dist. Ct.*, 49 P.3d 647 (Nev. 2002), this Court held that a mandatory arbitration provision in a 2-10 Home Buyers Warranty was an "unconscionable adhesion contract and, therefore, unenforceable." *Id.* at 649.

This Court cited to the lack of opportunity of the homeowner to negotiate the terms of the warranty and the fact that it was offered on a "take it or leave it" basis. *Id.* at 650. Similarly in the present case, the Respondents Ballesteros and Olson were not given any true opportunity to negotiate the terms of the U.S. Home purchase contract, were handed a "high stack" of paperwork" to sign, and/or were offered the purchase of the Subject Homes on a "take it or leave it" basis. (Vol. II, JA352-355) The district court's finding of procedurally unconscionability was supported by the record and correct. (Vol. II, JA460-462)

### *B. The District Court Properly Found that the Arbitration Provisions are Substantively Unconscionable*

Substantive unconscionability, where an arbitration agreement is concerned, addresses whether the arbitration remedy contains a "modicum of bilaterality." *D.R. Horton*, 96 P.3d at 1165, *quoting Ting v. AT & T*, 319 F.3d 1126, 1149 (9th Cir. 2003), *cert. denied*, 540 U.S. 811, 124 S.Ct. 53, 157 L.Ed.2d 24 (2003).

In the present matter, the arbitration agreements are drafted by U.S. Home or a predecessor of U.S. Home as declarant for the CC&Rs or as the drafting party of the PSAs, contain oppressive terms, and have no modicum of bilaterality. (Vol. I, JA129, JA145-146, JA149-150)

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1. The Arbitration Provisions within the Association's CC&Rs are Substantively Unconscionable

The arbitration provisions contained within the CC&Rs are substantively unconscionable. The invalid costs provision of *D.R. Horton* is identical to the invalid costs provision in the instant U.S. Home's CC&Rs, Section 17.16, where "costs of the arbitration shall be borne equally by the parties." (Vol. I, JA129) The arbitration provisions indicate that the "arbitration shall be conducted according to the provisions of the Construction Industry Arbitration Rules of the American Arbitration Association." (Vol. I, JA129) However, there is no disclosure of the potential arbitration costs, nor are there any disclosures or explanations that the costs of arbitration may be higher than litigation. (Vol. I, JA129) In fact, Respondents indicated that arbitration was not explained to them or brought to their attention. (Vol. II, JA352-355)

The Chapter 40 rights to recovery of fees and costs are also uncertain to be awarded in arbitration as the arbitrator has discretion in law or equity to render a binding arbitration award. *See* R-48 at www.adr.org/construction. This discretion in arbitration is of great concern to Respondents as there is no review of the arbitrator's subjective analysis or whether the arbitrator based the award/decision on Chapter 40 remedies. Short of fraud or manifest disregard of the law, it is very

difficult to vacate a binding arbitration award. *See* NRS 38.241. Furthermore, the arbitration fees may be substantial under AAA, from at least $750 to $10,000 plus. *See* www.adr.org/feeschedule. The arbitrator's fees may go up to $1,500 or more per day per arbitrator. If there is a panel of 3 arbitrators, then the minimum filing fee would increase to $2,000 to $4,000 with the arbitrators being reimbursed up to $1,500 a day per arbitrator or the arbitrator's "standard" rate, which may be more costly (up to $4,500 or more a day). This is in stark contrast to the $520 initial filing fee, then $30 for each additional named claimant in district court. If each of the Respondents' claims is arbitrated separately, then the fees would be a multiple of the fees and number of Respondents. The construction and commercial arbitration fee schedules appear to be the same. *See* www.adr.org/constructionfeeschedule.

The bias of the construction industry panel under the AAA is apparent as the majority of arbitrators are individuals from within the construction industry (general contractors or subcontractors or attorneys of general contractors or subcontractors). (Vol. I, JA174-175; Vol. II, JA409-410, 418-419) *See* www.adr.org. Consumer groups are opposed to these forced arbitrations because of the industry bias of the arbitrator panel, *inter alia*. *See* www.citizen.org

("Forced Arbitration: Unfair and Everywhere"); www.afj.org ("Eliminating Forced Arbitration"). Further, the arbitration awards are not "published" or publicly available, nor appealable or reviewable as they are binding. This "binding" arbitration, with no right to appeal and "confidential" decisions, seemingly encourages bias because of the "shield of confidentiality". The nature of the "confidential and discretionary decisions"- or lack of review - unwittingly provides incentives to arbitrators to decide in favor of such defending contractors/subcontractors. Arbitrators are financially interested in receiving repeat business from contractors/subcontractors, who are the drafters of the arbitration clauses into many of their purchase agreements. As the construction industry panel under the AAA consists of arbitrators familiar with and/or related to the construction industry – such as contractors, subcontractors, and their attorneys, it is difficult to balance competence and knowledge in the field of construction with fairness in rendering appropriate awards for claimants. This is extremely unfair to homeowner Respondents who would be forced to select an arbitrator from a biased arbitrator pool. In this context, it is apparent that Respondents would not be given impartial arbitrations in a neutral forum.

The arbitration provisions in the CC&Rs are one-sided and adhesive. Each

homeowner apparently waives the reasonable costs associated with standard litigation and now must bear equally the higher costs,[4] of not only a mediation required under Chapter 40, but also of an arbitration with U.S. Home, which itself is a basis for finding substantive unconscionability. *See e.g., D.R. Horton, Inc. v. Green*, 120 Nev. 549, 96 P.3d 1159 (2004).

Further, the arbitration provisions contained in the CC&Rs would not be binding on any subcontractors. Respondents normally have a right to file an amended complaint to name negligent subcontractors as direct Defendants. As the subcontractors would not be required to arbitrate (notwithstanding the fact that Respondents could not compel arbitration against subcontractors as there is no agreement to arbitrate, but as an example of another right stripped from Respondents that they would ordinarily have if they brought their claims in district court), there would be inconsistent results, those reached in arbitration versus the court, along with a duplication of efforts, and higher overall costs.

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[4] The higher costs are not disclosed to the home buyer and nothing draws particular attention to the potentially higher costs. In contrast, under Chapter 40, the successful homeowner in a constructional defect lawsuit is entitled to recover costs and attorneys' fees which are substantial lost rights under the arbitration provisions contained within the CC&Rs.

2. The Arbitration Provisions within U.S. Home's PSAs are Substantively Unconscionable

Similarly, the arbitration provisions in U.S. Home's PSAs indicate that "Seller shall have the option to include its subcontractors and suppliers as parties in the mediation and arbitration" are not only one-sided, but there is no fairness in U.S. Home's sole option to unilaterally compel the participation of such subcontractors in arbitration. (Vol. I, JA146, JA150) In litigation, Respondents have the option to name such subcontractors directly, but are unfairly divested of this right in arbitration. *See generally* NRS 40.645.

The homeowner Respondents never meaningfully agreed to arbitrate their construction defect claims as they did not understand the terms of the arbitration agreements nor were they able to negotiate or change the provisions. (Vol. II, JA352-355) In addition, the terms of the arbitration provisions are so one-sided as to make the arbitration provisions oppressive and unenforceable. (Vol. I, JA144-151; Vol. II, JA352-355)

The *Gonski* court cited to an earlier case that also held that an arbitration provision in a home sales contract was unconscionable. In the *D.R. Horton* case, homeowners purchased homes from D.R. Horton, Inc. *See D.R. Horton, Inc. v. Green*, 120 Nev. 549, 96 P.3d 1159 (2004). The original home purchase agreement

contained a mandatory arbitration provision similar to the one at issue in this matter. *Id.* at 1160. The two page contract had an arbitration provision on the second page. *Id.* The homeowner testified that he never read the second page. *Id.* The homeowner testified that he did not "understand that the provision constituted a waiver of their right to a jury trial or that it impacted their statutory rights under NRS Chapter 40 involving construction defect claims." *Id.* The homeowner further testified that he did not understand that he would be "required to fund one-half of the expenses of the arbitration and that these expenses could be more costly than standard litigation." *Id.*

Further, this Court in the *D.R. Horton* case found substantive unconscionability because of two provisions in the agreement: 1) a liquidated damages clause for refusing to arbitrate, and 2) "the requirement that each party pay equally for the costs of arbitration." *D.R. Horton*, 120 Nev. at 1165. This Court held that the arbitration provision was both procedurally and substantively unconscionable and affirmed the district courts' holding that the provision was unenforceable. *Id.*

In the present matter, each homeowner apparently waives the reasonable costs associated with standard litigation and now must bear the higher costs, of not

only a mediation, but an arbitration also if the mediation does not resolve all issues. (Vol. I, JA145-146, JA149-150) The homeowner Respondents are responsible for their own attorneys' fees and costs in mediation and then in arbitration if not resolved in mediation. It is uncertain whether in U.S. Home's arbitration provisions, the Chapter 40 rights to recovery of fees and costs will be awarded in arbitration. (Vol. I, JA145-146, JA149-150) The arbitration fees may be substantial under AAA, from about $750 to $10,000 plus. *See* www.adr.org/feeschedule. This is in stark contrast to the initial filing fee of $520 for the first Respondent, and $30 for each additional Respondent in district court. The arbitrator's fees may go up to $1,500 or more per day per arbitrator. If there is a panel of 3 arbitrators, then the minimum filing fee would increase to $2,000 to $4,000 with the arbitrators being reimbursed up to $1,500 a day per arbitrator or the arbitrator's "standard" rate, which may be more costly (up to $4,500 or more a day), not to mention fees (market rate) for the venue or place where the arbitration(s) are to occur. If each of the Respondents' claims is arbitrated separately, then the fees would be an exorbitant multiple of the fees and the number of Respondents. The construction and commercial arbitration fee schedules appear to be the same. *See* www.adr.org/feeschedule.

The bias of the construction industry panel under the AAA is apparent as the arbitrators are from within the construction industry (general contractors or subcontractors or attorneys of general contractors or subcontractors). (Vol. I, JA174; Vol. II, JA417-418) It appears from U.S. Home's PSAs that homeowners were uninformed about the potential high cost of arbitration, and did not have any arbitration provisions explained to them, and/or pointed out. (Vol. II, JA352-355) The *D.R. Horton* court noted that "the existence of large arbitration costs could preclude a litigant . . . from effectively vindicating [his or her] . . .rights in the arbitral forum." *D.R. Horton*, 96 P.3d at 1165, *quoting Green Tree Financial Corp.-Ala. v. Randolph*, 531 U.S. 79, 90, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000). The homeowner Respondents seemingly waive Chapter 40 rights to attorneys' fees and costs, which alone is a basis for finding substantive unconscionability. *See, e.g., Gonski*, 245 P.3d 1164 (Nev. 2010); *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 96 P.3d 1159 (2004). Nevada law provides for the right to recover costs and fees without having to pay the often extreme costs of a multiparty arbitration under AAA Construction Industry Arbitration Rules, the right to sue subcontractors directly if need be, and the basic right to a neutral forum such as the Nevada court system. *See* NRS 40.600-40.695; NRS 38.206-38.360.

The district court properly found substantive unconscionability. (Vol. II, JA462-463)

The holding in *Gonski*, and *D.R. Horton* are not anomalies. The *Gonski*, *D.R. Horton* and *Burch* cases reflect a long line of case law that has held that arbitration provisions aimed at home purchasers are generally not enforceable. *See, e.g.,* CAL. CIV. PROC. CODE § 1298.7, which provides that when an arbitration provision is included in an agreement to convey real property, it shall **not** preclude or limit a purchaser's right to pursue a construction and design defect action against the developer in court. These laws reflect the fact that, for many people, the purchase of a home will be the single largest investment made in their lives. Thus, courts have ruled that binding mandatory arbitration provisions in home purchase agreements are unenforceable. *See Villa Vincenza Homeowners Assn. v. Nobel Court Redevelopment, LLC*, 191 Cal.App.4th 963 (Cal.Ct.App. 2011); *Bruni v. Didion*, 160 Cal.App.4th 1272 (Cal.Ct.App. 2008); and *Baker v. Osborne Development Corp.*, 159 Cal.App.4th 884 (Cal.Ct.App. 2008). The inequality in bargaining power between a typical home buyer and a developer is manifest. Thus, construing CC&Rs and/or purchase contracts so that they remove a homeowners' right to a trial by jury and/or the protections provided by state statutes like NRS

Chapter 40, should not be done.

The arbitration provisions at issue in the present matter are unenforceable as they are both procedurally and substantively unconscionable under the analyses of the *Gonski, D.R. Horton* and *Burch* cases.

Furthermore, homeowner Respondents would be prejudiced if arbitration is ordered by being required to duplicate their efforts and once again expend more time and resources on discovery in arbitration that will be expended in litigation, including, but not limited to, retaining the same experts multiple times, conducting destructive or other testing numerous times, and producing expert reports in multiple proceedings. It is clear that separate arbitration record(s) would have to be established apart from the litigation record, which would undoubtedly duplicate efforts, expend more time and resources than what has already been expended.

Moreover, to separate this process and allow this matter to proceed into different actions would simply be inefficient and duplicative – 2 individual arbitrations tracking alongside a litigation involving the remaining 10 homes of Respondents or 12 separate arbitrations if the Court finds the arbitration provisions within the Association's CC&Rs to be enforceable. The additional time, expense and costs necessary to separately arbitrate claims, and litigate the

remaining claims would clearly prejudice homeowner Respondents. Even if the matter were to be arbitrated jointly for all 12 sets of Respondents, the duplication of efforts would still be apparent in having to establish a separate arbitration record apart from the litigation record already in place. (Vol. I, JA182-183)

### *C. Portions of the Arbitration Provisions Should Not be Severed*

U.S. Home argues that the attorney fee provision in the CC&Rs and PSAs may be severed from the otherwise enforceable arbitration agreement. *See* U.S. Home's Opening Brief at 29-30. However, the substantial upfront costs to begin arbitration must be advanced by homeowner Respondents. Under NRS 40.655, the attorney's fees and costs may be awarded in litigation and Homeowners' counsel does not require upfront fees and costs to be paid. *See* NRS 40.655. The district court did not err in finding deprivation of NRS Chapter 40 rights as the costs to begin arbitration must be paid upfront, whereas in litigation, they may be awarded at the conclusion of the matter, and counsel does not require such upfront payment. *See* www.adr.org/feeschedule. Further, the NRS Chapter 40 recourse to file a district court complaint after completion of Chapter 40 pre-litigation requirements, nullifies Chapter 40 statutory rights and remedies if arbitration is required and court action, along with jury trial, is waived. (Add. A)

Notwithstanding, the district court appropriately found that the arbitration provisions contained multiple procedurally and substantively unconscionable clauses, therefore such provisions were found to be unenforceable. (Vol. II, JA460-463) The finding of "multiple unlawful provisions" allows a trial court to conclude that "the arbitration agreement is permeated by an unlawful purpose." *Armendariz*, 24 Cal.4th at 124; *see also Graham Oil Co. v. ARCO Products Co.*, 43 F.3d 1244, 1247 (9th Cir. 1994) (finding an arbitration clause that waived punitive damages and attorneys' fees remedies available to plaintiff as unenforceable); *Zaborowski v. MHN Gov't Servs., Inc.*, 936 F.Supp.2d 1145, 1157 (E.D. Cal. 2013) (finding that the [arbitration agreement] is so permeated with unconscionability that it is not severable. It is an adhesive contract that contains oppression and surprise).

Similarly, the district court found that arbitration provisions were unconscionable because of their inconspicuousness, and because of the provisions indicating that each party to bear its own attorneys' fees and costs in arbitration, *inter alia*. (Vol. II, JA460-463) Moreover, the unconscionable provisions cannot be stricken without "assuming the role of contract author rather than interpreter." *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180

(9th Cir. 2003). The case at bar requires that the arbitration provisions be declared unenforceable as the unconscionable provisions could not be stricken without the court becoming the "contract author" instead of "interpreter".

## V. ARBITRABILITY DETERMINATION BY THE ARBITRATOR IS BEING RAISED FOR THE FIRST TIME IN THIS APPEAL, THEREFORE SHOULD NOT BE CONSIDERED

U.S. Home argues, for the first time in this Appeal, that homeowners who executed PSAs with U.S. Home containing arbitration provisions should be decided by an arbitrator, not this Court. *See* U.S. Home's Opening Brief at 53. Any such arguments should be disregarded as they are not contained in the district court record, therefore such arguments were not preserved for appeal. *See Carson Ready Mix, Inc. v. First Nat. Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (the court "cannot consider matters not properly appearing in the record on appeal."); *Alderson v. Gilmore*, 13 Nev. 84, 95 (1878) ("[the court has] no power to look outside of the record of a case.") Moreover, since the enforceability of the arbitration provisions was already argued in the district court with no mention of the delegation provision, U.S. Home waived any right to argue that enforceability should be determined by an arbitrator and not the court, when

such arguments were already presented to and decided by the district court. (Vols. I, II, JA1-480)

Notwithstanding, it would be against public policy to enforce a delegation clause within an arbitration provision against those Respondents who never agreed to even arbitrate (where there is no finding of an agreement to arbitrate), to an arbitrator. There is no delegation clause in the CC&Rs' arbitration provisions. (Vol. I, JA129)

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## CONCLUSION

For the foregoing reasons, this Court is requested to sustain the Order of denial of U.S. Home's Motion to Compel Arbitration based upon lack of agreement to arbitrate, the unconscionability of the arbitration provisions contained in the Association's Covenants, Conditions and Restrictions, and/or U.S. Home's Purchase and Sales Agreements.

Respectfully submitted this 7th day of December, 2015.

SHINNICK, RYAN & RANSAVAGE P.C.

By: _____

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## AFFIDAVIT OF COURTNEY K. LEE

1. I am over the age of 21 years, am of sound mind, and have personal knowledge of all matters attested to herein.

2. I am counsel of record for Plaintiffs in *The Michael Ballesteros Trust, et al. v. U.S. Home Corporation*, Case No. A-15-714219-D, pending in the Eighth Judicial District Court, and for Respondents in the current Appeal, Case No. 68810.

3. The matters stated in homeowner Respondents' Answering Brief are accurate to the best of my knowledge, information and belief.

4. The documents attached in the previously filed Joint Appendix ("JA") and hereto as homeowner Respondents' Addendum A ("Add. A") and Addendum B ("Add. B") are true copies of documents on file with the district court or relevant statutes in the foregoing action.

FURTHER AFFIANT SAYETH NAUGHT.

COURTNEY K. LEE

Sworn and subscribed before me this
7th day of December, 2015.

Notary Public

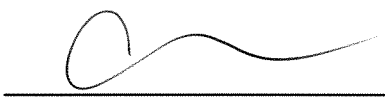
JESSICA J. WHITE
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 12-11-2018
Certificate No: 10-3071-1

## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this Answering Brief has been prepared in a proportionally spaced typeface (14-point Times New Roman) using MS Word and contains 8,224 words (less than the 14,000 word limit).

2. I further certify that I have read this Answering 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 Answering Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in the Answering Brief regarding matters in the record be supported by a reference to those portions of the record, if any, where the matter relied upon is to be found. I understand that I may be subject to sanctions if this Answering Brief does not comply with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 7th day of December, 2015.



COURTNEY K. LEE

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Respondents' Answering Brief were electronically served this 7th day of December, 2015, upon all counsel of record in *The Michael Ballesteros Trust, et al. v. U.S. Home Corporation,* Case No. A-15-714219-D (Eighth Judicial District Court), and Appeal Case No. 68810 through the Court's electronic filing program and by first-class U.S. Mail, postage prepaid, upon:

Honorable Joanna Kishner
District Judge, Eighth Judicial District Court
Regional Justice Center, Department 31
200 Lewis Avenue
Las Vegas, NV 89155

***/s/ Jessica White***
Jessica White
An Employee of SHINNICK, RYAN & RANSAVAGE P.C.