

Case No. 72931

IN THE SUPREME COURT OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

SFR INVESTMENTS POOL 1, LLC; and
STAR HILL HOMEOWNERS
ASSOCIATION,

Appellant,

vs.

THE BANK OF NEW YORK MELLON
F/K/A/ THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF THE CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-6,

Respondent.

Certified Question From the United States District Court, District of Nevada
The Honorable RICHARD F. BOULWARE, II, UNITED STATES District Judge
Case No. 2:16-cv-02561-RFB-PAL

APPELLANT'S STATUTORY ADDENDUM

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TAB 1

CHAPTER 306

AN ACT relating to property; requiring a trustee or other person authorized by a deed of trust to record a notice of default or exercise a power of sale to give notice of default and sale to any person with a subordinate interest of record in the property; clarifying that the homestead exemption applies to the value of equity in the property; eliminating the requirement of publication of notice of certain matters concerning the summary administration of estates; allowing an estate of a certain value to be set aside when there is no surviving spouse or minor children of the deceased; and providing other matters properly relating thereto.

[Approved June 9, 1989]

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

Section 1. NRS 107.090 is hereby amended to read as follows:

107.090 1. As used in this section, [a] “person with an interest” means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust and as evidenced by any document or instrument filed or recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time [subsequent to] after recordation of [such] the deed of trust file in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of [such] the notice of default or sale.

[3.] The request [shall] must state the name and address of the person requesting copies of [such] the notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation and the book and page where it is recorded.

[4.] 3. The trustee or person authorized to record the notice of default shall, within 10 days [of recordation of such notice,] after the notice of default is recorded, cause to be deposited in the United States mail an envelope, registered or certified and with postage prepaid, containing a copy of [such] the notice, addressed to [each] :

(a) Each person who has filed a request for a copy of [such notice.

5.] the notice; and

(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person [who has filed a request for a copy of such notice.

6.] described in subsection 3.

5. No request [for a copy of any notice filed under] filed pursuant to the provisions of [this section shall affect] subsection 2 affects the title to real property.

TAB 2

NEVADA REVISED STATUTES

Containing All Statute Laws of Nevada of a
General, Public and Permanent Nature

VOLUME 8

Classified, Arranged, Revised, Indexed and Published
(Pursuant to chapter 220 of NRS)

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CARSON CITY, NEVADA

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AA_0004

CITE NEVADA REVISED STATUTES

NRS

Thus: NRS 19.010

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AA_0005

NRS 107.080 into state action for purposes of establishing claim in federal court based on denial of due process. Therefore, complaint alleging that nonjudicial foreclosure statute offended due process by failing to provide hearing before exercise of trustee's power of sale was properly dismissed. *Charmicor, Inc. v. Deaner*, 572 F.2d 694 (1978)

Sale not set aside where debtor had actual notice and caused failure to receive mailed notice. Where debtor sought to set aside transfer of property by nonjudicial foreclosure sale upon ground that she did not

receive notices of default and sale pursuant to NRS 107.080 and 21.130, bankruptcy court found that (1) it was responsibility of debtor who opened second post office box to request that post office transfer her mail from first box to second and she failed to do so; (2) trustee on deed of trust was under no duty to search for debtor when notices were returned from first box unclaimed; and (3) issue was moot because evidence established that debtor had actual notice of foreclosure sale. In re *Madrid*, 10 B.R. 795 (D. Nev. 1981)

107.090 Request for notice of default and sale: Filing and contents; mailing of notice; effect of request.

1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument filed or recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time after recordation of the deed of trust file in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default or of sale. The request must state the name and address of the person requesting copies of the notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation and the book and page where it is recorded.

3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:

- (a) Each person who has filed a request for a copy of the notice; and
- (b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person described in subsection 3.

5. No request filed pursuant to the provisions of subsection 2 affects the title to real property.

(Added to NRS by 1961, 74; A 1969, 42, 95; 1989, 644, 1772)

107.095 Notice of default: Mailing to guarantor or surety of debt; effect of failure to give.

1. The notice of default required by NRS 107.080 must also be sent by registered or certified mail, return receipt requested and with postage pre-paid, to each guarantor or surety of the debt. If the address of the guarantor or surety is unknown, the notice must be sent to the address of the trust property. Failure to give the notice, except as otherwise provided in subsection 3, releases the guarantor or surety from his obligation to the beneficiary, but does not affect the validity of a sale conducted pursuant to NRS 107.080 nor the obligation of any guarantor or surety to whom the notice was properly given.

2. Failure to give the notice of default required by NRS 107.090, except as otherwise provided in subsection 3, releases the obligation to the beneficiary of any person who has complied with NRS 107.090 and who is or may otherwise be held liable for the debt or other obligation secured by the deed of trust, but such a failure does not affect the validity of a sale conducted pursuant to NRS 107.080 nor the obligation of any person to whom the notice was properly given pursuant to this section or to NRS 107.080 or 107.090.

3. A guarantor, surety or other obligor is not released pursuant to this section if:

(a) The required notice is given at least 15 days before the later of:

(1) The expiration of the 15- or 35-day period described in NRS 107.080; or

(2) Any extension of that period by the beneficiary; or

(b) The notice is rescinded before the sale is advertised.

(Added to NRS by 1989, 1770)

107.100 Receiver: Appointment after filing notice of breach and election to sell.

1. At any time after the filing of a notice of breach and election to sell real property under a power of sale contained in a deed of trust, the trustee or beneficiary of the deed of trust may apply to the district court for the county in which the property or any part of the property is located for the appointment of a receiver of such property.

2. A receiver shall be appointed where it appears that personal property subject to the deed of trust is in danger of being lost, removed, materially injured or destroyed, that real property subject to the deed of trust is in danger of substantial waste or that the income therefrom is in danger of being

lost, or that the property is or may become insufficient to discharge the debt which it secures.

(Added to NRS by 1965, 252)

TAB 3

CHAPTER 245

AN ACT relating to property; enacting the Uniform Common-Interest Ownership Act; appropriately modifying chapters 117 and 278A of NRS as they remain in effect for condominiums and planned unit developments created before the effective date of this act; and providing other matters properly relating thereto.

[Approved June 5, 1991]

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

Section 1. Title 10 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 128, inclusive, of this act.

Sec. 2. This chapter may be cited as the Uniform Common-Interest Ownership Act.

Sec. 3. Applicability of this chapter is governed by sections 47 to 54, inclusive, of this act.

Sec. 4. In the declaration and bylaws (section 87 of this act), unless specifically provided otherwise or the context otherwise requires, and in this chapter, the words and terms defined in sections 5 to 36, inclusive, of this act have the meaning ascribed to them in those sections.

Sec. 5. 1. "Affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant.

2. 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.

.....
↓1991 Statutes of Nevada, Page 536 ([Chapter 245, AB 221](#))↓

3. 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.
4. Control does not exist if the powers described in this section are held solely as security for an obligation and are not exercised.

Sec. 6. "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 and the ownership and votes in the association; and

3. In a planned community, the liability for common expenses and votes in the association.

Sec. 7. "Association" or "unit-owners' association" means the unit-owners' association organized under section 80 of this act.

Sec. 8. "Common elements" means:

1. In 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;
2. In a planned community, any real estate within a planned community owned or leased by the association, other than a unit; and
3. All real and personal property owned or leased by the association.

Sec. 9. "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

Sec. 10. "Common-interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit. "Ownership of a unit" does not include holding a leasehold interest of less than 20 years in a unit, including options to renew.

Sec. 11. "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.

Sec. 12. "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.

Sec. 13. "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 his ownership in the association to exclusive possession of a unit.

.....
↓1991 Statutes of Nevada, Page 537 ([Chapter 245, AB 221](#))↓

Sec. 14. "Dealer" means a person in the business of selling units for his own account.

Sec. 15. "Declarant" means any person or group of persons acting in concert who:

1. As part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of; or
2. Reserves or succeeds to any special declarant's right.

Sec. 16. "Declaration" means any instruments, however denominated, that create a common-interest community, including any amendments to those instruments.

Sec. 17. "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.

Sec. 18. "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.

Sec. 19. "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

Sec. 20. "Identifying number" means a symbol or address that identifies only one unit in a common-interest community.

Sec. 21. "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.

Sec. 22. "Liability for common expenses" means the liability for common expenses allocated to each unit pursuant to section 61 of this act.

Sec. 23. "Limited common element" means a portion of the common elements allocated by the declaration or by operation of subsection 2 or 4 of section 56 of this act for the exclusive use of one or more but fewer than all of the units.

Sec. 24. "Master association" means an organization described in section 77 of this act, whether or not it is also an association described in section 80 of this act.

Sec. 25. "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.

Sec. 26. "Person" includes a government and governmental subdivision or agency.

.....
 ↓1991 Statutes of Nevada, Page 538 ([Chapter 245, AB 221](#))↓

Sec. 26.5. "Plan" means those items set forth in subsection 4 of section 63 of this act, including drawings of improvements which are filed with agencies which issue permits but do not need to be recorded.

Sec. 27. "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.

Sec. 27.5. "Plat" means a map created in accordance with subsection 2 of section 63 of this act and chapter 278 or 278A of NRS which is recorded in the office of the county recorder of the county in which the real property is situated.

Sec. 28. "Proprietary lease" means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

Sec. 29. "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 a leasehold interest (including options to renew) of less than 20 years, or as security for an obligation.

Sec. 30. "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. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

Sec. 31. "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, 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.

Sec. 32. "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.

Sec. 33. "Special declarant's rights" means rights reserved for the benefit of a declarant to:

1. Complete improvements indicated on plats and plans or in the declaration (section 63 of this act) or, in a cooperative, to complete improvements described in the public offering statement pursuant to subsection 2 of section 110 of this act;
2. Exercise any developmental right (section 64 of this act);
3. Maintain sales offices, management offices, signs advertising the common-interest community and models (section 69 of this act);
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 (section 70 of this act)*;

.....
 ↓1991 Statutes of Nevada, Page 539 ([Chapter 245, AB 221](#))↓

which may be added to the common-interest community (section 70 of this act);

5. Make the common-interest community subject to a master association (section 77 of this act);
6. Merge or consolidate a common-interest community with another common-interest community of the same form of ownership (section 78 of this act); 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 (subsection 4 of section 82 of this act).

Sec. 34. "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.

Sec. 35. "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 section 59 of this act. 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.

Sec. 36. "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 (section 61 of this act) until that unit has been conveyed to another person.

Sec. 37. Except as expressly provided in this chapter, its provisions may not be varied by agreement, and rights conferred by it may not be waived. 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.

Sec. 38. 1. 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.

2. In a condominium or planned community:

(a) If there is any unit's owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(b) If there is any unit's owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no developmental rights.

.....
↓1991 Statutes of Nevada, Page 540 ([Chapter 245, AB 221](#))↓

3. Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

4. If there is no unit's owner other than a declarant, the real estate comprising the common-interest community may be taxed and assessed in any manner provided by law.

Sec. 39. 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.

Sec. 40. 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.

.....
↓1991 Statutes of Nevada, Page 541 ([Chapter 245, AB 221](#))↓

4. The judicial decree must be recorded in every county in which any portion of the common-interest community is located.

Sec. 41. The principles of law and equity, including the law of corporations, 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.

Sec. 42. 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.

Sec. 43. 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.

Sec. 44. Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

Sec. 45. 1. 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.

2. Any right or obligation declared by this chapter is enforceable by judicial proceeding.

Sec. 46. 1. From time to time the dollar amounts specified in sections 49 and 108 of this act must change, as provided in subsections (b) and (c), according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1967 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the "Index"). The Index for December 1982-1984 is the Reference Base Index.

2. The dollar amounts specified in sections 49 and 108 of this act, and any amount stated in the declaration pursuant to those sections, must change on July 1 of each year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 10 percent or more, but:

↓1991 Statutes of Nevada, Page 542 ([Chapter 245, AB 221](#))↓

(a) The portion of the percentage change in the Index in excess of a multiple of 10 percent must be disregarded and the dollar amounts must change only in multiples of 10 percent of the amounts appearing in this chapter on the date of enactment;

(b) The dollar amounts must not change if the amounts required by this section are those currently in effect pursuant to this chapter as a result of earlier application of this section; and

(c) In no event may the dollar amounts be reduced below the amounts appearing in this chapter on the date of enactment.

3. If the Index is revised after December 1979, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

Sec. 47. Except as otherwise provided in sections 48 and 49 of this act, this chapter applies to all common-interest communities created within this state on or after January 1, 1992. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities created on or after January 1, 1992.

Sec. 48. If a cooperative contains only units restricted to nonresidential use, or contains no more than 12 units and is not subject to any developmental rights, it is subject only to sections 39 and 40 of this act unless the declaration provides that the entire chapter is applicable.

Sec. 49. If a planned community:

1. Contains no more than 12 units and is not subject to any developmental rights; or

2. Provides, in its declaration, that the annual average liability for common expenses of all units restricted to residential purposes, exclusive of optional users' fees and any insurance premiums paid by the association, may not exceed \$500, as adjusted pursuant to section 46 of this act,

it is subject only to sections 38, 39 and 40 of this act unless the declaration provides that this entire chapter is applicable.

Sec. 50. Except as otherwise provided in section 51 of this act, sections 38, 39, 40, 57, 58, 78, paragraphs (a) to (f), inclusive, and (k) to (r), inclusive, of subsection 1 of section 81, sections 92, 100 to 104, inclusive, 106, 117 and 125 of this act, and sections 5 to 36, inclusive, of this act to the extent necessary in construing any of those sections, apply to all common-interest communities created in this state before January 1, 1992; but those sections apply only with respect to events and circumstances occurring on or after January 1, 1992, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of those common-interest communities.

Sec. 51. If a cooperative or planned community created within this state before January 1, 1992, contains no more than 12 units and is not subject to any developmental rights, it is subject only to sections 38, 39 and 40 of this act unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of *the provisions of section 52 of this act, in which case all the sections enumerated in section 50 of this act apply to that cooperative or planned community.*

↓1991 Statutes of Nevada, Page 543 ([Chapter 245, AB 221](#))↓

the provisions of section 52 of this act, in which case all the sections enumerated in section 50 of this act apply to that cooperative or planned community.

Sec. 52. 1. In the case of amendments to the declaration, bylaws or plats and plans 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.

2. An amendment to the declaration, bylaws or plats and plans 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 with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

Sec. 53. This chapter does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the chapter does apply to that planned community. 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 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.

Sec. 54. This chapter does not apply to common-interest communities or units located outside this state, but the provisions governing public offering statements (sections 106 to 113, inclusive, of this act) apply to all contracts for the disposition thereof signed

in this state by any party unless exempt under subsection 2 of section 108 of this act.

Sec. 55. 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.

Sec. 56. 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.*

↓1991 Statutes of Nevada, Page 544 ([Chapter 245, AB 221](#))↓

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.

Sec. 57. 1. All provisions of the declaration and bylaws are severable.

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 section 81 of this act.

3. In the event of a conflict between the provisions of 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.

Sec. 58. A description of unit which set forth the name of the common-interest community, the file number and book 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.

Sec. 59. 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 or plans, 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 section 56 of this act, as provided in paragraph (j) of subsection 2 of section 63 of this act and, in a planned community, any real estate that is or must become common elements;

↓1991 Statutes of Nevada, Page 545 ([Chapter 245, AB 221](#))↓

(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 section 56 of this act, together with a statement that they may be so allocated;

(h) A description of any developmental rights (section 17 of this act) and other special declarant's rights (section 33 of this act) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time 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 section 61 of this act;

(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 recording data where easements and licenses are recorded 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 sections 60, 61, 62, 63, 69, 70 and subsection 4 of section 82 of this act.

2. The declaration may contain any other matters the declarant considers appropriate.

Sec. 60. 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 where the lease is recorded;

(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 maybe exercised, or a statement that they do not have those rights;

↓1991 Statutes of Nevada, Page 546 ([Chapter 245, AB 221](#))↓

(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 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 section 40 of this act 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.

Sec. 61. 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 (section 99 of this act) 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 (section 99 of this act) 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 (section 99 of this act) 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 section 82 of this act, 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.*

↓1991 Statutes of Nevada, Page 547 ([Chapter 245, AB 221](#))↓

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.

Sec. 62. 1. Except for the limited common elements described in subsections 2 and 4 of section 56 of this act, 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 section 59 of this act. The allocations must be made by amendments to the declaration.

Sec. 63. 1. Plats and plans are a part of the declaration, and are required for all common-interest communities except cooperatives. Separate plats and plans are not required by this chapter if all the information required by this section is contained in

either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

2. Each plat must show:

- (a) The name and a survey of the area which is the subject of the plat;
- (b) The approximate location and approximate dimensions of all real estate not subject to developmental rights, or subject only to the developmental right to withdraw, and the location and dimensions of all existing improvements within that real estate;
- (c) A legally sufficient description of any real estate subject to developmental rights, labeled to identify the rights applicable to each parcel;
- (d) The extent of any encroachments by or upon any portion of the common-interest community;
- (e) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common-interest community;

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↓1991 Statutes of Nevada, Page 548 ([Chapter 245, AB 221](#))↓

(f) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection 4 and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection 4 and that unit's identifying number;

(h) A legally sufficient description of any real estate in which the units' owners will own only an estate for years, labeled as "leasehold real estate";

(i) The distance between noncontiguous parcels of real estate comprising the common-interest community;

(j) 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 section 56 of this act; and

(k) In the case of real estate not subject to developmental rights, all other matters customarily shown on land surveys.

3. A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common-interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

4. To the extent not shown or projected on the plats, plans of the units must show or project:

(a) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements (paragraph 8 of subsection 1 of section 59 of this act), identified appropriately.

5. Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

6. Upon exercising any developmental right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections 1, 2 and 4 or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

7. A declarant shall provide a general schematic plan of the planned unit development comprising its common-interest community with its initial phase of development. The declarant shall revise the plan with each subsequent phase.

8. Each plat must be certified by an independent professional land surveyor. Each plan must be certified by an independent professional engineer or architect.

Sec. 64. 1. To exercise any developmental right reserved under paragraph (h) of subsection 1 of section 59 of this act, the declarant shall prepare, execute and record an amendment to the declaration (section 71 of this act) and in a condominium or planned community comply with section 63 of this *act*.

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↓1991 Statutes of Nevada, Page 549 ([Chapter 245, AB 221](#))↓

act. 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 section 62 of this act.

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 section 59 or 60 of this act, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by section 63 of this act. 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 section 59 of this act.

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 (section 40 of this act); 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 section 59 of this act, 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.

Sec. 65. Subject to the provisions of the declaration and other provisions of law, a unit's owner:

1. May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community;
2. 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
3. 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*.

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↓1991 Statutes of Nevada, Page 550 ([Chapter 245, AB 221](#))↓

support of any portion of the common-interest community. Removal of partitions or creation of apertures under this subsection is not an alteration of boundaries.

Sec. 66. 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 or plans 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, including any plans, necessary to show or describe the altered boundaries between adjoining units, and their dimensions and identifying numbers.

Sec. 67. 1. If the declaration expressly so permits, a unit may be subdivided into 2 or more units. Subject to the provisions of the declaration and other provisions of law, 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 and plans, 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.

Sec. 68. 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 willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.

Sec. 69. 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 and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. In a cooperative or condominium, any office for sales or management or model not designated a unit by the declaration is a common element. If a declarant ceases to be a *unit's owner, he ceases to have any rights with regard thereto unless it is removed promptly from the common-interest community in accordance with a right to remove reserved in the declaration*.

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↓1991 Statutes of Nevada, Page 551 ([Chapter 245, AB 221](#))↓

unit's owner, he ceases to have any rights with regard thereto unless it is removed promptly from the common-interest community in accordance with a right to remove reserved in the declaration. 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.

Sec. 70. 1. Subject to the provisions of 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. In a planned community, subject to the provisions of paragraph (f) of subsection 1 of section 81 and section 93 of this act, the units' owners have an easement:

(a) In the common elements for purposes of access to their units; and

(b) To use the common elements and all real estate that must become common elements (paragraph (f) of subsection 1 of section 59 of this act) for all other purposes.

Sec. 71. 1. Except in cases of amendments that may be executed by a declarant under section 63 or 64 of this act or by the association under section 40 or 60, subsection 3 of section 62, or section 67 of this act, or by certain units' owners under subsection 2 of section 62 or section 66 or 72 of this act, and except as limited by subsection 4, the declaration, including any plats and plans, 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, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one 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 section 66 of this act, 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 create or increase special declarant's rights, increase the number of units, 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 the units' owners 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.

Sec. 72. 1. Except in the case of a taking of all the units by eminent domain (section 40 of this act) or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, 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.*

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↓1991 Statutes of Nevada, Page 552 ([Chapter 245, AB 221](#))↓

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. 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 lien holders as their interests may appear, in accordance with sections 73 and 74 of this act. 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 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 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 section 74 of this act, and liens on the units shift *accordingly.*

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↓1991 Statutes of Nevada, Page 553 ([Chapter 245, AB 221](#))↓

accordingly. While the tenancy in common exists, each unit's owner and his 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 any 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.

Sec. 73. 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 lien holder. 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 lien holder, and any other creditor of the association is to be treated as if he 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 lien holders 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.

Sec. 74. The respective interests of units' owners referred to in subsections 5, 6 and 7 of section 72 and in section 73 of this act 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.*

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↓1991 Statutes of Nevada, Page 554 ([Chapter 245, AB 221](#))↓

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.

Sec. 75. 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.

Sec. 76. 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 sections 95 and 96 of this act.

Sec. 77. 1. If the declaration provides that any of the powers described in section 81 of this act 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, 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 section 80 of this act, a master association may exercise the powers set forth in paragraph (b) of subsection 1 of section 81 of this act only to the extent *expressly permitted in 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.*

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↓1991 Statutes of Nevada, Page 555 ([Chapter 245, AB 221](#))↓

expressly permitted in 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.

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 sections 82, 89, 90, 91 and 93 of this act 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 section 80 of this act, 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 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.

Sec. 78. 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.*

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↓1991 Statutes of Nevada, Page 556 ([Chapter 245, AB 221](#))↓

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.

Sec. 79. 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 section 59 of this act 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 (e) of that subsection.

Sec. 80. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed. 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 sections 72, 73 and 74 of this act, or their heirs, successors or assigns. The association must be organized as a profit or nonprofit corporation, trust or partnership.

Sec. 81. 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may:

- (a) Adopt and amend bylaws, rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from units' owners;
- (c) Hire and discharge managing agents and other employees, agents and independent contractors;
- (d) Institute, defend or intervene in litigation 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) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

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↓1991 Statutes of Nevada, Page 557 ([Chapter 245, AB 221](#))↓

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 93 of this act; 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 section 93 of this act;

- (i) Grant easements, leases, licenses and concessions through or over the common elements;
- (j) Impose and receive any payments, fee or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of section 56 of this act, and for services provided to units' owners;
- (k) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association;
- (l) Impose reasonable charges for the preparation and recordation of amendments to the declaration, the information required by section 117 of this act or statements of unpaid assessments;
- (m) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
- (n) 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;
- (o) Exercise any other powers conferred by the declaration or bylaws;
- (p) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association;
- (q) Direct the removal of vehicles improperly parked on property owned or leased by the association, pursuant to NRS 487.038; and
- (r) Exercise any other powers necessary and proper for the governance and operation of the association.

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

Sec. 82. 1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries and are subject to the insulation from liability provided for directors of corporations by the laws of this state. The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.

2. The executive board may not act on behalf of the association to amend the declaration (section 71 of this act), to terminate the common-interest community (section 72 of this act), or to elect members of the executive board or determine their qualifications, powers and duties or terms of office (subsection 6), but the executive board may fill vacancies in its membership for the unexpired portion of any term.

3. Within 30 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the *budget to all the units' owners, and shall set a date for a meeting of the units' owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary.*

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↓1991 Statutes of Nevada, Page 558 ([Chapter 245, AB 221](#))↓

budget to all the units' owners, and shall set a date for a meeting of the units' owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all units' owners or any larger vote specified in the declaration reject the budget, the 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. Subject to subsection 5, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earlier of:

- (a) Sixty days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant;
- (b) Two years after all declarants have ceased to offer units for sale in the ordinary course of business; or
- (c) Two years after any right to add new units was last exercised.

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but 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.

5. 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 33 1/3 percent of the members of the executive board must be elected by units' owners other than the declarant.

6. Except as otherwise provided in subsection 5 of section 77 of this act, not later than the termination of any period of declarants' control, the units' owners shall elect an executive board of at least three members, at least a majority of whom must be units' owners. The executive board shall elect the officers. The members and officers of the executive board shall take office upon election.

7. Notwithstanding any provision of the declaration or bylaws to the contrary, the units' owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the units' owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

8. When a member of an executive board is sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he 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. Members of the executive board are not *personally liable to the victims of crimes occurring on the property.*

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↓1991 Statutes of Nevada, Page 559 ([Chapter 245, AB 221](#))↓

personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against the association, but may be recovered from persons whose activity gave rise to the damages.

9. 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, and a fiduciary of an estate that owns a unit may be an officer or member of the executive board. In all events where the person serving or offering to serve as an officer or member of the executive board is not the record owner, he shall file proof of authority in the records of the association.

10. 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 him, including:

(a) The original or a certified copy of the recorded declaration as amended, the association's articles of incorporation if the association is incorporated, bylaws, minute books and other books and records of the association and any rules or regulations which may have been adopted.

(b) An accounting for money of the association and financial statements from the date the association received money to the date the period of the declarant's control ends. The financial statements must fairly and accurately report the association's financial condition prepared in accordance with generally accepted accounting principles.

(c) The association's money or control thereof.

(d) 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.

(e) 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.

(f) All insurance policies then in force, in which the units' owners, the association, or its directors and officers are named as insured persons.

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the common-interest community.

(h) Any other permits and approvals issued by governmental bodies applicable to the common-interest community which are in force or which were issued within 1 year before the date on which units' owners other than the declarant took control of the association.

(i) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective.

(j) A roster of owners and mortgagees of units and their addresses and telephone numbers, if known, as shown of the declarant's records.

(k) Contracts of employment in which the association is a contracting party.

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↓1991 Statutes of Nevada, Page 560 ([Chapter 245, AB 221](#))↓

(l) 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.

Sec. 83. 1. A special declarant's right (section 33 of this act) 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 him 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 (section 5 of this act), 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 his 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 section 69 of this act 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 (subsection 4 of section 82 of this act) 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.

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↓1991 Statutes of Nevada, Page 561 ([Chapter 245, AB 221](#))↓

Sec. 84. 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 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 his 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 (section 69 of this act), 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 section 83 of this act, 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 transferor to control the executive board in accordance with subsection 4 of section 82 of this act 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 acts and omissions under subsection 4 of section 82 of this act.

Sec. 85. Sections 83 and 84 of this act 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.

Sec. 86. If entered into before the executive board elected by the units' owners pursuant to subsection 6 of section 82 of this act takes office, any management contract, employment contract, or lease of recreational or parking areas or facilities, any other contract or lease between the association and a declarant or an affiliate of a declarant or any contract or lease that is not in *good faith or was unconscionable to the units' owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the units' owners takes office upon not less than 90 days' notice to the other party.*

good faith or was unconscionable to the units' owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the units' owners takes office upon not less than 90 days' notice to the other party. This section does not apply to 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 to a proprietary lease.

Sec. 87. 1. The bylaws of the association must provide:

- (a) The number of members of the executive board and the titles of the officers of the association;
- (b) For election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;
- (c) The qualifications, powers and duties, terms of office and manner of electing and removing members and officers of the executive board and filling vacancies;
- (d) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agency;
- (e) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association; and
- (f) A method for amending the bylaws.

2. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

Sec. 88. 1. Except to the extent provided by the declaration, subsection 2 or section 96 of this act, the association is responsible for maintenance, repair and replacement of the common elements, and each unit's owner is responsible for maintenance, repair and replacement of his unit. Each unit's owner shall afford to the association and the other units' owners, and to their agents or employees, access through his 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.

Sec. 89. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board or by units' owners having 20 percent, or any lower percentage specified in the bylaws, of the votes in the association. No less than 10 nor more than 60 days in advance of any meeting, the secretary or *other officer specified in the bylaws shall cause notice 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.*

other officer specified in the bylaws shall cause notice 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. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budgetary changes and any proposal to remove an officer or member of the executive board.

Sec. 90. 1. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast 20 percent of the votes that may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

2. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50 percent of the votes on that board are present at the beginning of the meeting.

Sec. 91. 1. If only one of several owners of a unit is present at a meeting of the association, 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 that unit without protest made promptly to the person presiding over the meeting by any of the other owners of the unit.

2. Votes allocated to a unit may be cast pursuant to a proxy executed by a unit's owner. 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. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

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

- (a) The provisions of subsections 1 and 2 apply to lessees as if they were units' owners;
- (b) Units' owners who have leased their units to other persons may not cast votes on those specified matters; and
- (c) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were units' owners.

Units' owners must also be given notice, in the manner provided in section 89 of this act, of all meetings at which lessees are entitled to vote.

4. No votes allocated to a unit owned by the association may be cast.

Sec. 92. 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. Otherwise, an action alleging a wrong done by the association must be brought 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.

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↓1991 Statutes of Nevada, Page 564 ([Chapter 245, AB 221](#))↓

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. Any statute of limitation affecting the association's right of action 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 is a unit's owner or a member or officer of the association.

Sec. 93. 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 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 section 72 of this act, 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 subsection 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.*

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↓1991 Statutes of Nevada, Page 565 ([Chapter 245, AB 221](#))↓

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.

Sec. 94. 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, both of the following:

(a) Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a converted building, against fire and extended coverage perils. The total amount of 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) 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 death, 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.

2. In the case of a building that is part of a cooperative or that contains units having horizontal boundaries described in the declaration, 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 hand delivered or sent prepaid by United States mail to all units' owners. The declaration may require the association to carry any other insurance, and the association in any event 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 his own benefit.

Sec. 95. 1. Insurance policies carried pursuant to section 94 of this act must provide to the extent reasonably available that:

(a) Each unit's owner is an insured person under the policy with respect to liability arising out of his 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 household;
- (c) No act or omission by any unit's owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be 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 section 94 of this act must be adjusted with the association, but the proceeds for that loss are payable to any trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The trustee or the association shall hold any proceeds in trust for the association, units' owners and lien holders as their interests may appear. Subject to the provisions of section 96 of this act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, units' owners, and lien holders 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.

Sec. 96. 1. Any portion of the common-interest community for which insurance is required under this section 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 sections 72, 73 and 74 of this act 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. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

2. If the entire common-interest community is not repaired or replaced, the 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 except to the extent that other persons will be distributees (subparagraph 2 of paragraph (1) of subsection 1 of section 59 of this act):

- (a) The 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 lien holders, as their interests may appear; and

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

- (1) In a condominium, in proportion to the interests of all the units in the common elements; and
- (2) 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 section 40 of this act, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

Sec. 97. The provisions of sections 94, 95 and 96 of this act may be varied or waived in the case of a common-interest community all of whose units are restricted to nonresidential use.

Sec. 98. 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.

Sec. 99. 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.

2. Except for assessments under subsections 3, 4 and 5, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of section 61 of this act. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

3. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair 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 or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units 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.

4. Assessments to pay a judgment against the association (subsection 1 of section 102 of this act) 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.

5. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

6. 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.

Sec. 100. 1. The association has a lien on a unit for any assessment levied against that unit or fines imposed against the unit's owner from the time the *assessment or fine becomes due*.

assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j), (k) and (l) of subsection 1 of section 81 of this act 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 recording 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 the assessments for common expenses based on the periodic budget adopted by the association pursuant to section 99 of this act which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

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

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

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

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

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

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

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be *foreclosed as provided by this section or by sections 101 to 104, inclusive, of this act.*

↓1991 Statutes of Nevada, Page 569 ([Chapter 245, AB 221](#))↓

foreclosed as provided by this section or by sections 101 to 104, inclusive, of this act.

10. In a cooperative where the owner's interest in a unit is personal property (section 38 of this act), the association's lien may be foreclosed in like manner as a security interest under NRS 104.9101 to 104.9507, inclusive.

Sec. 101. 1. In a condominium, a cooperative where the owner's interest in a unit is real estate (section 38 of this act), or a planned community, the association may foreclose its lien by sale after:

(a) The association has 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 delinquent assessment, which states the amount of the assessments and other sums which are due in accordance with subsection 1 of section 100 of this act, a description of the unit against which the lien is imposed, and the name of the record owner of the units;

(b) 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 contains the same information as the notice of delinquent assessment, but must also describe the deficiency in payment and the name and address of the person authorized by the association to enforce the lien by sale; and

(c) The unit's owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 60 days following the recording of the notice of default and election to sell.

2. The notice of delinquent assessment 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 60 days begins on the first day following the later of:

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

(b) The day 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 successor in interest at his address if known, otherwise to the address of the unit.

4. The association or other person conducting the sale shall also, after the expiration of the 60 days and before selling the unit, 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 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 successor in interest at his address if known, otherwise to the address of the unit.

Sec. 102. 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.*

↓1991 Statutes of Nevada, Page 570 ([Chapter 245, AB 221](#))↓

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. If so authorized to purchase, the association may enter 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 make, execute and, after payment is made, deliver to the purchaser, or his successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit, and shall apply the proceeds of the sale for the following purposes in the following order:

(a) The reasonable expenses of sale;

(b) 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 agreement between the association and the unit's owner, reasonable attorney's fees and other legal expenses incurred by the association;

(c) Satisfaction of the association's lien;

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

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

Sec. 103. 1. The recitals in such a deed of:

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

(b) The elapsing of the 60 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 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 sections 101 and 102 of this act vests in the purchaser the title of the unit's owner without equity or right of redemption.

Sec. 104. 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. The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.

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↓1991 Statutes of Nevada, Page 571 ([Chapter 245, AB 221](#))↓

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.

Sec. 105. (Deleted by amendment.)

Sec. 106. The association shall keep financial records sufficiently detailed to enable the association to comply with section 117 of this act. All financial and other records must be made reasonably available for examination by any unit's owner and his authorized agents.

Sec. 107. 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.

Sec. 108. 1. Sections 108 to 128, inclusive, of this act 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 canceled at any time and for any reason by the purchaser without penalty; or

(g) Disposition of a unit in a planned community in which the declaration limits the maximum annual assessment of any unit to not more than \$300, as adjusted pursuant to section 46 of this act if:

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

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

(3) The planned community is not subject to any developmental rights.

Sec. 109. 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 sections 110 to 114, inclusive, of this act.

2. A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (sections 83 and 84 of this act) or to a dealer who intends to offer units in the common-interest *community*.

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↓1991 Statutes of Nevada, Page 572 ([Chapter 245, AB 221](#))↓

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 section 116 of this act. The person who prepared all or a part of the public offering statement is liable under sections 116 and 125 of this act 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 prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless he 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 sections 110 to 114, inclusive, of this act 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.

Sec. 110. Except as otherwise provided in section 111 of this act, a public offering statement must contain or fully and accurately disclose each of the following:

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

2. 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.

3. The estimated number of units in the common-interest community.

4. Copies of the declaration, bylaws, and any rules or regulations of the association.

5. 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. The budget must include, without limitation:

(a) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement; and

(b) The projected monthly assessment for common expenses for each type of unit.

6. A description of any services or subsidies being provided by the developer, not reflected in the budget.

7. Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

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↓1991 Statutes of Nevada, Page 573 ([Chapter 245, AB 221](#))↓

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

9. A statement that unless the purchaser or his agent has personally inspected the unit, that the purchaser may cancel, by written notice, the 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.

10. A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the common-interest community of which a declarant has actual knowledge.

11. 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.

Sec. 111. 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 but need not include the information otherwise required by subsections 8 and 11 of section 110 of this act and the narrative descriptions of documents required by subsection 4 of that section.

Sec. 112. 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 section 110 of this act:

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;*

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.

Sec. 113. 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 sections 110 and 111 of this act:

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 sections 100 and 101 of this act.

Sec. 114. 1. The public offering statement of a common-interest community containing any converted building must contain, in addition to the information required by sections 110 and 111 of this act:

(a) A statement by the declarant, based on a report prepared by an independent registered architect or 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 statement by the declarant of the expected useful life of each item reported in paragraph (a) or a statement that no representations are made in that regard; and

(c) 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.

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.

Sec. 115. 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 he 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.

Sec. 116. 1. A person required to deliver a public offering statement pursuant to subsection 3 of section 109 of this act shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of *sale*.

sale. 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 must contain a provision to that effect.

2. If a purchaser elects to cancel a contract pursuant to subsection 1, he 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 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 section 109 of this act fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection 1, the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to 10 percent of the sale price of the unit, plus 10 percent of the share, proportionate to his liability for common expenses, of any indebtedness of the association secured by security interests encumbering the common-interest community.

Sec. 117. 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 section 108 of this act, a unit's owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance:

- (a) A copy of the declaration (other than any plats and plans), the bylaws, and the rules or regulations of the association;
- (b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner; and
- (c) The current operating budget of the association.

2. 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 certificate prepared by the association. A unit's owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the contract to purchase is voidable by the purchaser until the certificate has been provided and for 5 days thereafter or until conveyance, whichever first occurs.

Sec. 118. Any 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 section 109 of this act 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:

1. Delivered to the declaration at closing;
2. Delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or
3. Refunded to the purchaser.

Sec. 119. 1. In the case of a sale of a unit where delivery of a public offering statement is required pursuant to subsection 3 of section 109 of this act, 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 108.2419, 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.

Sec. 120. 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.

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.

Sec. 121. 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 in the manner set forth in section 123 of this act.

Sec. 122. 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 him, 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. In addition, 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 section 123 of this act.

5. For purposes of this section, improvements made or contracted for by an affiliate of a declarant (section 5 of this act) 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.

Sec. 123. 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.

Sec. 124. 1. A judicial proceeding for breach of any obligation arising under section 121 or 122 of this act 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.

Sec. 125. If a declarant 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 adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded *for a willful failure to comply with this chapter.*

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↓1991 Statutes of Nevada, Page 579 ([Chapter 245, AB 221](#))↓

for a willful failure to comply with this chapter. The court, in an appropriate case, may award reasonable attorney's fees.

Sec. 126. 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."

Sec. 127. 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 section 63 of this act, 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 section 64, 65, 66, 67, 69 or 70 of this act.

Sec. 128. 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, as evidenced by a recorded certificate of substantial completion executed by an independent registered architect or professional engineer, or by issuance of a certificate of occupancy authorized by law.

Sec. 129. NRS 115.005 is hereby amended to read as follows:

115.005 As used in this chapter, unless the context otherwise requires:

1. "Equity" means the amount that is determined by subtracting from the fair market value of the property, the value of any liens excepted from the homestead exemption pursuant to subsection 3 of NRS 115.010.

2. "Homestead" means the property consisting of **[either a]** :

(a) A quantity of land, together with the dwelling house thereon and its appurtenances **[, or a]** ;

(b) A mobile home whether or not the underlying land is owned by the claimant **[,]** ; or

(c) A unit, whether real or personal property, existing pursuant to sections 2 to 128, inclusive, of this act or to chapter 117 of NRS, with any appurtenant limited common elements and its interest in the common elements of the common-interest community, to be selected by the husband and wife, or either of them, or a single person claiming the homestead.

Sec. 130. NRS 115.010 is hereby amended to read as follows:

115.010 1. The homestead is not subject to forced sale on execution or any final process from any court, except as provided by subsections 2 and 3.

2. The exemption provided in subsection 1 extends only to that amount of equity in the property held by the claimant which does not exceed \$95,000 in value.

3. The exemption provided in subsection 1 does not extend to process to enforce the payment of obligations contracted for the purchase of the property, or for improvements made thereon, including any mechanic's lien lawfully obtained, or for legal taxes, or for:

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↓1991 Statutes of Nevada, Page 580 ([Chapter 245, AB 221](#))↓

erty, or for improvements made thereon, including any mechanic's lien lawfully obtained, or for legal taxes, or for:

- (a) Any mortgage or deed of trust thereon executed and given; or
(b) Any lien to which prior consent has been given through the acceptance of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, **specifically including any lien in favor of an association pursuant to section 100 of this act or NRS 117.070**, by both husband and wife, when that relation exists.

4. Any declaration of homestead which has been filed before July 1, 1989, shall be deemed to have been amended on that date by extending the homestead exemption commensurate with any increase in the amount of equity held by the claimant in the property selected and claimed for the exemption up to the amount permitted by law on that date, but the increase does not impair the right of any creditor to execute upon the property when that right existed before July 1, 1989.

Sec. 131. NRS 117.020 is hereby amended to read as follows:

117.020 1. The provisions of this chapter **[shall]** apply to property divided **[or to be divided]** into condominiums only if there **[shall be]** was recorded **before January 1, 1992**, in the county in which **[such] the** property lies a plan consisting of:

- (a) A description or survey map of the surface of the land included within the project;
(b) Diagrammatic floor plans of the building or buildings built or to be built thereon in sufficient detail to identify each unit, its relative location and approximate dimensions; and
(c) A certificate consenting to the recordation of **[such] the** plan pursuant to this chapter signed and acknowledged by the record owner of **[such] the** property and by all record holders of security interests therein.

2. **[Such] The** plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by the record owner of **[such] the** property and by all record holders of security interests therein. Until recordation of a revocation, the provisions of this chapter **[shall]** continue to apply to **[such] the** property.

3. The term “record owner” as used in this section includes all of the record owners of **[such] the** property at the time of recordation, but does not include holders of security interests, mineral interests, easements or rights of way.

Sec. 132. NRS 40.433 is hereby amended to read as follows:

40.433 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 117, 119A or 278A of NRS **[,] or sections 2 to 128, inclusive, of this act**, or pursuant to a judgment or decree of any court of competent jurisdiction.

Sec. 133. NRS 278.010 is hereby amended to read as follows:

278.010 As used in NRS 278.010 to 278.630, inclusive, unless the context otherwise requires:

.....
↓1991 Statutes of Nevada, Page 581 ([Chapter 245, AB 221](#))↓

1. **[“Acre site” consists of 43,560 square feet of land, and includes any public streets and alleys or other rights of way or easements.**

2.] “Building code” means ordinances, plans, regulations, or rulings adopted by the governing body for the purpose of regulating and specifying the soundness of construction of structures.

[3.] 2. “Cities and counties” means all counties and cities located in counties. Carson City is considered as a county.

[4.] 3. “Commission” means the planning commission of the city, the county or the region, as established by ordinance or by the provisions of this chapter.

4. “Common-interest community” has the meaning ascribed to it in section 10 of this act.

5. “County surveyor” means a person appointed as such or a person designated by a board of county commissioners or the board of supervisors of Carson City to perform the duties of a county surveyor under this chapter.

6. “Final map” means a map prepared in accordance with the provisions of NRS 278.010 to 278.630, inclusive, and those of any applicable local ordinance, which is designed to be placed on record in the office of the county recorder of the county in which any part of the subdivision is located or the recorder of Carson City.

7. “Governing body” means the city council or other legislative body of the city or the board of county commissioners or, in the case of Carson City, the board of supervisors.

8. “Improvement” means such street work and utilities to be installed on land dedicated or to be dedicated for streets and easements as are necessary for local drainage, local traffic and the general use of property owners in the subdivision.

9. “Local ordinance” means an ordinance enacted by the governing body of any city or county, under the powers granted in NRS 278.010 to 278.630, inclusive, and within the limitations therein set forth, regulating the design and improvement of land subdivisions.

10. “Lot” means a distinct part or parcel of land which has been divided to transfer ownership or to build. The term does not include a parcel of land used or intended solely for use as a location for a water well.

11. “Parcel map” means a map as provided in NRS 278.461, 278.462 and 278.464 to 278.467, inclusive.

12. “Right of way” includes all public and private rights of way and all areas required for public use in accordance with any master plan or parts thereof.

13. “Streets” includes streets, avenues, boulevards, roads, lanes, alleys, viaducts, public easements and rights of way, and other ways.

14. “Subdivider” means a person who causes land to be divided into a subdivision for himself or for others.

15. “Tentative map” means a map made to show the design of a proposed subdivision and the existing conditions in and around it.

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↓1991 Statutes of Nevada, Page 582 ([Chapter 245, AB 221](#))↓

Sec. 134. NRS 278.0201 is hereby amended to read as follows:

278.0201 1. In the manner prescribed by ordinance, a governing body may, upon application of any person having a legal or equitable interest in land, enter into an agreement with that person concerning the development of that land. This agreement must describe the land which is the subject of the agreement and specify the duration of the agreement, the permitted uses of the land, the density or intensity of its use, the maximum height and size of the proposed buildings and any provisions for the dedication of any portion of the land for public use. The agreement may fix the period within which construction must commence and provide for an extension of that deadline.

2. Unless the agreement otherwise provides, the ordinances, resolutions or regulations applicable to that land and governing the permitted uses of that land, density and standards for design, improvements and construction are those in effect at the time the agreement is made.

3. [Nothing in this section prohibits] This section does not prohibit the governing body from adopting new ordinances, resolutions or regulations applicable to that land which do not conflict with those ordinances, resolutions and regulations in effect at the time the agreement is made, except that any subsequent action by the governing body must not prevent the development of the land as set forth in the agreement. The governing body is not prohibited from denying or conditionally approving any other plan for development pursuant to any ordinance, resolution or regulation in effect at the time of that denial or approval.

4. The provisions of NRS 278.350 [, 278.360 and 278A.510] and 278.360 do not apply if an agreement entered into pursuant to this section contains provisions which are contrary to the respective sections.

Sec. 135. NRS 278.320 is hereby amended to read as follows:

278.320 1. "Subdivision" means any land, vacant or improved, which is divided or proposed to be divided into five or more lots, parcels, sites, units or plots, for the purpose of any transfer, development or any proposed transfer or development unless exempted by one of the following provisions:

(a) The term "subdivision" does not apply to any division of land which is subject to the provisions of NRS 278.471 to 278.4725, inclusive.

(b) Any joint tenancy or tenancy in common shall be deemed a single interest in land.

(c) Unless a method of disposition is adopted for the purpose of evading this chapter or would have the effect of evading this chapter, the term "subdivision" does not apply to:

(1) Any division of land which is ordered by any court in this state or created by operation of law;

(2) A lien, mortgage, deed of trust or any other security instrument;

(3) A security or unit of interest in any investment trust regulated under the laws of this state or any other interest in an investment entity;

(4) Cemetery lots; or

(5) An interest in oil, gas, minerals or building materials, which are now or hereafter severed from the surface ownership of real property.

2. A common-interest community consisting of five or more units shall be deemed to be a subdivision of land within the meaning of this section, but need only comply with NRS 278.326 to 278.460, inclusive, 278.473 to 278.477, inclusive, 278.480 and 278.490.

↓1991 Statutes of Nevada, Page 583 ([Chapter 245, AB 221](#))↓

need only comply with NRS 278.326 to 278.460, inclusive, 278.43 to 278.477, inclusive, 278.480 and 278.490.

3. The board of county commissioners of any county may exempt any parcel or parcels of land from the provisions of NRS 278.010 to 278.630, inclusive, if:

(a) [Such] The land is owned by a railroad company or by a nonprofit corporation organized and existing pursuant to the provisions of chapter 81 of NRS which is an immediate successor in title to a railroad company, and [such] the land was in the past used in connection with any railroad operation; and

(b) Other persons now permanently reside on [such land.

3.] the land.

4. This chapter does not apply to the division of land for agricultural purposes into parcels of more than 10 acres, if a street, road, or highway opening or widening or easement of any kind is not involved.

Sec. 135.5. NRS 278.373 is hereby amended to read as follows:

278.373 The certificates and acknowledgments required by NRS 278.374 to 278.378, inclusive, [shall] and section 63 of this act must appear on a final map and may be combined where appropriate.

Sec. 136. NRS 278.374 is hereby amended to read as follows:

278.374 1. A final map presented for filing shall include a certificate signed and acknowledged, pursuant to NRS 111.270, by any person who is the owner of the land:

(a) Consenting to the preparation and recordation of the final map.

(b) Offering for dedication that part of the land which the person wishes to dedicate for public use, subject to any reservation contained therein.

(c) Reserving any parcel from dedication.

(d) Granting any permanent easement for utility installation or access, as designated on the final map, together with a statement approving such easement, signed by the public utility or person in whose favor the easement is created or whose services are required.

2. For the purpose of this section the following shall be deemed not to be an interest in land under this section:

(a) A lien for taxes or special assessments.

(b) A trust interest under a bond indenture.

3. [A] Upon the final map presented for filing by a common-interest community a title company must, and for any other subdivision a local government may by ordinance require a title company to:

(a) Certify that each person signing the final map owns of record an interest in the land and that all of the owners of record of the land have signed the final map; and

(b) List any lien or mortgage holders of record. For a common-interest community, the certificate must show that there are no liens against the common-interest community or any part thereof for delinquent state, county, municipal, federal or local taxes or assessments collected as taxes or special assessments.

Sec. 137. NRS 278.461 is hereby amended to read as follows:

278.461 1. A person who proposes to divide any land for transfer or development into four or fewer lots shall file a parcel map in the office of the county recorder, unless this requirement is waived or the provisions of NRS 278.471 to 278.4725, inclusive, apply.

↓1991 Statutes of Nevada, Page 584 ([Chapter 245, AB 221](#))↓

county recorder, unless this requirement is waived or the provisions of NRS 278.471 to 278.4725, inclusive, apply. The map must be accompanied by a written statement signed by the treasurer of the county in which the land to be divided is located indicating that no property taxes on the land are delinquent.

2. A common-interest community consisting of four units or less shall be deemed to be a division of land within the meaning of this section, but need only comply with NRS 278.371, 278.373 to 278.378, inclusive, 278.461, 278.462, 278.464 and 278.466.

3. A parcel map is not required when the division is for the express purpose of:

- (a) The creation or realignment of a public right of way by a public agency.
- (b) The creation or realignment of an easement.

(c) An adjustment of the boundary line or the transfer of land between two owners of adjacent property which does not result in the creation of any additional parcels.

(d) The purchase, transfer or development of space within an apartment building or an industrial or commercial building.

(e) Carrying out an order of any court or dividing land as a result of an operation of law.

[3.] 4. A parcel map is not required for any of the following transactions involving land:

(a) The creation of a lien, mortgage, deed of trust or any other security instrument.

(b) The creation of a security or unit of interest in any investment trust regulated under the laws of this state or any other interest in an investment entity.

(c) Conveying an interest in oil, gas, minerals or building materials, which are severed from the surface ownership of real property.

(d) Conveying an interest in land acquired by the department of transportation under chapter 408 of NRS.

(e) Filing a certificate of amendment under NRS 278.473.

[4.] 5. When two or more separate lots, parcels, sites, units or plots of land are purchased, they remain separate for the purposes of this section and NRS 278.468, 278.590 and 278.630. When the lots, parcels, sites, units or plots are resold or conveyed they are exempt from the provisions of NRS 278.010 to 278.630, inclusive, until further divided.

[5.] 6. Unless a method of dividing land is adopted for the purpose or would have the effect of evading this chapter, the provisions for the division of land by a parcel map do not apply to a transaction exempted by paragraph (c) of subsection 1 of NRS 278.320.

Sec. 138. NRS 278A.130 is hereby amended to read as follows:

278A.130 [1.] The ordinance must provide that the city or county may accept the dedication of land or any interest therein for public use and maintenance, but the ordinance must not require, as a condition of the approval of a planned unit development, that land proposed to be set aside for common open space be dedicated or made available to public use. *If any land is set aside for common open space, the planned unit development must be organized as a common-interest community in one of the forms permitted by sections 2 to 128, inclusive, of this act.*

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↓1991 Statutes of Nevada, Page 585 ([Chapter 245, AB 221](#))↓

sections 2 to 128, inclusive, of this act. The ordinance may require that the [landowner provide for and establish an organization for the ownership and maintenance of any common open space, and that the organization]association for the common-interest community may not be dissolved or dispose of any common open space by sale or otherwise, without first offering to dedicate the common open space to the city or county. That offer must be accepted or rejected within 120 days.

[2. The ordinance may authorize the organization to make reasonable assessments to meet its necessary expenditures for maintaining the common open space in reasonable order and condition in accordance with the plan. The assessments must be made ratably against the properties within the planned unit development that have a right of enjoyment of the common open space. The ordinance may provide for agreement between the organization and the property owners providing:

(a) A reasonable method for notice and levy of the assessment; and

(b) For the subordination of the liens securing the assessment to other liens either generally or specifically described.]

Sec. 139. NRS 278A.170 is hereby amended to read as follows:

278A.170 The procedures for enforcing payment of an assessment for the maintenance of common open space provided in [NRS 278A.150 and 278A.160] sections 100 to 104, inclusive, of this act are also available to any organization for the ownership and maintenance of common open space established other than under this chapter or sections 2 to 128, inclusive, of this act and entitled to receive payments from owners of property for such maintenance under a recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude which provides that any reasonable and ratable assessment thereon for the organization's costs of maintaining the common open space constitutes a lien or encumbrance upon the property.

Sec. 140. NRS 278A.180 is hereby amended to read as follows:

278A.180 1. If the [organization established] association for the common-interest community or another organization which was formed before January 1, 1992, to own and maintain common open space [,] or any successor association or other organization, at any time after the establishment of a planned unit development, fails to maintain the common open space in a reasonable order and condition in accordance with the plan, the city or county may serve written notice upon that association or other organization or upon the residents of the planned unit development, setting forth the manner in which the association or other organization has failed to maintain the common open space in reasonable condition. The notice must include a demand that the deficiencies of maintenance be cured within 30 days after the receipt of the notice and must state the date and place of a hearing thereon. The hearing must be within 14 days of the receipt of the notice.

2. At the hearing the city or county may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they must be cured. If the deficiencies set forth in the original notice or in the modification thereof are not cured within the 30-day period, or any extension thereof, the city or county, in order to preserve the taxable values of the properties within the planned unit development and to prevent the common *open space from becoming a public nuisance, may enter upon the common open space and maintain it for [a period of] 1 year.*

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↓1991 Statutes of Nevada, Page 586 ([Chapter 245, AB 221](#))↓

open space from becoming a public nuisance, may enter upon the common open space and maintain it for [a period of] 1 year.

3. Entry and maintenance does not vest in the public any right to use the common open space except when such a right is voluntarily dedicated to the public by the owners.

4. Before the expiration of the period of maintenance set forth in subsection 2, the city or county shall, upon its own initiative or upon the request of the **association or other** organization previously responsible for the maintenance of the common open space, call a public hearing upon notice to the **association or other** organization or to the residents of the planned unit development, to be held by the city or county. At this hearing the **association or other** organization or the residents of the planned unit development **[shall]may** show cause why the maintenance by the city or county need not, at the election of the city or county, continue for a succeeding year.

5. If the city or county determines that the **association or other** organization is ready and able to maintain the common open space in a reasonable condition, the city or county shall cease its maintenance at the end of the year.

6. If the city or county determines the **association or other** organization is not ready and able to maintain the common open space in a reasonable condition, the city or county may, in its discretion, continue the maintenance of the common open space during the next succeeding year, subject to a similar hearing and determination in each year thereafter.

7. The decision of the city or county in any case referred to in this section constitutes a final administrative decision subject to review.

Sec. 140.5. NRS 278A.570 is hereby amended to read as follows:

278A.570 1. A plan which has been given final approval by the city or county, must be certified without delay by the city or county and filed of record in the office of the appropriate county recorder before any development occurs in accordance with that plan. A county recorder shall not file for record any final plan unless it includes **[a]** :

(a) A final map of the entire final plan or an identifiable phase of the final plan if required by the provisions of NRS 278.010 to 278.630, inclusive **[, and includes:**

(a)] ;

(b) The certifications required pursuant to section 63 of this act; and

(c) The same certificates of approval as are required under NRS 278.377 **[; or**

(b) Evidence that the] or evidence that:

(1) The approvals were requested more than 30 days before the date on which the request for filing is made **[, and that the] ;**
and

(2) The agency has not refused its approval.

2. Except as otherwise provided in this subsection, after the plan is recorded, the zoning and subdivision regulations otherwise applicable to the land included in the plan cease to apply. If the development is completed in identifiable phases, then each phase can be recorded. The zoning and subdivision regulations cease to apply after the recordation of each phase to the extent necessary to allow development of that phase.

.....
↓1991 Statutes of Nevada, Page 587 ([Chapter 245, AB 221](#))↓

3. Pending completion of the planned unit development, or of the part that has been finally approved, no modification of the provisions of the plan, or any part finally approved, may be made, nor may it be impaired by any act of the city or county except with the consent of the landowner.

4. The county recorder shall collect a fee of \$50, plus 50 cents per lot or unit mapped, for the recording or filing of any final map, plat or plan. The fee must be deposited in the general fund of the county where it is collected.

Sec. 141. NRS 117.025, 117.027, 117.120, 278A.140, 278A.150, 278A.160 and 361.243 are hereby repealed.

Sec. 142. This act becomes effective on January 1, 1992.

TAB 4

NEVADA REVISED STATUTES

Containing All Statute Laws of Nevada of a
General, Public and Permanent Nature

VOLUME 10

SUPREME COURT BLDG.

NOV 22 1991

SUPREME COURT BLDG.

Classified, Arranged, Revised, Indexed and Published
(Pursuant to chapter 220 of NRS)

BY THE
LEGISLATIVE COUNSEL
STATE OF NEVADA



LEGISLATIVE COUNSEL BUREAU
CARSON CITY, NEVADA

114

AA_0037

CITE NEVADA REVISED STATUTES

2010 11/14
NRS

2010 11/14 11:43:01
Thus: NRS 19.010

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AA_0038

6. 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.

(Added to NRS by 1991, 567)

116.3116 Lien for assessments.

1. The association has a lien on a unit for any assessment levied against that unit or fines imposed against the unit's owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j), (k) and (l) 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 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 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

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

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

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

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

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

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

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section or by NRS 116.31162 to 116.31168, inclusive.

10. In a cooperative where the owner's interest in a unit is personal property (NRS 116.1105), the association's lien may be foreclosed in like manner as a security interest under NRS 104.9101 to 104.9507, inclusive.

(Added to NRS by 1991, 567)

116.31162 Foreclosure of lien in condominium, cooperative in which unit is real estate, or planned community.

1. In a condominium, a cooperative where the owner's interest in a unit is real estate (NRS 116.1105), or a planned community, the association may foreclose its lien by sale after:

(a) The association has 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 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 units;

(b) 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 contains the same information as the notice of delinquent assessment, but must also describe the deficiency in payment and the name and address of the person authorized by the association to enforce the lien by sale; and

(c) The unit's owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 60 days following the recording of the notice of default and election to sell.

(b) 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 agreement between the association and the unit's owner, reasonable attorney's fees and other legal expenses incurred by the association;

(c) Satisfaction of the association's lien;

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

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

(Added to NRS by 1991, 569)

116.31166 Recitals in deed; title of purchaser.

1. The recitals in such a deed of:

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

(b) The elapsing of the 60 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 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 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)

116.31168 Requests for notice of default and sale.

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. The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.

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)

116.3118 Association's records. The association shall keep financial records sufficiently detailed to enable the association to comply with NRS

TAB 5

AB 612 By Judiciary COMMON-INTEREST OWNER

Revises Uniform Common-Interest Ownership Act. (BDR 10-479)

Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

- 05/11 70 Read first time. Referred to Committee on Judiciary. To printer.
- 05/12 71 From printer. To committee. ✓
- 05/12 71 Dates discussed in committee: 5/20 (NACT)
- 06/24 103 From committee: Amend, and do pass as amended.
- 06/24 103 (Amendment number 1079.)
- 06/24 103 ✓ Placed on Second Reading File.
- 06/24 103 Read second time. Amended. To printer.
- 06/25 104 From printer. To engrossment.
- 06/25 104 Engrossed. First reprint. ✓
- 06/25 104 Placed on General File.
- 06/25 104 ✓ Read third time. Passed, as amended. Title approved, as amended. (41 Yeas, 0 Nays, 1 Absent, 0 Excused, 0 Not Voting.) To Senate.
- 06/25 103 In Senate.
- 06/25 103 Read first time. Referred to Committee on Judiciary. To committee.
- 06/25 103 Dates discussed in Committee: 6/28, 6/29 (A&DP)
- 06/30 107 From committee: Amend, and do pass as amended.
- 06/30 107 (Amendment number 1310.)
- 06/30 107 Placed on Second Reading File.
- 06/30 107 ✓ Read second time. Amended. To printer.
- 06/30 107 From printer. To re-engrossment.
- 06/30 107 Re-engrossed. Second reprint. ✓
- 07/01 108 Read third time. Passed, as amended. Title approved. (21 Yeas, 0 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Assembly.
- 07/01 110 In Assembly.
- 07/01 110 Senate amendment concurred in. To enrollment.
- 07/06 0 Enrolled and delivered to Governor.
- 07/12 0 Approved by the Governor.
- 07/13 0 Chapter 573.

Section 51 of this act effective 12:01 a.m. October 1, 1993.
Remainder of this act effective October 1, 1993.

(* = instrument from prior session)

NEVADA LEGISLATURE
SIXTY-SEVENTH SESSION
1993

SUMMARY OF LEGISLATION

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU

*10/11/93
10/11/93
1993*

A.B. 612 (Chapter 573)

Assembly Bill 612 revises provisions of the Uniform Common-Interest Ownership Act, which governs certain types of property ownership such as condominiums and cooperatives. The measure makes various technical changes to the Act, and certain sections of existing law are reorganized. In addition, the bill makes substantive changes, including:

- Revising the period of declarant's control of a unit-owners' association to the earlier of: (a) 60 days after sale of 75 percent of the units, unless a majority of the units are time shares; (b) 5 years after ceasing to offer units for sale; or (c) 5 years after the right to add new units was last exercised.
- Clarifying the rights and liabilities of unit owners if a lien is filed against the association.
- Requiring that a first notice of delinquency be mailed to the unit owner, rather than merely recorded.
- Establishing procedures for the sale of a unit whose owner is in default.
- Extending the applicability of certain provisions governing unit-owners' associations to communities containing more than six units.
- Requiring that an association provide an owner with documents necessary to resell a unit.

Assembly Bill 612 clarifies and expands upon the Uniform Common-Interest Ownership Act, which was adopted by the 1991 Legislature.

ASSEMBLY BILL No. 612—COMMITTEE ON JUDICIARY

MAY 11, 1993

Referred to Committee on Judiciary

SUMMARY—Revises Uniform Common-Interest Ownership Act and Planned Unit Development Law. (BDR 10-479)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to property; making various changes in the Uniform Common-Interest Ownership Act; revising the provisions governing organizations established for the ownership and maintenance of common open space; and providing other matters properly relating thereto.

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

1 **Section 1.** Chapter 116 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 2 to 7, inclusive, of this act.

3 **Sec. 2.** 1. *Except as otherwise provided in subsection 2, the declaration*
4 *may provide for a period of declarant's control of the association, during*
5 *which a declarant, or persons designated by him, may appoint and remove*
6 *the officers and members of the executive board. Regardless of the period*
7 *provided in the declaration, a period of declarant's control terminates no*
8 *later than 60 days after conveyance of 80 percent of the units that may be*
9 *created to units' owners other than a declarant. A declarant may voluntarily*
10 *surrender the right to appoint and remove officers and members of the execu-*
11 *tive board before termination of that period, but in that event the declarant*
12 *may require, for the duration of the period of declarant's control, that*
13 *specified actions of the association or executive board, as described in a*
14 *recorded instrument executed by the declarant, be approved by the declarant*
15 *before they become effective.*

16 2. *Not later than 60 days after conveyance of 25 percent of the units that*
17 *may be created to units' owners other than a declarant, at least one member*
18 *and not less than 25 percent of the members of the executive board must be*
19 *elected by units' owners other than the declarant. Not later than 60 days after*
20 *conveyance of 50 percent of the units that may be created to units' owners*
21 *other than a declarant, not less than 33 1/3 percent of the members of the*
22 *executive board must be elected by units' owners other than the declarant.*

23 **Sec. 3.** 1. *Except as otherwise provided in subsection 5 of NRS 116.2120,*
24 *not later than the termination of any period of declarant's control, the units'*
25 *owners shall elect an executive board of at least three members, at least a*

1 majority of whom must be units' owners. The executive board shall elect
2 officers. The members and officers of the executive board shall take o
3 upon election.

4 2. An officer, employee, agent or director of a corporate owner of a unit
5 trustee or designated beneficiary of a trust that owns a unit, a partner
6 partnership that owns a unit, and a fiduciary of an estate that owns a unit
7 be an officer or member of the executive board. In all events where the person
8 serving or offering to serve as an officer or member of the executive board
9 not the record owner, he shall file proof of authority in the records of the
10 association.

11 Sec. 4. 1. Notwithstanding any provision of the declaration or bylaws
12 the contrary, the units' owners, by a two-thirds vote of all persons present
13 and entitled to vote at any meeting of the units' owners at which a quorum
14 present, may remove any member of the executive board with or without
15 cause, other than a member appointed by the declarant.

16 2. If a member of an executive board is sued for liability for actions
17 undertaken in his role as a member of the board, the association shall
18 indemnify him for his losses or claims, and undertake all costs of defense
19 unless it is proven that he acted with willful or wanton misfeasance or
20 gross negligence. After such proof the association is no longer liable for the
21 cost of defense, and may recover costs already expended from the members
22 of the executive board who so acted. Members of the executive board are
23 personally liable to the victims of crimes occurring on the property. Punitive
24 damages may not be recovered against the association, but may be recovered
25 from persons whose activity gave rise to the damages.

26 Sec. 5. Within 30 days after units' owners other than the declarant
27 elect a majority of the members of the executive board, the declarant shall
28 deliver to the association all property of the units' owners and of the associa
29 tion held by or controlled by him, including:

30 1. The original or a certified copy of the recorded declaration as amended
31 the association's articles of incorporation if the association is incorporated
32 bylaws, minute books and other books and records of the association and
33 rules or regulations which may have been adopted.

34 2. An accounting for money of the association and financial statements
35 from the date the association received money to the date the period of the
36 declarant's control ends. The financial statements must fairly and accurately
37 report the association's financial condition prepared in accordance with
38 generally accepted accounting principles.

39 3. The association's money or control thereof.

40 4. All of the declarant's tangible personal property that has been re
41 sented by the declarant as property of the association or, unless the declarant
42 has disclosed in the public offering statement that all such personal property
43 used in the common-interest community will remain the declarant's property,
44 all of the declarant's tangible personal property that is necessary for, and
45 been used exclusively in, the operation and enjoyment of the common
46 ments, and inventories of these properties.

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

4 6. All insurance policies then in force, in which the units' owners, the
5 association, or its directors and officers are named as insured persons.

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

9 8. Any renewable permits and approvals issued by governmental bodies
10 applicable to the common-interest community which are in force and any
11 other permits and approvals so issued and applicable which are required by
12 law to be kept on the premises of the community.

13 9. Written warranties of the contractor, subcontractors, suppliers and
14 manufacturers that are still effective.

15 10. A roster of owners and mortgagees of units and their addresses and
16 telephone numbers, if known, as shown of the declarant's records.

17 11. Contracts of employment in which the association is a contracting
18 party.

19 12. Any contract for service in which the association is a contracting party
20 or in which the association or the units' owners have any obligation to pay a
21 fee to the persons performing the services.

22 Sec. 6. The association or other person conducting the sale shall also
23 mail, within 10 days after the notice of default and election to sell is recorded,
24 a copy of the notice by first-class mail to:

25 1. Each person who has requested notice pursuant to NRS 107.090 or
26 116.31168;

27 2. Any lessee under the unit's owner, if the units owner has notified the
28 association, 30 days before the recordation of the notice, that the unit is
29 leased;

30 3. Any holder of a recorded security interest encumbering the unit's
31 owner's interest who has notified the association, 30 days before the recorda
32 tion of the notice of default, of the existence of the security interest; and

33 4. A purchaser of the unit, if the unit's owner has notified the association,
34 30 days before the recordation of the notice, that the unit is the subject of a
35 contract of sale and the association has been requested to furnish the certifi
36 cate required by subsection 2 of NRS 116.4109.

37 Sec. 7. The association or other person conducting the sale shall also,
38 after the expiration of the 60 days and before selling the unit:

39 1. Give notice of the time and place of the sale in the manner and for a
40 time not less than that required by law for the sale of real property upon
41 execution, except that a copy of the notice of sale must be mailed, on or
42 before the date of first publication or posting, by certified or registered mail,
43 return receipt requested, to the unit's owner or his successor in interest at his
44 address if known, otherwise to the address of the unit.

45 2. Mail, on or before the date of first publication or posting, a copy of the
46 notice by first-class mail to:

47 (a) Each person entitled to receive a copy of the notice of default and
48 election to sell notice under section 6 of this act; and

1 (b) The holder of a recorded security interest, a lessee under the unit
2 owner, or the purchaser of the unit if any of them has notified the association
3 before the mailing of the notice of sale, of the existence of the security
4 interest, lease or contract of sale, as applicable.

5 Sec. 8. NRS 116.1102 is hereby amended to read as follows:

6 116.1102 Applicability of this chapter is governed by NRS 116.1201
7 [116.1208,] 116.1207, inclusive.

8 Sec. 9. NRS 116.110318 is hereby amended to read as follows:

9 116.110318 "Common elements" means:

10 1. In a condominium or cooperative, all portions of the common-interest
11 community other than the units, including easements in favor of units or the
12 common elements over other units; and

13 2. In a planned community, any real estate within [a] the planned commu-
14 nity owned or leased by the association, other than a unit . . . ; and

15 3. All real and personal property owned or leased by the association.]

16 Sec. 10. NRS 116.110323 is hereby amended to read as follows:

17 116.110323 "Common-interest community" means real estate with
18 respect to which a person, by virtue of his ownership of a unit, is obligated to
19 pay for real estate other than that unit [.] , except a planned unit development
20 as defined in NRS 278A.065. "Ownership of a unit" does not include holding
21 a leasehold interest of less than 20 years in a unit, including options to renew.
22 A condominium or cooperative that is part of a planned unit development is
23 governed by the provisions of this chapter.

24 Sec. 11. NRS 116.110348 is hereby amended to read as follows:

25 116.110348 "Identifying number" means a symbol [or address that]
26 address or legally sufficient description of real estate which identifies one
27 one unit in a common-interest community.

28 Sec. 12. NRS 116.110385 is hereby amended to read as follows:

29 116.110385 "Special declarant's rights" means rights reserved for the
30 benefit of a declarant to [:

31 1. Complete] complete improvements indicated on plats and plans [or
32 the declaration (NRS 116.2109) or, in a cooperative, to complete improve-
33 ments described in the public offering statement pursuant to subsection 2 of
34 NRS 116.4103;

35 2. Exercise any developmental right (NRS 116.2110);

36 3. Maintain sales offices, management offices, signs advertising the
37 common-interest community and models (NRS 116.2115);

38 4. Use easements through the common elements for the purpose of making
39 improvements within the common-interest community or within real estate
40 which may be added to the common-interest community (NRS 116.2116).

41 5. Make the common-interest community subject to a master association
42 (NRS 116.2120);

43 6. Merge or consolidate a common-interest community with another
44 common-interest community of the same form of ownership (NRS
45 116.2121); or

46 7. Appoint or remove any officer of the association or any master associa-
47 tion or any member of an executive board during any period of declaration

1 control (subsection 4 of NRS 116.3103).] filed with or specifically described
2 in the declaration.

3 Sec. 13. NRS 116.1115 is hereby amended to read as follows:

4 116.1115 1. From time to time the dollar amounts specified in NRS
5 116.1202, 116.1203 , [and] 116.4101 and 116.41035 must change, as pro-
6 vided in subsections 2 and 3, according to and to the extent of changes in the
7 Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S.
8 City Average, All Items [1967] 1982-1984 = 100, compiled by the Bureau
9 of Labor Statistics, United States Department of Labor, (the "Index"). The
10 Index for December [1982-1984] 1990 is the Reference Base Index.

11 2. The dollar amounts specified in NRS 116.1202, 116.1203 [and
12 116.4101,] , 116.4101 and 116.41035, and any amount stated in the declara-
13 tion pursuant to those sections, must change on July 1 of each year if the
14 percentage of change, calculated to the nearest whole percentage point,
15 between the Index at the end of the preceding year and the Reference Base
16 Index is 10 percent or more, but:

17 (a) The portion of the percentage change in the Index in excess of a
18 multiple of 10 percent must be disregarded and the dollar amounts must
19 change only in multiples of 10 percent of the amounts appearing in this
20 chapter on the date of enactment;

21 (b) The dollar amounts must not change if the amounts required by this
22 section are those currently in effect pursuant to this chapter as a result of
23 earlier application of this section; and

24 (c) In no event may the dollar amounts be reduced below the amounts
25 appearing in this chapter on the date of enactment.

26 3. If the Index is revised after December [1979,] 1990, the percentage of
27 change pursuant to this section must be calculated on the basis of the revised
28 Index. If the revision of the Index changes the Reference Base Index, a
29 revised Reference Base Index must be determined by multiplying the Refer-
30 ence Base Index then applicable by the rebasing factor furnished by the
31 Bureau of Labor Statistics. If the Index is superseded, the index referred to in
32 this section is the one represented by the Bureau of Labor Statistics as
33 reflecting most accurately changes in the purchasing power of the dollar for
34 consumers.

35 Sec. 14. NRS 116.1201 is hereby amended to read as follows:

36 116.1201 Except as otherwise provided in NRS 116.1202 and 116.1203,
37 this chapter applies to all common-interest communities created within this
38 state on or after January 1, 1992. The provisions of [chapters 117 and 278A]
39 chapter 117 of NRS do not apply to common-interest communities created on
40 or after January 1, 1992.

41 Sec. 15. NRS 116.1202 is hereby amended to read as follows:

42 116.1202 If a cooperative contains only units restricted to nonresidential
43 use, [or] contains no more than [12 units and is not subject to any develop-
44 mental rights,] 50 units or has an annual budget of less than \$150,000, it is
45 subject only to NRS 116.1106 and 116.1107 unless the declaration provides
46 that the entire chapter is applicable.

47 Sec. 16. NRS 116.1203 is hereby amended to read as follows:

48 116.1203 If a planned community:

1 1. Contains no more than [12 units and is not subject to any developmen
2 rights;] 50 units; or

3 2. [Provides, in its declaration, that the annual average liability for com
4 mon expenses of all units restricted to residential purposes, exclusive of
5 optional users' fees and any insurance premiums paid by the association, m
6 not exceed \$500, as adjusted pursuant to NRS 116.1115,] Has an annual
7 budget of less than \$150,000 exclusive of optional users' fees and any insu
8 rance premiums paid by the association,
9 it is subject only to NRS 116.1105, 116.1106 and 116.1107 unless th
10 declaration provides that this entire chapter is applicable.

11 Sec. 17. NRS 116.1204 is hereby amended to read as follows:

12 116.1204 Except as otherwise provided in NRS 116.1205, [NRS
13 116.1105, 116.1106, 116.1107, 116.2103, 116.2104 and 116.21
14 paragraphs (a) to (f), inclusive, and (k) to (r), inclusive, of subsection 1 of
15 NRS 116.3102, NRS [116.3111,] 116.3116 to 116.3118, inclusive
16 116.3118, 116.4109 and 116.4117, and [NRS] 116.11031 to 116.11039,
17 inclusive, to the extent necessary in construing any of those sections, apply
18 all common-interest communities created in this state before January 1, 1992,
19 but those sections apply only with respect to events and circumstances occur
20 ring on or after January 1, 1992, and do not invalidate existing provisions of
21 the declaration, bylaws, or plats or plans of those common-interest
22 communities.

23 Sec. 18. NRS 116.1206 is hereby amended to read as follows:

24 116.1206 1. In the case of amendments to the declaration, bylaws or
25 plats and plans of any common-interest community created before January 1
26 1992:

27 (a) If the result accomplished by the amendment was permitted by law
28 before January 1, 1992, the amendment may be made either in accordance
29 with that law, in which case that law applies to that amendment, or it may be
30 made under this chapter; and

31 (b) If the result accomplished by the amendment is permitted by this
32 chapter, and was not permitted by law before January 1, 1992, the amend
33 ment may be made under this chapter.

34 2. An amendment to the declaration, bylaws or plats and plans authoriz
35 ed by this section to be made under this chapter must be adopted in conforma
36 nce with the applicable provisions of chapter 117 [or 278A] of NRS and with the
37 procedures and requirements specified by those instruments. If an amendmen
38 t grants to any person any rights, powers or privileges permitted by this
39 chapter, all correlative obligations, liabilities and restrictions in this chap
40 ter also apply to that person.

41 Sec. 19. NRS 116.2103 is hereby amended to read as follows:

42 116.2103 1. All provisions of the declaration and bylaws are severabl
43 y void if they violate any provision of this chapter.
44 2. The rule against perpetuities and NRS 111.103 to 111.1039, inclusive,
45 do not apply to defeat any provision of the declaration, bylaws, rules or
46 regulations adopted pursuant to NRS 116.3102.

47 3. In the event of a conflict between the provisions of the declaration and
48 the bylaws, the declaration prevails except to the extent the declaration is
inconsistent with this chapter.

1 4. Title to a unit and common elements is not rendered unmarketable or
2 otherwise affected by reason of an insubstantial failure of the declaration to
3 comply with this chapter. [Whether a substantial failure impairs marketability
4 is not affected by this chapter.] A substantial failure of a declaration to
5 comply with this chapter does not render title to a unit and common elements
6 unmarketable if the declarant records an amendment to or restatement of the
7 declaration substantially correcting the failure within 60 days after receiving
8 written notice of the failure from a person affected. A declarant may record
9 an amendment to a declaration, or record a restated declaration, for the
10 purpose and to the extent of causing the original declaration to comply with
11 this chapter, and such an amendment or restatement only requires the signa
12 ture and acknowledgment of the declarant whether or not units in the com
13 mon-interest community have been sold or encumbered and notwithstanding
14 any preconditions or requirements to amendment set forth in the original
15 declaration or in NRS 116.2117. A declarant recording such an amendment
16 or restated declaration is liable to a person affected for the actual damages
17 proven by the person affected to have been sustained by reason of the
18 recordation.

19 Sec. 20. NRS 116.2104 is hereby amended to read as follows:

20 116.2104 A description of a unit which sets forth the name of the com
21 mon-interest community, the file number and book or other information to
22 show where the declaration is recorded, the county in which the common-
23 interest community is located and the identifying number of the unit, is a
24 legally sufficient description of that unit and all rights, obligations and inter
25 ests appurtenant to that unit which were created by the declaration or bylaws.

26 Sec. 21. NRS 116.2105 is hereby amended to read as follows:

27 116.2105 1. The declaration must contain:

28 (a) The names of the common-interest community and the association and
29 a statement that the common-interest community is either a condominium,
30 cooperative or planned community;

31 (b) The name of every county in which any part of the common-interest
32 community is situated;

33 (c) A legally sufficient description of the real estate included in the
34 common-interest community;

35 (d) A statement of the [maximum] estimated number of units that the
36 declarant [reserves the right] intends to create;

37 (e) In a condominium or planned community, a description of the bounda
38 raries of each unit created by the declaration, including the unit's identifying
39 number or, in a cooperative, a description, which may be by plats or plans, of
40 each unit created by the declaration, including the unit's identifying number,
41 its size or number of rooms, and its location within a building if it is within a
42 building containing more than one unit;

43 (f) A description of any limited common elements, other than those speci
44 fied in subsections 2 and 4 of NRS 116.2102, as provided in paragraph (j) of
45 subsection 2 of NRS 116.2109 and, in a planned community, any real estate
46 that is or must become common elements;

1 (g) A description of any real estate, except real estate subject to develop-
2 mental rights, that may be allocated subsequently as limited common ele-
3 ments, 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;

5 (h) A description of any developmental rights (NRS 116.11034) as
6 [other] special declarant's rights (NRS 116.110385) reserved by the declar-
7 ant, together with a legally sufficient description of the real estate to which
8 each of those rights applies, and a time within which each of those rights may
9 be exercised;

10 (i) [If any developmental right may be exercised with respect to different
11 parcels of real estate at different times, a statement to that effect together
12 with:

13 (1) Either a statement fixing the boundaries of those portions and rep-
14 lating the order in which those portions may be subjected to the exercise of
15 each developmental right or a statement that no assurances are made in this re-
16 gard; and

17 (2) A statement whether, if any developmental right is exercised in any
18 portion of the real estate subject to that developmental right, that develop-
19 mental right must be exercised in all or in any other portion of the remain-
20 of that real estate;

21 (j) Any other conditions or limitations under which the rights described in
22 paragraph (h) may be exercised or will lapse;

23 [(k)] (j) An allocation to each unit of the allocated interests in the manner
24 described in NRS 116.2107;

25 [(l)] (k) Any restrictions:

26 (1) On use, occupancy and alienation of the units; and

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

31 [(m)] The recording data where easements and licenses are recorded appor-
32 tenant to or included in the common-interest community or to which any
33 portion of the common-interest community is or may become subject by
34 virtue of a reservation in the declaration; and

35 [(n)] and

36 (l) All matters required by NRS 116.2106 to [116.2109,] 116.208, inclu-
37 sive, subsection 5 of NRS 116.2109, 116.2115 and 116.2116 and [subsections
38 4 of NRS 116.3103.] section 2 of this act.

39 2. The declaration may contain any other matters the declarant considers
40 appropriate.

41 **Sec. 22.** NRS 116.2107 is hereby amended to read as follows:

42 116.2107 1. The declaration must allocate to each unit:

43 (a) In a condominium, a fraction or percentage of undivided interests in the
44 common elements and in the common expenses of the association (NRS
45 116.3115) and a portion of the votes in the association;

46 (b) In a cooperative, a proportionate ownership in the association, a frac-
47 tion or percentage of the common expenses of the association (NRS
48 116.3115) and a portion of the votes in the association; and

1 (c) In a planned community, a fraction or percentage of the common
2 expenses of the association (NRS 116.3115) and a portion of the votes in the
3 association.

4 2. The declaration must state the formulas used to establish allocations of
5 interests. Those allocations may not discriminate in favor of units owned by
6 the declarant or an affiliate of the declarant.

7 3. If units may be added to or withdrawn from the common-interest
8 community, the declaration must state the formulas to be used to reallocate
9 the allocated interests among all units included in the common-interest com-
10 munity after the addition or withdrawal.

11 4. The declaration may provide:

12 (a) That different allocations of votes are made to the units on particular
13 matters specified in the declaration;

14 (b) For cumulative voting only for the purpose of electing members of the
15 executive board; and

16 (c) For class voting on specified issues affecting the class if necessary to
17 protect valid interests of the class.

18 Except as otherwise provided in [NRS 116.3103,] section 2 of this act, a
19 declarant may not utilize cumulative or class voting for the purpose of
20 evading any limitation imposed on declarants by this chapter nor may units
21 constitute a class because they are owned by a declarant.

22 5. Except for minor variations because of rounding, the sum of the liabilities
23 for common expenses and, in a condominium, the sum of the undivided
24 interests in the common elements allocated at any time to all the units must
25 each equal one if stated as a fraction or 100 percent if stated as a percentage.
26 In the event of discrepancy between an allocated interest and the result
27 derived from application of the pertinent formula, the allocated interest
28 prevails.

29 6. In a condominium, the common elements are not subject to partition,
30 and any purported conveyance, encumbrance, judicial sale or other voluntary
31 or involuntary transfer of an undivided interest in the common elements made
32 without the unit to which that interest is allocated is void.

33 7. In a cooperative, any purported conveyance, encumbrance, judicial sale
34 or other voluntary or involuntary transfer of an ownership interest in the
35 association made without the possessory interest in the unit to which that
36 interest is related is void.

37 **Sec. 23.** NRS 116.2109 is hereby amended to read as follows:

38 116.2109 1. Plats and plans are a part of the declaration, and are
39 required for all common-interest communities except cooperatives. Separate
40 plats and plans are not required by this chapter if all the information required
41 by this section is contained in either a plat or plan. Each plat and plan must be
42 clear and legible and contain a certification that the plat or plan contains all
43 information required by this section.

44 2. Each plat must show:

45 (a) The name and a survey of the area which is the subject of the plat;

46 (b) A legally sufficient description of the real estate;

1 (c) The [approximate] location and [approximate] dimensions of all [real
2 estate not subject to developmental rights, or subject only to the developmen-
3 tal right to withdraw, and the location and dimensions of all] existing
4 improvements within [that] the real estate;

5 [(c) A legally sufficient description of any real estate subject to develop-
6 mental rights, labeled to identify the rights applicable to each parcel;]

7 (d) The extent of any encroachments by or upon any portion of the
8 common-interest community;

9 (e) To the extent feasible, a legally sufficient description of all easements
10 serving or burdening any portion of the common-interest community;

11 (f) The location and dimensions of any vertical unit boundaries not shown
12 or projected on plans recorded pursuant to subsection 4 and that unit's
13 identifying number;

14 (g) The location with reference to an established datum of any horizontal
15 unit boundaries not shown or projected on plans recorded pursuant to subsec-
16 tion 4 and that unit's identifying number;

17 (h) A legally sufficient description of any real estate in which the unit
18 owners will own only an estate for years, labeled as "leasehold real estate"

19 (i) The distance between noncontiguous parcels of real estate comprising
20 the common-interest community;

21 (j) The location and dimensions of limited common elements, including
22 porches, balconies and patios, other than parking spaces and the other limited
23 common elements described in subsections 2 and 4 of NRS 116.2102; and

24 (k) [In the case of real estate not subject to developmental rights, all] and
25 other matters [customarily shown] required on land surveys [.] prepared
26 pursuant to chapter 278 of NRS.

27 3. A plat may also show the intended location and dimensions of an
28 contemplated improvement to be constructed anywhere within the common-
29 interest community. Any contemplated improvement shown must be labeled
30 either "MUST BE BUILT" or "NEED NOT BE BUILT."

31 4. To the extent not shown or projected on the plats, plans of the unit
32 must show or project:

33 (a) The location and dimensions of the vertical boundaries of each unit
34 and that unit's identifying number;

35 (b) Any horizontal unit boundaries, with reference to an established datum
36 and that unit's identifying number; and

37 (c) Any units in which the declarant has reserved the right to create addi-
38 tional units or common elements (paragraph (h) of subsection 1 of NRS
39 116.2105), identified appropriately.

40 5. Unless the declaration provides otherwise, the horizontal boundaries of
41 part of a unit located outside a building have the same elevation as the
42 horizontal boundaries of the inside part and need not be depicted on the plat
43 and plans.

44 6. Upon exercising any developmental right, the declarant shall record
45 either new plats and plans necessary to conform to the requirements of
46 subsections 1, 2 and 4 or new certifications of plats and plans previously
47 recorded if those plats and plans otherwise conform to the requirements of
48 those subsections.

1 7. A declarant shall provide a general schematic plan of the planned unit
2 development comprising its common-interest community with its initial phase
3 of development. The declarant shall revise the plan with each subsequent
4 phase.

5 [8. Each plat must be certified by an independent professional land sur-
6 veyor. Each plan must be certified by an independent professional engineer or
7 architect.]

8 Sec. 24. NRS 116.2115 is hereby amended to read as follows:

9 116.2115 1. A declarant may maintain offices for sales and manage-
10 ment, and models in units or on common elements in the common-interest
11 community. [only if the declaration so provides and specifies the rights of a
12 declarant with regard to the number, size, location and relocation thereof. In
13 a cooperative or condominium, any office for sales or management or model
14 not designated a unit by the declaration is a common element. If a declarant
15 ceases to be a unit's owner, he ceases to have any rights with regard thereto
16 unless it is removed promptly from the common-interest community in accord-
17 dance with a right to remove reserved in the declaration. Subject to any
18 limitations in the declaration, a declarant may maintain signs on the common
19 elements advertising the common-interest community. This section is subject
20 to the provisions of other state law and to local ordinances.]

21 2. A declarant may sell and lease back a model home.

22 Sec. 25. NRS 116.2117 is hereby amended to read as follows:

23 116.2117 1. Except in cases of amendments that may be executed by a
24 declarant under NRS 116.2109 or 116.2110 or by the association under NRS
25 116.1107, subsection 3 of NRS 116.2108, or NRS 116.2113, or by certain
26 units' owners under subsection 2 of NRS 116.2108 or NRS 116.2112 or
27 116.2118, and except as limited by subsection 4, the declaration, including
28 any plats and plans, may be amended only by vote or agreement of units'
29 owners of units to which at least a majority of the votes in the association are
30 allocated, or any larger majority the declaration specifies. The declaration
31 may specify a smaller number only if all of the units are restricted exclusively
32 to nonresidential use.

33 2. No action to challenge the validity of an amendment adopted by the
34 association pursuant to this section may be brought more than one year after
35 the amendment is recorded.

36 3. Every amendment to the declaration must be recorded in every county
37 in which any portion of the common-interest community is located and is
38 effective only upon recordation. An amendment, except an amendment pursu-
39 ant to NRS 116.2112, must be indexed in the grantee's index in the name of
40 the common-interest community and the association and in the grantor's
41 index in the name of the parties executing the amendment.

42 4. Except to the extent expressly permitted or required by other provisions
43 of this chapter, no amendment may create or increase special declarant's
44 rights, increase the number of units, change the boundaries of any unit,
45 change the allocated interests of a unit or change the uses to which any unit is
46 restricted, in the absence of [unanimous consent of the units' owners affected
47 and the consent of] a majority vote of the owners of [the remaining] all
48 substantially affected units.

1 5. Amendments to the declaration required by this chapter to be recorded
2 by the association must be prepared, executed, recorded and certified
3 on behalf of the association by any officer of the association designated for that
4 purpose or, in the absence of designation, by the president of the association.

5 **Sec. 26.** NRS 116.2120 is hereby amended to read as follows:

6 116.2120 1. If the declaration provides that any of the powers described
7 in NRS 116.3102, are to be exercised by or may be delegated to a profit-
8 nonprofit corporation that exercises those or other powers on behalf of one or
9 more common-interest communities or for the benefit of the units' owners of
10 one or more common-interest communities, all provisions of this chapter
11 applicable to unit-owners' associations apply to any such corporation, except
12 as modified by this section.

13 2. Unless it is acting in the capacity of an association described in NRS
14 116.3101, a master association may exercise the powers set forth in paragraph
15 graph (b) of subsection 1 of NRS 116.3102 only to the extent expressly
16 permitted in the declarations of common-interest communities which are part
17 of the master association or expressly described in the delegations of power
18 from those common-interest communities to the master association.

19 3. If the declaration of any common-interest community provides that the
20 executive board may delegate certain powers to a master association, the
21 members of the executive board have no liability for the acts or omissions of
22 the master association with respect to those powers following delegation.

23 4. The rights and responsibilities of units' owners with respect to the unit
24 owners' association set forth in NRS 116.3103, 116.3108, 116.3110, 116.3111
25 116.3110 and 116.3112 and sections 2 to 5, inclusive, of this act apply in the
26 conduct of the affairs of a master association only to persons who elect the
27 board of a master association, whether or not those persons are other units'
28 owners within the meaning of this chapter.

29 5. Even if a master association is also an association described in NRS
30 116.3101, the certificate of incorporation or other instrument creating the
31 master association and the declaration of each common-interest community
32 the powers of which are assigned by the declaration or delegated to the master
33 association, may provide that the executive board of the master association
34 must be elected after the period of declarant's control in any of the following
35 ways:

36 (a) All units' owners of all common-interest communities subject to the
37 master association may elect all members of the master association's executive
38 board.

39 (b) All members of the executive boards of all common-interest communities
40 subject to the master association may elect all members of the master
41 association's executive board.

42 (c) All units' owners of each common-interest community subject to the
43 master association may elect specified members of the master association's
44 executive board.

45 (d) All members of the executive board of each common-interest community
46 subject to the master association may elect specified members of the
47 master association's executive board.

48 **Sec. 27.** NRS 116.3103 is hereby amended to read as follows:

1 116.3103 1. Except as otherwise provided in the declaration, the
2 bylaws, this section or other provisions of this chapter, the executive board
3 may act in all instances on behalf of the association. In the performance of
4 their duties, the officers and members of the executive board are fiduciaries
5 and are subject to the insulation from liability provided for directors of
6 corporations by the laws of this state. The members of the executive board
7 are required to exercise the ordinary and reasonable care of directors of a
8 corporation, subject to the business-judgment rule.

9 2. The executive board may not act on behalf of the association to amend
10 the declaration (NRS 116.2117), to terminate the common-interest commu-
11 nity (NRS 116.2118), or to elect members of the executive board or deter-
12 mine their qualifications, powers and duties or terms of office (subsection 6),
13 but the executive board may fill vacancies in its membership for the
14 unexpired portion of any term.

15 3. Within 30 days after adoption of any proposed budget for the common-
16 interest community, the executive board shall provide a summary of the
17 budget to all the units' owners, and shall set a date for a meeting of the units'
18 owners to consider ratification of the budget not less than 14 nor more than 30
19 days after mailing of the summary. Unless at that meeting a majority of all
20 units' owners or any larger vote specified in the declaration reject the budget,
21 the budget is ratified, whether or not a quorum is present. If the proposed
22 budget is rejected, the periodic budget last ratified by the units' owners must
23 be continued until such time as the units' owners ratify a subsequent budget
24 proposed by the executive board.

25 [4. Subject to subsection 5, the declaration may provide for a period of
26 declarant's control of the association, during which a declarant, or persons
27 designated by him, may appoint and remove the officers and members of the
28 executive board. Regardless of the period provided in the declaration, a
29 period of declarant's control terminates no later than the earlier of:

30 (a) Sixty days after conveyance of 75 percent of the units that may be
31 created to units' owners other than a declarant;

32 (b) Two years after all declarants have ceased to offer units for sale in the
33 ordinary course of business; or

34 (c) Two years after any right to add new units was last exercised.

35 A declarant may voluntarily surrender the right to appoint and remove
36 officers and members of the executive board before termination of that
37 period, but in that event the declarant may require, for the duration of the
38 period of declarant's control, that specified actions of the association or
39 executive board, as described in a recorded instrument executed by the
40 declarant, be approved by the declarant before they become effective.

41 5. Not later than 60 days after conveyance of 25 percent of the units that
42 may be created to units' owners other than a declarant, at least one member
43 and not less than 25 percent of the members of the executive board must be
44 elected by units' owners other than the declarant. Not later than 60 days after
45 conveyance of 50 percent of the units that may be created to units' owners
46 other than a declarant, not less than 33 1/3 percent of the members of the
47 executive board must be elected by units' owners other than the declarant.

1 6. Except as otherwise provided in subsection 5 of NRS 116.2120, and
2 later than the termination of any period of declarants' control, the units
3 owners shall elect an executive board of at least three members, at least a
4 majority of whom must be units' owners. The executive board shall elect the
5 officers. The members and officers of the executive board shall take office
6 upon election.

7 7. Notwithstanding any provision of the declaration or bylaws to the
8 contrary, the units' owners, by a two-thirds vote of all persons present and
9 entitled to vote at any meeting of the units' owners at which a quorum is
10 present, may remove any member of the executive board with or without
11 cause, other than a member appointed by the declarant.

12 8. When a member of an executive board is sued for liability for actions
13 undertaken in his role as a member of the board, the association shall indemnify
14 him for his losses or claims, and undertake all costs of defense, until and
15 unless it is proven that he acted with willful or wanton misfeasance or with
16 gross negligence. After such proof the association is no longer liable for the
17 cost of defense, and may recover costs already expended from the member of
18 the executive board who so acted. Members of the executive board are not
19 personally liable to the victims of crimes occurring on the property. Punitive
20 damages may not be recovered against the association, but may be recovered
21 from persons whose activity gave rise to the damages.

22 9. An officer, employee, agent or director of a corporate owner of a unit, a
23 trustee or designated beneficiary of a trust that owns a unit, a partner of a
24 partnership that owns a unit, and a fiduciary of an estate that owns a unit
25 be an officer or member of the executive board. In all events where the person
26 serving or offering to serve as an officer or member of the executive board is
27 not the record owner, he shall file proof of authority in the records of the
28 association.

29 10. Within 30 days after units' owners other than the declarant may elect a
30 majority of the members of the executive board, the declarant shall deliver to
31 the association all property of the units' owners and of the association held by
32 or controlled by him, including:

33 (a) The original or a certified copy of the recorded declaration as amended,
34 the association's articles of incorporation if the association is incorporated,
35 bylaws, minute books and other books and records of the association and its
36 rules or regulations which may have been adopted.

37 (b) An accounting for money of the association and financial statements
38 from the date the association received money to the date the period of the
39 declarant's control ends. The financial statements must fairly and accurately
40 report the association's financial condition prepared in accordance with generally
41 accepted accounting principles.

42 (c) The association's money or control thereof.

43 (d) All of the declarant's tangible personal property that has been represented
44 by the declarant as property of the association or, unless the declarant
45 has disclosed in the public offering statement that all such personal property
46 used in the common-interest community will remain the declarant's property,
47 all of the declarant's tangible personal property that is necessary for, and to

1 been used exclusively in, the operation and enjoyment of the common ele-
2 ments, and inventories of these properties.

3 (e) A copy of any plans and specifications used in the construction of the
4 improvements in the common-interest community which were completed
5 within 2 years before the declaration was recorded.

6 (f) All insurance policies then in force, in which the units' owners, the
7 association, or its directors and officers are named as insured persons.

8 (g) Copies of any certificates of occupancy that may have been issued with
9 respect to any improvements comprising the common-interest community.

10 (h) Any other permits and approvals issued by governmental bodies appli-
11 cable to the common-interest community which are in force or which were
12 issued within 1 year before the date on which units' owners other than the
13 declarant took control of the association.

14 (i) Written warranties of the contractor, subcontractors, suppliers and
15 manufacturers that are still effective.

16 (j) A roster of owners and mortgagees of units and their addresses and
17 telephone numbers, if known, as shown of the declarant's records.

18 (k) Contracts of employment in which the association is a contracting
19 party.

20 (l) Any contract for service in which the association is a contracting party
21 or in which the association or the units' owners have any obligation to pay a
22 fee to the persons performing the services.]

23 **Sec. 28.** NRS 116.3104 is hereby amended to read as follows:

24 116.3104 1. A special declarant's right (NRS 116.110385) created or
25 reserved under this chapter may be transferred only by an instrument evi-
26 dencing the transfer recorded in every county in which any portion of the
27 common-interest community is located. The instrument is not effective unless
28 executed by the transferee.

29 2. Upon transfer of any special declarant's right, the liability of a trans-
30 feror declarant is as follows:

31 (a) A transferor is not relieved of any obligation or liability arising before
32 the transfer and remains liable for warranties imposed upon him by this
33 chapter. Lack of privity does not deprive any unit's owner of standing to
34 maintain an action to enforce any obligation of the transferor.

35 (b) If a successor to any special declarant's right is an affiliate of a declar-
36 ant (NRS 116.11031), the transferor is jointly and severally liable with the
37 successor for any obligations or liabilities of the successor relating to the
38 common-interest community.

39 (c) If a transferor retains any special declarant's rights, but transfers other
40 special declarant's rights to a successor who is not an affiliate of the declar-
41 ant, the transferor is liable for any obligations or liabilities imposed on a
42 declarant by this chapter or by the declaration relating to the retained special
43 declarant's rights and arising after the transfer.

44 (d) A transferor has no liability for any act or omission or any breach of a
45 contractual obligation or warranty arising from the exercise of a special
46 declarant's right by a successor declarant who is not an affiliate of the
47 transferor.

1 3. Unless otherwise provided in a mortgage, deed of trust or other agree-
 2 ment creating a security interest, in case of foreclosure of a security interest
 3 sale by a trustee under an agreement creating a security interest, tax sale
 4 judicial sale or sale under the Bankruptcy Code or a receivership, of any unit
 5 owned by a declarant or real estate in a common-interest community subject
 6 to developmental rights, a person acquiring title to all the property being
 7 foreclosed or sold, but only upon his request, succeeds to all special declar-
 8 ant's rights related to that property held by that declarant. [, or only to an
 9 rights reserved in the declaration pursuant to NRS 116.2115 and held by the
 10 declarant to maintain models, offices for sales and signs.] The judgment or
 11 instrument conveying title must provide for transfer of [only the] special
 12 declarant's rights requested.

13 4. Upon foreclosure of a security interest, sale by a trustee under a
 14 agreement creating a security interest, tax sale, judicial sale or sale under the
 15 Bankruptcy Code or a receivership of all interests in a common-interest
 16 community owned by a declarant:

- 17 (a) The declarant ceases to have any special declarant's rights; and
- 18 (b) The period of declarant's control [(subsection 4 of NRS 116.3103)]
 19 (section 2 of this act) terminates unless the judgment or instrument conveying
 20 title provides for transfer of all special declarant's rights held by that declar-
 21 ant to a successor declarant.

22 **Sec. 29.** NRS 116.31043 is hereby amended to read as follows:
 23 116.31043 The liabilities and obligations of a person who succeeds to
 24 special declarant's rights are as follows:

25 1. A successor to any special declarant's right who is an affiliate of a
 26 declarant is subject to all obligations and liabilities imposed on the transferor
 27 by this chapter or by the declaration.

28 2. A successor to any special declarant's right, other than a successor
 29 described in subsection 3 or 4 or a successor who is an affiliate of a declarant,
 30 is subject to the obligations and liabilities imposed by this chapter or by the
 31 declaration:

- 32 (a) On a declarant which relate to the successor's exercise or nonexercise
 33 of special declarant's rights; or
- 34 (b) On his transferor, other than:
 35 (1) Misrepresentations by any previous declarant;
 36 (2) Warranties on improvements made by any previous declarant,
 37 made before the common-interest community was created;
 38 (3) Breach of any fiduciary obligation by any previous declarant or his
 39 appointees to the executive board; or
 40 (4) Any liability or obligation imposed on the transferor as a result of
 41 the transferor's acts or omissions after the transfer.

42 3. [A successor to only a right reserved in the declaration to maintain
 43 models, offices for sales and signs (NRS 116.2115), may not exercise any
 44 other special declarant's right, and is not subject to any liability or obligation
 45 as a declarant, except the obligation to provide a public offering statement
 46 any liability arising as a result thereof.

1 4.] A successor to all special declarant's rights held by a transferor who
 2 succeeded to those rights pursuant to a deed or other instrument of convey-
 3 ance in lieu of foreclosure or a judgment or instrument conveying title under
 4 subsection 3 of NRS 116.3104, may declare in a recorded instrument the
 5 intention to hold those rights solely for transfer to another person. Thereafter,
 6 until transferring all special declarant's rights to any person acquiring title to
 7 any unit or real estate subject to developmental rights owned by the succes-
 8 sor, or until recording an instrument permitting exercise of all those rights,
 9 that successor may not exercise any of those rights other than any right held
 10 by his transferor to control the executive board in accordance with [subsec-
 11 tion 4 of NRS 116.3103] section 2 of this act for the duration of any period of
 12 declarant's control, and any attempted exercise of those rights is void. So
 13 long as a successor declarant may not exercise special declarant's rights
 14 under this subsection, the successor declarant is not subject to any liability or
 15 obligation as a declarant other than liability for his acts and omissions under
 16 [subsection 4 of NRS 116.3103.] section 2 of this act.

17 **Sec. 30.** NRS 116.31046 is hereby amended to read as follows:
 18 116.31046 NRS [116.3104 and 116.31043 do] 116.31043 does not subject
 19 any successor to a special declarant's right to any claims against or other
 20 obligations of a transferor declarant, other than claims and obligations arising
 21 under this chapter or the declaration.

22 **Sec. 31.** NRS 116.3105 is hereby amended to read as follows:
 23 116.3105 If entered into before the executive board elected by the units'
 24 owners pursuant to [subsection 6 of NRS 116.3103] section 3 of this act takes
 25 office, any management contract, employment contract, or lease of recrea-
 26 tional or parking areas or facilities, any other contract or lease between the
 27 association and a declarant or an affiliate of a declarant or any contract or
 28 lease that is not in good faith or was unconscionable to the units' owners at
 29 the time entered into under the circumstances then prevailing may be termi-
 30 nated without penalty by the association at any time after the executive board
 31 elected by the units' owners takes office upon not less than 90 days' notice to
 32 the other party. This section does not apply to any lease the termination of
 33 which would terminate the common-interest community or reduce its size,
 34 unless the real estate subject to that lease was included in the common-interest
 35 community for the purpose of avoiding the right of the association to termi-
 36 nate a lease under this section, or to a proprietary lease.

37 **Sec. 32.** NRS 116.3106 is hereby amended to read as follows:

- 38 116.3106 1. The bylaws of the association must provide:
 39 (a) The number of members of the executive board and the titles of the
 40 officers of the association;
 41 (b) For election by the executive board of a president, treasurer, secretary
 42 and any other officers of the association the bylaws specify;
 43 (c) The qualifications, powers and duties, terms of office and manner of
 44 electing and removing officers of the association and members [and officers]
 45 of the executive board and filling vacancies;
 46 (d) Which, if any, of its powers the executive board or officers may
 47 delegate to other persons or to a managing [agency;] agent;

1 (e) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association; and

2 (f) A method for amending the bylaws.

3 2. [Subject to the provisions of] *Except as otherwise provided in the*
4 declaration, the bylaws may provide for any other matters the association
5 deems necessary and appropriate.

6 **Sec. 33.** NRS 116.3107 is hereby amended to read as follows:

7 116.3107 1. Except to the extent provided by the declaration, subsection
8 2 [of] and NRS 116.31135, the association is responsible for maintenance,
9 repair and replacement of the common elements, and each unit's owner is
10 responsible for maintenance, repair and replacement of his unit. Each unit's
11 owner shall afford to the association and the other units' owners, and to their
12 agents or employees, access through his unit reasonably necessary for those
13 purposes. If damage is inflicted on the common elements or on any unit
14 through which access is taken, the unit's owner responsible for the damage
15 or the association if it is responsible, is liable for the prompt repair thereof.

16 2. In addition to the liability that a declarant as a unit's owner has under
17 this chapter, the declarant alone is liable for all expenses in connection with
18 real estate subject to developmental rights. No other unit's owner and no
19 other portion of the common-interest community is subject to a claim for
20 payment of those expenses. Unless the declaration provides otherwise, no
21 income or proceeds from real estate subject to developmental rights inure to
22 the declarant.

23 3. In a planned community, if all developmental rights have expired with
24 respect to any real estate, the declarant remains liable for all expenses of the
25 real estate unless, upon expiration, the declaration provides that the real
26 estate becomes common elements or units.

27 **Sec. 34.** NRS 116.3112 is hereby amended to read as follows:

28 116.3112 1. In a condominium or planned community, portions of the
29 common elements may be conveyed or subjected to a security interest by the
30 association if persons entitled to cast at least a majority of the votes in the
31 association, including a majority of the votes allocated to units not owned by
32 a declarant, or any larger percentage the declaration specifies, agree to that
33 action; but all owners of units to which any limited common element is
34 allocated must agree *in order* to convey that limited common element or
35 subject it to a security interest. The declaration may specify a smaller percentage
36 only if all of the units are restricted exclusively to nonresidential
37 uses. Proceeds of the sale are an asset of the association.

38 2. Part of a cooperative may be conveyed and all or part of a cooperative
39 may be subjected to a security interest by the association if persons entitled to
40 cast at least a majority of the votes in the association, including a majority of
41 the votes allocated to units not owned by a declarant, or any larger percentage
42 the declaration specifies, agree to that action; but, if fewer than all of the units
43 or limited common elements are to be conveyed or subjected to a security
44 interest, then all units' owners of those units, or the units to which the
45 limited common elements are allocated, must agree in order to convey the
46 units or limited common elements or subject them to a security interest. The
47 declaration may specify a smaller percentage only if all of the units

1 restricted exclusively to nonresidential uses. Proceeds of the sale are an asset
2 of the association. Any purported conveyance or other voluntary transfer of
3 an entire cooperative, unless made pursuant to NRS 116.2118, is void.

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

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

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

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

26 7. Unless the declaration otherwise provides, a conveyance or encum-
27 brance of common elements pursuant to this section does not affect the
28 priority or validity of preexisting encumbrances.

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

31 **Sec. 35.** NRS 116.31135 is hereby amended to read as follows:

32 116.31135 1. Any portion of the common-interest community for which
33 insurance is required under [this section] *NRS 116.3113* which is damaged or
34 destroyed must be repaired or replaced promptly by the association unless:

35 (a) The common-interest community is terminated, in which case NRS
36 116.2118, 116.21183 and 116.21185 apply;

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

39 (c) Eighty percent of the units' owners, including every owner of a unit or
40 assigned limited common element that will not be rebuilt, vote not to rebuild.
41 The cost of repair or replacement in excess of insurance proceeds and
42 reserves is a common expense.

43 2. If the entire common-interest community is not repaired or replaced,
44 the proceeds attributable to the damaged common elements, must be used to
45 restore the damaged area to a condition compatible with the remainder of the
46 common-interest community, and except to the extent that other persons will
47 be distributees (subparagraph 2 of paragraph [(1)] (k) of subsection 1 of NRS
48 116.2105):

1 (a) The proceeds attributable to units and limited common elements the
2 are not rebuilt must be distributed to the owners of those units and the owners
3 of the units to which those limited common elements were allocated, or to
4 lien holders, as their interests may appear; and

5 (b) The remainder of the proceeds must be distributed to all the unit
6 owners or lien holders, as their interests may appear, as follows:

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

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

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

16 **Sec. 36.** NRS 116.3115 is hereby amended to read as follows:

17 116.3115 1. Until the association makes an assessment for common
18 expenses, the declarant shall pay all common expenses. After an assessment
19 has been made by the association, assessments must be made at least annually,
20 based on a budget adopted at least annually by the association.

21 2. Except for assessments under subsections 3, 4 and 5, all common
22 expenses, including a reserve not exceeding 10 percent of the assessments,
23 must be assessed against all the units in accordance with the allocations set
24 forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.
25 Any past due assessment for common expenses or installment thereof bears
26 interest at the rate established by the association not exceeding 18 percent per
27 year.

28 3. To the extent required by the declaration:

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

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

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

37 4. Assessments to pay a judgment against the association [(subsection 1 of
38 NRS 116.31164)] may be made only against the units in the common-interest
39 community at the time the judgment was entered, in proportion to the
40 liabilities for common expenses.

41 5. If any common expense is caused by the misconduct of any unit
42 owner, the association may assess that expense exclusively against his unit.

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

46 **Sec. 37.** NRS 116.31162 is hereby amended to read as follows:

1 116.31162 1. In a condominium, a cooperative where the owner's inter-
2 est in a unit is real estate (NRS 116.1105), or a planned community, the
3 association may foreclose its lien by sale after:

4 (a) The association has [caused to be recorded, with the county recorder of
5 the county in which the common-interest community or any part of it is
6 situated,] mailed by certified or registered mail, return receipt requested, to
7 the unit's owner or his successor in interest, at his address if known, other-
8 wise at the address of the unit, a notice of delinquent assessment [,] which
9 states the amount of the assessments and other sums which are due in accord-
10 dance with subsection 1 of NRS 116.3116, a description of the unit against
11 which the lien is imposed, and the name of the record owner of the [units;]
12 unit;

13 (b) The association or other person conducting the sale has executed and
14 caused to be recorded, with the county recorder of the county in which the
15 common-interest community or any part of it is situated, a notice of default
16 and election to sell the unit to satisfy the lien, which contains the same
17 information as the notice of delinquent assessment, but must also describe the
18 deficiency in payment and the name and address of the person authorized by
19 the association to enforce the lien by sale; and

20 (c) The unit's owner or his successor in interest has failed to pay the
21 amount of the lien, including costs, fees and expenses incident to its enforce-
22 ment, for 60 days following the recording of the notice of default and election
23 to sell.

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

27 3. The period of 60 days begins on the first day following the later of:

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

29 (b) The day on which a copy of the notice of default is mailed by certified
30 or registered mail, return receipt requested, to the unit's owner or his succes-
31 sor in interest at his address if known, otherwise to the address of the unit.

32 [4. The association or other person conducting the sale shall also, after the
33 expiration of the 60 days and before selling the unit, give notice of the time
34 and place of the sale in the manner and for a time not less than that required
35 by law for the sale of real property upon execution, except that a copy of the
36 notice of sale must be mailed, on or before the date of first publication or
37 posting, by certified or registered mail, return receipt requested, to the unit's
38 owner or his successor in interest at his address if known, otherwise to the
39 address of the unit.]

40 **Sec. 38.** NRS 116.31164 is hereby amended to read as follows:

41 116.31164 1. The sale must be conducted in the county in which the
42 common-interest community or part of it is situated, and may be conducted
43 by the association, its agent or attorney, or a title insurance company or
44 escrow agent licensed to do business in this state, except that the sale may be
45 made at the office of the association if the notice of the sale so provided,
46 whether the unit is located within the same county as the office of the
47 association or not. The association or other person conducting the sale may
48 from time to time postpone the sale by such advertisement and notice as it

1 considers reasonable or, without further advertisement or notice, by pro
2 mation made to the persons assembled at the time and place previously
3 and advertised for the sale.

4 2. On the day of sale originally advertised or to which the sale is po
5 poned, at the time and place specified in the notice or postponement,
6 person conducting the sale may sell the unit at public auction to the high
7 cash bidder. Unless otherwise provided in the declaration or by agree
8 the association may purchase the unit and hold, lease, mortgage or convey
9 [If so authorized to purchase, the] *The association may [enter] purchase*
10 credit bid up to the amount of the unpaid assessments and any permit
11 costs, fees and expenses incident to the enforcement of its lien.

12 3. After the sale, the person conducting the sale shall make, execute
13 after payment is made, deliver to the purchaser, or his successor or assign
14 deed without warranty which conveys to the grantee all title of the unit
15 owner to the unit, and shall apply the proceeds of the sale for the follow
16 purposes in the following order:

- 17 (a) The reasonable expenses of sale;
- 18 (b) The reasonable expenses of securing possession before sale, holdi
19 maintaining, and preparing the unit for sale, including payment of taxes
20 other governmental charges, premiums on hazard and liability insuranc
21 and, to the extent provided for by [agreement between the association and
22 unit's owner,] *the declaration*, reasonable attorney's fees and other
23 expenses incurred by the association;
- 24 (c) Satisfaction of the association's lien;
- 25 (d) Satisfaction in the order of priority of any subordinate claim of reco
26 and
- 27 (e) Remittance of any excess to the unit's owner.

28 **Sec. 39.** NRS 116.31166 is hereby amended to read as follows:
29 116.31166 1. The recitals in [such] a deed *made pursuant to NR*
30 *116.31164* of:

- 31 (a) Default [and the recording], *the mailing* of the notice of delinque
32 assessment, and *the recording of the* notice of default and election to sel
33 (b) The elapsing of the 60 days; and
- 34 (c) The giving of notice of sale,
35 are conclusive proof of the matters recited.

36 2. Such a deed containing those recitals is conclusive against the unit
37 former owner, his heirs and assigns, and all other persons. The receipt for
38 purchase money contained in such a deed is sufficient to discharge the pu
39 chaser from obligation to see to the proper application of the purcha
40 money.

41 3. The sale of a unit pursuant to NRS 116.31162 and 116.31164
42 *section 6 of this act* vests in the purchaser the title of the unit's owner with
43 equity or right of redemption.

44 **Sec. 40.** NRS 116.31168 is hereby amended to read as follows:

45 116.31168 1. The provisions of NRS 107.090 apply to the foreclosure
46 an association's lien as if a deed of trust were being foreclosed. The requ
47 must identify the lien by stating the names of the unit's owner and
48 common-interest community. [The association must also give reason

1 notice of its intent to foreclose to all holders of liens in the unit who are
2 known to it.]

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

7 **Sec. 41.** NRS 116.4101 is hereby amended to read as follows:
8 116.4101 1. NRS 116.4101 to 116.4120, inclusive, apply to all units
9 subject to this chapter, except as otherwise provided in subsection 2 or as
10 modified or waived by agreement of purchasers of units in a common-interest
11 community in which all units are restricted to nonresidential use.

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

- 14 (a) Gratuitous disposition of a unit;
- 15 (b) Disposition pursuant to court order;
- 16 (c) Disposition by a government or governmental agency;
- 17 (d) Disposition by foreclosure or deed in lieu of foreclosure;
- 18 (e) Disposition to a dealer;
- 19 (f) Disposition that may be canceled at any time and for any reason by the
20 purchaser without penalty; or
- 21 (g) Disposition of a unit in a planned community [in which the declaration
22 limits the maximum annual assessment of any unit to not more than \$300, as
23 adjusted pursuant to NRS 116.1115] *which contains no more than 50 units or*
24 *has an annual budget of less than \$150,000* if:

25 (1) The declarant reasonably believes in good faith that the maximum
26 stated assessment will be sufficient to pay the expenses of the planned com-
27 munity; *and*

28 (2) The declaration cannot be amended to increase the assessment dur-
29 ing the period of declarant's control without the consent of all units' owners.
30 [; and

31 (3) The planned community is not subject to any developmental rights.]

32 **Sec. 42.** NRS 116.4103 is hereby amended to read as follows:

33 116.4103 1. Except as otherwise provided in NRS 116.41035, a public
34 offering statement must contain or fully and accurately disclose each of the
35 following:

36 [1.] (a) The name and principal address of the declarant and of the com-
37 mon-interest community, and a statement that the common-interest commu-
38 nity is either a condominium, cooperative or planned community.

39 [2.] (b) A general description of the common-interest community, includ-
40 ing to the extent possible, the types, number and declarant's schedule of
41 commencement and completion of construction of buildings, and amenities
42 that the declarant anticipates including in the common-interest community.

43 [3.] (c) The estimated number of units in the common-interest community.

44 [4.] (d) Copies of the declaration, bylaws, and any rules or regulations of
45 the association [

46 5.], *but a plat or plan is not required.*

47 (e) Any current balance sheet and a projected budget for the association,
48 either within or as an exhibit to the public offering statement, for 1 year after

1 the date of the first conveyance to a purchaser, and thereafter the current
2 budget of the association. The budget must include, without limitation:

3 [(a)] (1) A statement of the amount, or a statement that there is no amount
4 included in the budget as a reserve for repairs and replacement; and

5 [(b)] (2) The projected monthly assessment for common expenses for each
6 type of unit.

7 [6.] (f) A description of any services or subsidies being provided by the
8 [developer,] declarant or an affiliate of the declarant, not reflected in the
9 budget.

10 [7.] (g) Any initial or special fee due from the purchaser at closing
11 together with a description of the purpose and method of calculating the fee.

12 [8.] (h) The terms and significant limitations of any warranties provided by
13 the declarant, including statutory warranties and limitations on the enforce-
14 ment thereof or on damages.

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

20 [10.] (j) A statement of any unsatisfied judgments or pending suits against
21 the association, and the status of any pending suits material to the common-
22 interest community of which a declarant has actual knowledge.

23 [11.] (k) Any current or expected fees or charges to be paid by unit
24 owners for the use of the common elements and other facilities related to the
25 common-interest community.

26 2. A declarant is not required to revise a public offering statement more
27 than once each calendar quarter, if the following warning is given promi-
28 nence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT
29 RENT AS OF (insert a specified date). RECENT DEVELOPMENTS
30 REGARDING (here refer to particular provisions of NRS 116.4103
31 116.4105) MAY NOT BE REFLECTED IN THIS STATEMENT."

32 Sec. 43. NRS 116.41035 is hereby amended to read as follows:

33 116.41035 If a common-interest community [composed of not more than
34 12 units is not subject to any developmental rights] contains no more than 12
35 units and has an annual budget of less than \$150,000 and no power is
36 reserved to a declarant to make the common-interest community part of a
37 larger common-interest community, group of common-interest communities
38 or other real estate, a public offering statement may but need not include the
39 information otherwise required by [subsections 8 and 11] paragraphs (h) and
40 (k) of subsection 1 of NRS 116.4103.

41 Sec. 44. NRS 116.4108 is hereby amended to read as follows:

42 116.4108 1. A person required to deliver a public offering statement
43 pursuant to subsection 3 of NRS 116.4102 shall provide a purchaser with a
44 copy of the current public offering statement [and all amendments thereto
45 before conveyance of the unit, and] not later than the date of any contract of
46 sale. Unless the purchaser has personally inspected the unit [,] or a model of
47 the unit, the purchaser may cancel, by written notice, the contract of purchase

1 until midnight of the fifth calendar day following the date of execution of the
2 contract, and the contract must contain a provision to that effect.

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

8 3. If a person required to deliver a public offering statement pursuant to
9 subsection 3 of NRS 116.4102 fails to provide a purchaser to whom a unit is
10 conveyed with [that] a current public offering statement, [and all amend-
11 ments thereto as required by subsection 1,] the purchaser [, in addition to any
12 rights to damages or other relief,] is entitled [to receive from that person an
13 amount equal to 10 percent of the sale price of the unit, plus 10 percent of the
14 share, proportionate to his liability for common expenses, of any indebted-
15 ness of the association secured by security interests encumbering the com-
16 mon-interest community.] only to actual damages or to rescission.

17 Sec. 45. NRS 116.4109 is hereby amended to read as follows:

18 116.4109 1. Except in the case of a sale in which delivery of a public
19 offering statement is required, or unless exempt under subsection 2 of NRS
20 116.4101, a unit's owner shall furnish to a purchaser before execution of any
21 contract for sale of a unit, or otherwise before conveyance:

22 (a) A copy of the declaration (other than any plats and plans), the bylaws,
23 and the rules or regulations of the association;

24 (b) A statement setting forth the amount of the monthly assessment for
25 common expenses and any unpaid assessment of any kind currently due from
26 the selling unit's owner; and

27 (c) The current operating budget of the association.

28 2. The association, within 10 days after a request by a unit's owner, shall
29 furnish a certificate containing the information necessary to enable the unit's
30 owner to comply with this section. A unit's owner providing a certificate
31 pursuant to subsection 1 is not liable to the purchaser for any erroneous
32 information provided by the association and included in the certificate.

33 3. Neither a purchaser nor the purchaser's interest in a unit is liable for
34 any unpaid assessment or fee greater than the amount set forth in the certi-
35 ficate prepared by the association. [A unit's owner is not liable to a purchaser
36 for the failure or delay of the association to provide the certificate in a timely
37 manner, but the contract to purchase is voidable by the purchaser until the
38 certificate has been provided and for 5 days thereafter or until conveyance,
39 whichever first occurs.] If the association does not record a notice of assess-
40 ment or assessment lien, then the purchaser and any title insurer may rely
41 upon the premise that no money is due on account of assessments against that
42 unit.

43 Sec. 46. NRS 116.4115 is hereby amended to read as follows:

44 116.4115 1. Except as limited by subsection 2 with respect to a pur-
45 chaser of a unit that may be used for residential use, implied warranties of
46 quality:

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

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

4 2. With respect to a purchaser of a unit that may be occupied for resi-
5 tial use, no general disclaimer of implied warranties of quality is effective
6 unless the seller has provided the purchaser with a warranty for 5 years
7 longer issued pursuant to a program underwritten by an insurer authorized
8 to transact insurance for home protection in this state, but a declarant and
9 dealer may disclaim liability in an instrument signed by the purchaser for
10 a specified defect or specified failure to comply with applicable law, if
11 the defect or failure entered into and became a part of the basis of the bargain
12 and a warranty for 5 years or longer is issued pursuant to a program as described
13 in this subsection, a declarant or dealer may make a general disclaimer
14 of implied warranties to the extent of the insurance.

15 Sec. 47. NRS 116.4117 is hereby amended to read as follows:
16 116.4117 If a declarant or any other person subject to this chapter fails to
17 comply with any of its provisions or any provision of the declaration,
18 bylaws, any person or class of persons [adversely affected by] suffers
19 actual damages from the failure to comply has a claim for appropriate
20 Punitive damages may be awarded for a willful and material failure
21 to comply with this chapter [.] if the failure is established by clear and convincing
22 evidence. The court [., in an appropriate case,] may award reasonable
23 attorney's fees [.] to the prevailing party.

24 Sec. 48. NRS 116.4120 is hereby amended to read as follows:
25 116.4120 In the case of a sale of a unit in which delivery of a preliminary
26 offering statement is required, a contract of sale may be executed, but
27 no interest in that unit may be conveyed [., until the declaration is recorded,
28 the unit is substantially completed, as evidenced by a recorded certificate of
29 substantial completion executed by an independent registered architect or
30 professional engineer, or by issuance of a certificate of occupancy authorized
31 by law.] in accordance with local ordinances.

32 Sec. 49. NRS 278.373 is hereby amended to read as follows:
33 278.373 The certificates and acknowledgments required by
34 [116.2109 and] 278.374 to 278.378, inclusive, must appear on a final
35 and may be combined where appropriate.

36 Sec. 50. Chapter 278A of NRS is hereby amended by adding thereto
37 provisions set forth as sections 51, 52 and 53 of this act.

38 Sec. 51. An organization established for the ownership and maintenance
39 of common open space which receives payments from owners of property
40 within the planned unit development for the maintenance shall:

- 41 1. Immediately deposit the payments in a separate trust account
42 maintained by it with some bank or recognized depository in this state.
- 43 2. Keep records of all payments deposited therein and all disbursements
44 therefrom.

45 Sec. 52. 1. Any reasonable assessment upon any property within
46 a planned unit development is a debt of the owner thereof at the time
47 the assessment is made. The amount of the assessment plus interest, costs including
48 attorney's fees and penalties is a lien upon the property assessed when

1 organization causes to be recorded with the county recorder of the county
2 wherein the development is located a notice of assessment which states:

- 3 (a) The amount of the assessment and interest, costs and penalties;
- 4 (b) A description of the property against which it has been assessed; and
- 5 (c) The name of the record owner of the property.

6 The notice must be signed by an authorized representative of the organization
7 or as otherwise agreed. Upon payment or other satisfaction of the assessment
8 and charges, the organization shall cause to be recorded a further notice
9 stating the satisfaction and the release of the lien.

10 2. The lien is prior to property taxes and assessments recorded subsequent
11 to the recordation of the notice of assessment except where the agreement
12 provides for its subordination to other liens and encumbrances. Unless sooner
13 satisfied and released or its enforcement initiated, the lien expires 2 years
14 from the date of recordation of the notice of assessment, but the 2-year period
15 may be extended by the organization for not more than 2 additional years by
16 recording a written extension thereof.

17 3. The lien may be enforced by sale by the organization, its agent or
18 attorney after failure of the owner to pay the assessment in accordance with
19 its terms. The sale must be conducted in accordance with the provisions of
20 Covenants Nos. 6, 7 and 8 of NRS 107.030 and 107.090 insofar as they are
21 consistent with the provisions of section 53 of this act, or in any other manner
22 so consistent and permitted by law. Unless otherwise provided by agreement
23 with the organization, if it is a corporation, cooperative association, partnership
24 or natural person, may purchase the property at foreclosure sale and hold,
25 lease, mortgage and convey it.

26 Sec. 53. 1. The power of sale conferred in section 52 of this act may not
27 be exercised until:

- 28 (a) The organization, its agent or attorney has first executed and caused to
29 be recorded with the recorder of the county in which the property is located a
30 notice of default and election to sell the property or cause its sale to satisfy
31 the assessment lien; and
- 32 (b) The property owner or his successor in interest has failed to pay the
33 amount of the lien including costs, fees and expenses incident to its enforce-
34 ment for a period of 60 days.

35 2. The 60-day period commences on the first day following the day upon
36 which the notice of default and election to sell is recorded and a copy of the
37 notice is mailed by certified mail with postage prepaid to the property owner
38 or to his successor in interest at his address if the address is known, otherwise
39 to the address of the property. The notice must describe the deficiency in
40 payment.

41 3. The organization, its agent or attorney shall, after expiration of the
42 60-day period and before selling the property, give notice of the time and
43 place of the sale in the manner and for a time not less than that required by
44 law for the sale of real property upon execution, except that a copy of the
45 notice of sale must be mailed on or before the first publication or posting by
46 certified mail with postage prepaid to the property owner or to his successor
47 in interest at his address if that address is known, otherwise to the address of
48 the property. The sale itself may be made at the office of the organization if

1 the notice so provided, whether the property is located within the same county
2 as the office of the organization or not.

3 4. Every sale made under the provisions of section 52 of this act vests
4 the purchaser the title of the property owner without equity or right of
5 redemption.

6 Sec. 54. NRS 278A.130 is hereby amended to read as follows:

7 278A.130 1. The ordinance must provide that the city or county
8 accept the dedication of land or any interest therein for public use and
9 maintenance, but the ordinance must not require, as a condition of the
10 approval of a planned unit development, that land proposed to be set aside for
11 common open space be dedicated or made available to public use. [If any
12 land is set aside for common open space, the planned unit development must
13 be organized as a common-interest community in one of the forms permitted
14 by chapter 116 of NRS.] The ordinance may require that the [association for
15 the common-interest community] landowner establish an organization for the
16 ownership and maintenance of any common open space, and that the organiza-
17 tion may not be dissolved or dispose of any common open space by sale or
18 otherwise, without first offering to dedicate the common open space to the
19 city or county. That offer must be accepted or rejected within 120 days.

20 2. The ordinance may authorize the organization to make reasonable
21 assessments to meet its necessary expenditures for maintaining the common
22 open space in reasonable order and condition in accordance with the plan.
23 The assessments must be made ratably against the properties within the
24 planned unit development that have a right of enjoyment of the common open
25 space. The ordinance may provide for agreement between the organization
26 and the property owners providing:

27 (a) A reasonable method for notice and levy of the assessment; and

28 (b) For the subordination of the liens securing the assessment to other liens
29 either generally or specifically described.

30 Sec. 55. NRS 278A.170 is hereby amended to read as follows:

31 278A.170 The procedures for enforcing payment of an assessment for the
32 maintenance of common open space provided in [NRS 116.3116 to 116.3118 and
33 116.31168, inclusive,] sections 52 and 53 of this act are also available to an
34 organization for the ownership and maintenance of common open space
35 established other than [under] pursuant to this chapter [or chapter 116 of
36 NRS] and entitled to receive payments from owners of property for such
37 maintenance under a recorded declaration of restrictions, deed restrictions,
38 restrictive covenant or equitable servitude which provides that [any] a reasonable
39 and ratable assessment thereon for the organization's costs of maintaining the
40 common open space constitutes a lien or encumbrance upon the
41 property.

42 Sec. 56. NRS 278A.180 is hereby amended to read as follows:

43 278A.180 1. If the [association for the common-interest community or
44 another organization which was formed before January 1, 1992,] organization
45 established to own and maintain common open space or any successor
46 [association or other] organization, at any time after the establishment of a
47 planned unit development, fails to maintain the common open space in
reasonable order and condition in accordance with the plan, the city or county

1 may serve written notice upon that [association or other] organization or
2 upon the residents of the planned unit development, setting forth the manner
3 in which the [association or other] organization has failed to maintain the
4 common open space in reasonable condition. The notice must include a
5 demand that the deficiencies of maintenance be cured within 30 days after the
6 receipt of the notice and must state the date and place of a hearing thereon.
7 The hearing must be within 14 days of the receipt of the notice.

8 2. At the hearing the city or county may modify the terms of the original
9 notice as to the deficiencies and may give an extension of time within which
10 they must be cured. If the deficiencies set forth in the original notice or in the
11 modification thereof are not cured within the 30-day period, or any extension
12 thereof, the city or county, in order to preserve the taxable values of the
13 properties within the planned unit development and to prevent the common
14 open space from becoming a public nuisance, may enter upon the common
15 open space and maintain it for 1 year.

16 3. Entry and maintenance does not vest in the public any right to use the
17 common open space except when such a right is voluntarily dedicated to the
18 public by the owners.

19 4. Before the expiration of the period of maintenance set forth in subsection
20 2, the city or county shall, upon its own initiative or upon the request of
21 the [association or other] organization previously responsible for the maintenance
22 of the common open space, call a public hearing upon notice to the
23 [association or other] organization or to the residents of the planned unit
24 development, to be held by the city or county. At this hearing the [association
25 or other] organization or the residents of the planned unit development may
26 show cause why the maintenance by the city or county need not, at the
27 election of the city or county, continue for a succeeding year.

28 5. If the city or county determines that the [association or other] organiza-
29 tion is ready and able to maintain the common open space in a reasonable
30 condition, the city or county shall cease its maintenance at the end of the
31 year.

32 6. If the city or county determines that the [association or other] organiza-
33 tion is not ready and able to maintain the common open space in a reasonable
34 condition, the city or county may, in its discretion, continue the maintenance
35 of the common open space during the next succeeding year, subject to a
36 similar hearing and determination in each year thereafter.

37 7. The decision of the city or county in any case referred to in this section
38 constitutes a final administrative decision subject to review.

39 Sec. 57. NRS 278A.570 is hereby amended to read as follows:

40 278A.570 1. A plan which has been given final approval by the city or
41 county [.] must be certified without delay by the city or county and filed of
42 record in the office of the appropriate county recorder before any develop-
43 ment occurs in accordance with that plan. A county recorder shall not file for
44 record any final plan unless it includes:

45 (a) A final map of the entire final plan or an identifiable phase of the final
46 plan if required by the provisions of NRS 278.010 to 278.630, inclusive; and

47 (b) [The certifications required pursuant to NRS 116.2109; and

1 (c) The same certificates of approval as are required under NRS 278
2 or evidence that:

3 (1) The approvals were requested more than 30 days before the date
4 which the request for filing is made; and

5 (2) The agency has not refused its approval.

6 2. Except as otherwise provided in this subsection, after the plan is
7 recorded, the zoning and subdivision regulations otherwise applicable to the
8 land included in the plan cease to apply. If the development is completed in
9 identifiable phases, then each phase [can] may be recorded. The zoning and
10 subdivision regulations cease to apply after the recordation of each phase to
11 the extent necessary to allow development of that phase.

12 3. Pending completion of the planned unit development, or of the part that
13 has been finally approved, no modification of the provisions of the plan, or
14 any part finally approved, may be made, nor may it be impaired by any act of
15 the city or county except with the consent of the landowner.

16 4. The county recorder shall collect a fee of \$50, plus 50 cents per lot
17 unit mapped, for the recording or filing of any final map, plat or plan. The fee
18 must be deposited in the general fund of the county where it is collected

19 Sec. 58. NRS 116.1208 and 116.3111 are hereby repealed.

TEXT OF REPEALED SECTIONS

116.1208 Applicability to out-of-state common-interest communities

This chapter does not apply to common-interest communities or units located outside this state, but the provisions governing public offering statements (NRS 116.4102 to 116.4105, inclusive) apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection of NRS 116.4101.

116.3111 Tort and contract liability. Neither the association nor the 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. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against the 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. Any statute of limitation affecting the association's right of action 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 is a unit's owner or a member or officer of the association.

(30)

MINUTES OF MEETING
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-seventh Session
May 20, 1993

The Assembly Committee on Judiciary was called to order by Chairman Robert M. Sader at 8:10 a.m., Thursday, May 20, 1993, in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda, Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Robert M. Sader, Chairman
Mr. Gene T. Porter, Vice Chairman
Mr. Bernie Anderson
Mr. John C. Bonaventura
Mr. John C. Carpenter
Mr. Tom Collins, Jr.
Mr. James A. Gibbons
Mr. William D. Gregory
Mr. Ken L. Haller
Mr. William A. Petrak
Mr. John B. Regan
Mr. Scott Scherer
Ms. Stephanie Smith
Mr. Michael A. Schneider
Mr. Louis A. Toomin

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Ms. Denice Miller, Research Analyst

OTHERS PRESENT:

Mr. Gordon P. Moseley, Equal Rights for Fathers
Ms. Ande Engleman, Nevada Press Association
Ms. Patsy Redmond, Nevada Association of Realtors
Ms. Joan Buchanan, Real Estate Division
Mr. Bob Cavakis, Youth Correctional Services
Mr. Pat Coward, Nevada Dental Board of Examiners
Ms. Irene Porter, Nevada Home Builders Association

In response to questions from Mr. Haller, Mr. Hill told the committee the effect of the bill on his program would not be immediate, because they were dealing with post-secondary education. The individuals in his program, he related, had to be high school graduates or have a certain educational ability. He explained this would have an impact on the existing GED programs run by the school districts. He remarked that they were already in place and was uncertain of their capacity to handle an increase. Mr. Hill declared he thought this bill made some very good points and made sense, and he felt if someone wanted to be involved in an activity, this would give him some opportunities to make some decisions in his life. He did not have any proposed changes to the bill.

Mr. Regan reported he had a copy of the McCollum study (Exhibit E) and requested he be allowed to read one paragraph, "The quality of the inmate workforce available to provide institution services, including institution maintenance, and to work in prison industries, is also an important consideration. Illiterate workers who cannot read instructions, fill in job related forms, prepare brief reports, or perform work related math are unnecessary strains on correctional systems which are already carrying the burdens of inadequate space, staff and related resources." Mr. Regan contended that there was a correlation of illiteracy factor in the work programs.

There being no further testimony, Chairman Sader closed the hearing on A.B. 596.

ASSEMBLY BILL 612 -

Revises Uniform Common-Interest
Ownership Act and Planned Unit
Development Law. (BDR 10-479)

Chairman Sader related the issues and gave background on this bill for the committee. He stated the Uniform Common-Interest Ownership Act was enacted by the Nevada Legislature in the 1991 Session and came from a uniform state law that had been adopted in three states, Nevada being the fourth. Mr. Sader explained the law, in its application, proved to have numerous problems in the last two years in various areas. He explained the law dealt with how one managed, controlled, established and otherwise handled what were called common interest communities. Those included any real estate ventures, such as condominiums, planned-unit communities, timeshares and other types of situations in which there were commonly-owned facilities. This was basically a trailer bill, he claimed, trying to clean up provisions of the act which had been found to be a problem. He admitted the bill still needed a lot of work and there were many

people who were uncomfortable with various provisions. Chairman Sader advised he would be handling the matter himself and would start with some working group sessions the following week. He announced he wanted to review the highlights at this meeting and stressed anyone who had problems with any issue in the bill or in Chapter 116 that had not been addressed in the bill, should submit them in writing immediately with proposed changes and a rationale.

Renny Ashleman, on behalf of the Nevada State Homebuilders Association, reported last fall he and Steve Hartman met with Chairman Sader and volunteered to head up a group to try to coordinate the many diverse groups affected by the bill. He said many mini-hearings had been held in Las Vegas and other places, trying to communicate with those persons thought to be the principal players (Exhibit G). He reported he had received extensive additional comments and he would take these to the working group in the interest of saving time.

Mr. Ashleman declared the first set of major changes had to do with how long the declarant or developer could stay in control and explained there were currently clauses that stated if there had not been certain types of activities over a relatively short period of time, the developer had to yield control of the homeowners, condominium owners, or timeshare owners associations. He went on to relate there was concern about that, because if that control was lost the desirability for anyone else to come in and finish was thereby diminished. He went on to say there were technical problems regarding matters that did not conform with ordinary practices that needed to be changed.

Mr. Ashleman went on to the next set of corrections having to do with notices of delinquency and failure to pay assessments or dues to these organizations. The act currently had filing information regarding the recorder but was deficient in letting the person who held the unit know he was in trouble financially and at risk of having his unit ultimately sold at foreclosure, so language was drafted, he stated, to address that problem.

There was a problem, Mr. Ashleman explained, with the identification of units. When a community was first drawn up, there might not be a street address or an actual identifying number, he advised. Mr. Ashleman related the act did not make any provision for that, so the identification parts were technically deficient.

Mr. Ashleman explained the way in which filing of documents was performed had technical glitches that did not match either Nevada law or Nevada practice, and language had been drafted to try to get at that problem. He related it was expensive to comply with this act and keep up with it.

Mr. Ashleman pointed out technical problems with the fact the act called for a person being able to rescind if he did not see his unit. Typically, he stated, the unit was not even built; the people saw models.

There were further technical items that, he said, might not have been properly addressed that were in written remarks, presented as Exhibit G.

Chairman Sader felt the committee had a good idea of what the bill covered and stressed the fact this was a big issue and extremely important for anyone who was in a condominium, planned-unit community or cooperative.

Ms. Irene Porter, representing the Nevada Homebuilders Association, announced her people would work with Chairman Sader at his call.

Mr. Sader asked for the names of those who wished to be included for notice in the working group, as they would meet the following week to go over the proposed revisions. A deadline of Wednesday, May 26, was set by Chairman Sader to have comments to him. Thursday, May 27, 1:30 was set as the date for the first meeting.

Richard Plaster, a home builder in Las Vegas, expressed his appreciation for the committee's willingness to consider modification of Chapter 116. He explained a couple of problems that his counsel had run into with the act and declared it was possible for an owner of a condominium to end up with an unmarketable title and a situation where he could not sell his unit. The revisions in the amendment, he stated, would make the act more fair because by simple, clerical errors it would be possible for a developer to be subject to penalty. Mr. Plaster advised Chairman Sader that he would be participating in the working group.

Dennis McGarvey, Property Manager at Spanish Trail, a 1200 unit community in Las Vegas, was next to testify and announced he was a founding member of the Southern Nevada Chapter of Community Associations Institute, a national organization of community association professionals. Mr. McGarvey declared that his group

was of the opinion NRS 116 needed some changes but stated they did not feel this was the way to go. He presented possible changes submitted by Messrs. John Leach and Michael Buckley, two lawyers who were members of CAI, addressing the problems they had from a legal angle (Exhibits H & I). From a management standpoint, Mr. McGarvey stated he wanted to outline the problems the homeowners had with NRS 116. He remarked he had people come to him from across the Vegas valley with problems and had seen a 77 year old lady in tears because her association was not run correctly. She wanted to sell her home and move to Indiana to live with her sister but could not do it because the association had never had an audit, financial statements, or minutes of the meetings. The board's reasoning, he related, was they had changed the CC&R's. The small associations, he declared, needed NRS 116 the most as the roadmap to show them how to operate and how to conduct the day-to-day activity of an association. He referred to a section that put a cap on reserves at 10 percent. Mr. McGarvey contended he needed to take 25 percent of the fees in order to fully fund and not have any special assessments. It was Mr. McGarvey's personal feeling NRS 116 exempted associations formed before January 1, 1992. He stated he felt it should be retroactive, at least from the management of the these associations.

Mr. Sader asked Mr. McGarvey what he thought about a system whereby a majority of the members of the association could opt into the chapter.

Mr. McGarvey stated he thought that would be fine.

Mr. Barry Goold, Senior Partner of Goold, Patterson, DeVore and Rondeau, introduced himself to the committee and announced he had been practicing real estate law almost exclusively for fifteen years. He stated he was very familiar with the bill, having studied it when it was enacted two years ago, and had given seminars to home builders in Clark County and conducted sessions regarding the bill. Mr. Goold said he thought the bill was good, although it did need some work. He related the story of the seven wisemen who looked at the elephant, and each saw something different. This bill, Mr. Goold declared, affected many different industries and legal areas. With respect to Mr. McGarvey's comments, Mr. Goold stated he thought a lot of abuses that might have led to this enactment really did not come from the home builder's side but from the ongoing management side. He expressed concern about extending the bill to make it retroactive, because when dealing with real estate and real property the basic fundamental notions of the legal system were not to make those things retroactive because property rights

that have already become vested would be affected. He stressed if the committee entertained that type of a motion, he would implore them to keep it in the area of the on-going management of the associations, as it would not be an appropriate thing to do with respect to the declarations of covenants, conditions and restrictions, disclosure statements, etc.

Mr. Goold declared he was concerned about the liberal raising of the exemptions. He contended in fifteen years of experience in real estate, those who said it put the larger builders at a competitive disadvantage were correct. He stated he would also have to think that, although he had seen very few abuses, when they were seen, he thought they came from the "mom and pops," not the Lewis Homes or the Signature Homes.

In conclusion, Mr. Goold related a feature of the act that required all monies delivered to the seller in connection with the purchase of a home to be delivered in escrow. This, he announced, was a horrible oversight in the area of funds for upgrades. Mr. Goold referred to a situation where the buyer said to the developer, "I love your model, but I want blue tile in the kitchen." He pointed out the builder had spent the money out of pocket to put blue tile in the kitchen, the buyer did not qualify for the loan, and the builder was stuck with blue tile in the kitchen which he had to rip out and replace to sell the investment he has made of \$100,000 or \$200,000. He declared those monies for upgrades should be released to the builder.

Mr. Goold told the committee he thought the bill was an important first step and had many good points and advised the chairman he would like to assist with the subcommittee process.

Mr. Haller wondered if there was any federal regulation involved that should be looked at and if there was any statute other than NRS 116, perhaps the corporation law, that might have to be included in the consideration of the bill.

Mr. Sader announced he would deal with the latter question, explaining the corporations law did affect this, since most of the homeowner groups were usually non-profit corporations. He declared there was a problem with making this chapter consistent with the non-profit corporation statutes if the homeowners association was formed under that statute. In fact, he continued, the applicability provisions and how this chapter affected others, such as the planned unit chapter and corporations, was a major issue. Mr. Sader asked if someone could answer the federal law question.

Mr. Ashelman responded there was some federal regulation in the area, but he did not feel this bill was in conflict.

Mr. Andy Maline announced that he would participate in the subcommittee group. (Exhibit J)

Chairman Sader declared the hearing closed on A.B. 612.

After a brief recess, Mr. Sader indicated at the hearing on the previous day a member of the audience had stated A.B. 625 was Mr. Bennett's bill. Mr. Sader declared that Assemblyman Bennett wished to announce in most emphatic terms he had no knowledge, no interest and no involvement in Assembly Bill 625. Mr. Sader requested that the minutes of the previous day's meeting not reflect the comment which was incorrect.

ASSEMBLY BILL 604 Provides additional remedies for collection of child support. (BDR 11-795)

Assemblyman William Petrak, District 18, Clark County, stated he had sponsored A.B. 604 after several of his constituents had come to him seeking help in obtaining the child support due them. One person, he related, told him she had three children and had not received child support in the amount of \$23,000. Currently, he reported, this woman had two jobs to support the children while her ex-husband drove around in a fancy car, had a good position, and she could not get any help from him at all. Mr. Petrak stated he felt very strongly about this serious problem. He introduced Kay Zunino who he announced would explain some of the provisions of this legislation.

Ms. Kay Zunino, Chief of Nevada Child Support Enforcement Program, introduced herself as well as Mr. Nicholas Soraich, Director of the Clark County District Attorney's Family Support Division and Mr. Lance Turner, Director of the Washoe County District Attorney's Family Support Division. Ms. Zunino advised the committee of the fiscal and administrative impact of A.B. 604 on her program and stated that she was fully in support of the intent of this bill. (Exhibits K & L) After reviewing each section where there were problems, Ms. Zunino requested the committee amend AB 604 to delay implementation of the section pertaining to the application of a penalty or delinquent obligation until after the installation of NOMADS in 1995, since it was part of the general system design. Ms. Zunino encouraged Mr. Soraich and Mr. Turner to add any comments they had at this time.

MEMORANDUM

TO: Robert Sader, Chairman, Assembly Judiciary Committee, and
the Committee Members

FROM: Renny Ashleman, on behalf of the Nevada State
Homebuilders Association

DATE: May 19, 1993

SUBJECT: HEARING DATE, THURSDAY, MAY 20, 1993, 8:00 A.M.
UNIFORM COMMON INTEREST OWNERSHIP ACT REVISIONS (AB 612)

CONTACT I. R. Ashleman, II, Esquire
PERSONS: Irene Porter, Southern Nevada Homebuilders Association

BACKGROUND:

After consulting with Chairman Sader, Steve Hartman and I undertook to gather information from individuals and organizations with a known interest in amending the UCIOA. We prepared a rough draft of suggested changes and submitted them to Chairman Sader. He had LCB put them in bill draft form. Frank Daykin, under contract with LCB, did a first draft for LCB.

The explanation below is our understanding of the reasons various individuals and organizations requested changes. Where memory and time constraints permit, I have endeavored to put in contrary or differing views. Any omissions are unintentional, but many meetings and phone conversations took place and no doubt some omissions will occur. For those I apologize in advance.

Although the homebuilders do indeed seek amendments to the UCIOA, many of these amendments are not ours, but were included as an accommodation to others. We did not include amendments that the homebuilders actively opposed, but otherwise tried to reconcile and accommodate differing points of view.

REVIEW BY SECTIONS FOLLOWS:

Section 2:

This section, along with Sections 3-5, addresses the issue of control of homeowners and condominium owners associations.

The first change is from 75% to 80 % of units sold for the purpose of the change of control. This is in keeping with real world industry norms.

The omission of time related tests is recommended, because it is not uncommon for lengthy delays in build out or sell out. Many times these are related to financial difficulties of the builder.

Build out and sell out are on balance good for homeowners in most cases, because there is a bigger pool of dues payers, more amenities can be completed, etc. The fact that an association is under the control of the homeowners is a definite inhibiting factor to a declarant or would be successor to a declarant wishing to invest in completing the project.

The changes in (g) and (h) are suggested by Mike Buckley of the Jones firm. The current language in (g) appears to call for Certificates of Occupancy for individual units which makes very little sense. The current language in (h) appears to call for documents that may not exist. Not all approvals and permits take the form of documents given to Declarant. Some approvals are very hard to verify, e.g., zoning or subdivision approvals, and inspections which result in no violations. The amendments narrow the subsections.

Section 6:

Under current law, the first notice of delinquency is required to be recorded, but not mailed to the unit owner. This does not provide good notice and does not conform with Nevada practice in similar situations.

The notice of delinquency can still be recorded, but this change will make it less formal, and thus easier for the associations, but a fairer notice to the delinquent unit owner.

Section 7: This becomes the traditional and formal notice required for a sale and notifies other interested parties.

Section 8: Technical correction.

Section 9: Technical correction. All real and personal property owned or leased by the association may not be a "common element".

Section 10: This clarifies the distinctions between planned unit developments and common interest communities. See sections 50-57.

Section 11:

At early stages of legal documentation there may not be an address. In timeshare communities identification of specific weeks or intervals may be needed in addition to an address.

Section 12:

Simplifies the definition, makes it more flexible, and makes the Uniform language conform to some particularities of Nevada law. In Nevada, plats and plans are generally not filed with the

declaration. Under this language reserved rights might be in documents that consumers would not be likely to see. Without this change, a purpose of the UCIOA could be easily thwarted.

Section 13: The Bureau of Labor Statistics changed its reference index and time periods. Old references are obsolete.

Section 14:

Chapter 278A still has a purpose and continued applicability. Among other things, it is a zoning ordinance. 278A has references back to 116 where needed.

Section 15:

Raises the partial exemption standard for the UCIOA. The majority of interested parties thought that the UCIOA was too expensive and not needed for smaller common interest communities. Some declarants of larger projects object to this on the grounds that they may be damaged competitively. The majority felt that larger products could spread the expense over more units and, therefore, thought that competitive considerations were minimal.

There is, of course, no magic place to draw the line, but the majorities' belief was that abuse and contentious behavior had historically been quite minimal in smaller projects. Actually relatively few projects have had any problems.

Section 16: The same policy considerations as Section 15.

Section 17: Removes repealed section and modifies list of included data. See comments on repealed section.

Section 18: See Section 14.

Section 19: Clarifies the process of making amendments to comply with this chapter and the resulting effect upon marketability of title.

Section 20: Conforms 2104 to Nevada law and practice. Makes descriptions more flexible.

Section 21:

Simplifies reserved rights and makes it more flexible. Some participants prefer the old language. Most believe this gives fairer notice to the consumer without unduly restricting the Declarant. The additional language corrects references to conform with proposed amendments.

Section 22: Corrects references to conform to proposed amendments.

Section 23:

The amendments simplify and make references more precise. The omission of subsection 8 was in response to complaints by applicable professionals that they were required to certify matters not within their expertise. Groups representing these professionals originally asked for the language, so this may be controversial.

Section 24:

This amendment removes unduly restrictive language intended to cure a non-existent problem and unnecessary language. State law and other ordinances would still be in force.

Representatives of Howard Hughes Properties and the Summerlin Development are concerned that 2115 seems to allow only the declarant to maintain a sales office in units or on common elements. They sell land to homebuilders who maintain sales offices. They do not know where the offices will be located at the time the declaration is recorded. They suggest the following language be added to 2115 after the first sentence: "In a planned community that is to be constructed in phases over an extended period of time, a declarant may amend the declaration to provide for new offices for sales and management and models to be maintained by the declarant or a dealer in units or on common elements within a subdivision until a unit has been conveyed to a purchaser within such subdivision."

Section 25:

This amendment is intended to lessen the opportunity for legal blackmail by a unit owner who is merely a difficult person or who has unrelated grievances.

Section 26: Corrects references to conform to the proposed amendments.

Section 27: The removed language is amended and present in section 2 and 3 of these amendments.

Section 28: Amends to conform to amendments in this bill. See section 2 and 3.

Section 29: Conforms to amendments elsewhere in this bill. See section 2.

Section 30: Conforms to amendments. See Section 28.

Section 31: Conforms to amendments. See Section 3.

Section 32: Minor language changes.

Section 33: Conforming amendment.

Section 34:

Minor language change. It should be noted for the purposes of this hearing, that Section 34 may need more extensive changes. Right now, a planned community has difficulty conveying any portion of the common elements. There are those who argue, probably correctly, that there are times when one should be conveying those for various reasons, including among others, fair compensation. 3112 would appear to unduly restrict a board's ability to sell or exchange common elements. This could be a real problem for the larger projects, as pointed out by representatives of Howard Hughes Properties and the Summerlin Development for example.

Section 35: Corrects references.

Section 36: Corrects references and adds a reserve and limits its size.

Section 37: See sections 6 and 7.

Some commentators are concerned that the lien section in NRS 116.31162(b) only allows priority to a first lien. The coordination between 31162(a) and 31162(b) is an interesting problem.

There is a counter argument to the 31162(b) which is this limitation prohibits the homeowner from taking an additional borrowings on his condominium, when he knows an association lien is coming. On the other hand, it does limit the flexibility of the owner of the unit at any association. This limitation should not be too severe in as much as it really only requires that the lender and the title people inquire from the association as to whether or not any assessments are owing.

Section 38: Minor language change.

Section 39: Conforming to 6, 7, and 116.31164

Section 40: Conforming language.

Section 41: See Section 15.

Section 42:

Conforming language as to plot or plan. Changes developer to declarant for uniformity. The notice of changes to the public offering statement is intended to cut down on the enormous cost of continually revising the offering statement for minor changes.

Section 43: See section 15. The other amendments conform to changes in these amendments.

Section 44:

The change as to current offering statement is for the benefit of the consumer.

The change as to a model is to conform to actual industry practice. Purchasers almost never see their own actual unit.

The shift in the computation of damages is the most important feature of these amendments for declarants. There is no purpose for such extraordinary damages in an industry where no abuses have been shown. This is simply a windfall for litigious purchasers and their lawyers.

Section 45:

These revisions are necessary to facilitate the resale of units by individual owners. Absent these provisions owners will not normally have the needed documents. They are now forever liable to refund the purchasers money, causing all sorts of indigestion for title companies and owners. The need to protect against unrecorded assessment liens causes similar problems.

Section 46:

The new language would encourage the providing of warranty insurance. Under the existing language the declarant gains very little by providing such insurance. It is almost universally regarded as desirable that such insurance be furnished.

Section 47:

The proposed language is intended to discourage lawsuits which are designed for the purpose of obtaining punitive damages in cases where actual damages were slight or non-existent or the offending conduct was slight.

Section 48: This language is intended to get rid of cumbersome procedures that do not conform to local law or Nevada practice.

Section 49: This supplies the technically correct references.

Sections 50-57:

These changes represent an effort to coordinate the UCIOA and Chapter 278A. Mr. Daykin points out that consumers under the amendments proposed in Section 10 would lose existing protection. The amendments are an effort to restore that protection. These protective sections were previously in 278A prior to the adoption of the UCIOA.

Section 58:

The repeal of applicability to out-of-state common interest communities was motivated by a desire to simplify the act, to leave the matter in local control, and to simplify incidental sales in Nevada.

Many of the commentators believe that it is a mistake to repeal 1208, particularly the phrase "This chapter does not apply to common interest communities or units located outside this State." Plainly that language needs to be retained. Although I have somewhat lost track of the background, it is my believe that the proponents for repealing 1208 objected to the second phrase on the grounds given.

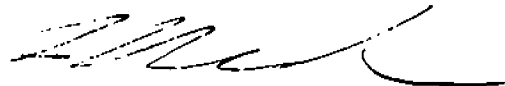
The repeal of the contract and tort liability section is intended to restore the corporate shield to the declarant for tort actions.

ADDITIONAL CONSIDERATIONS:

The attached suggestions by Lionel, Sawyer and Collins are intended to correct statutory references and facilitate the rendering of title opinions.

An additional consideration for this committee is the possibility of adding language to 3102(2). Some of our members fear that the language would negate the common item in a declaration prohibiting the association from interfering by imposing architectural controls or approval upon the developer. It seems to me that it makes imminent good sense that a developer should be able to develop his property without the homeowners being able to control that from his viewpoint and that their architectural control should be from later modifications. These are, after all, normally master plan communities; the usual worry such as uniformity, dates for presentation, and so on which occur with individual homeowners are not really a problem.

Respectfully submitted,



I. R. Ashleman, II
Attorney at Law

IRA/so

Attachment

MEMORANDUM

To: JPZ & LJB
From: MAM
Re: Nevada Resort Properties Polo Towers/
1993 Legislation
Date: October 7, 1992

Proposed Amendments to NRS 119A

I. Section 119A.520(4) of Nevada Revised Statutes shall be amended to read as follows:

Except as provided in [NRS 78.355] NRS 82.321, any proxy which is executed by an owner to an association is valid for an indefinite period if the owner may revoke his proxy, by written notice to the association, to vote at a particular meeting.

II. There shall be added to Chapter 119A of Nevada Revised Statutes a new section which shall read as follows:

In the event that a matter governed by this chapter is also governed by chapter 116 of NRS, compliance with the provisions in chapter 116 of NRS governing such matter that are in addition to or different from the provisions in this chapter governing the same matter, is not required. In the event of any conflict between this chapter and chapter 116 of NRS, the provisions of this chapter prevail.

Proposed Amendments to NRS 278

I. Section 278.374(1) of Nevada Revised Statutes shall be amended to read as follows:

A final map presented for filing shall include a certificate signed and acknowledged, pursuant to NRS 111.270, by any person who is the owner of the land, unless the final map is presented for filing by a common-interest community in which case such certificate need

only be signed and acknowledged by any person authorized to record the final map under chapter 116 of NRS: (a) Consenting to the preparation and recordation of the final map. (b) Offering for dedication that part of the land which the person wishes to dedicate for public use, subject to any reservation contained therein. (c) Reserving any parcel from dedication. (d) Granting any permanent easement for utility installation or access, as designated on the final map, together with a statement approving such easement, signed by the public utility or person in whose favor the easement is created or whose services are required.

II. Section 278.374(3) of Nevada Revised Statutes shall be amended to read as follows:

Upon the final map presented for filing by a common-interest community, a title company must, and for any other subdivision a local government may by ordinance require a title company to: (a) Certify that each person signing the final map owns of record an interest in the land and that, except as otherwise provided in subsection 1 for a final map presented for filing by a common-interest community, all of the owners of record of the land have signed the final map; and (b) List any lien or mortgage holders of record. For a common-interest community, the certificate must show that there are no liens against the common-interest community or any part thereof for delinquent state, county, municipal, federal or local taxes or assessments collected as taxes or special assessments.

TESTIMONY OF JOHN E. LEACH BEFORE THE
ASSEMBLY JUDICIARY COMMITTEE IN
SUPPORT OF Assembly Bill 612-MAY 20, 1993

Assembly Bill No. 612-Committee on Judiciary ("A.B. 612") revises the Uniform Common-Interest Ownership Act ("UCIOA") and Planned Unit Development Law. UCIOA was adopted by the Nevada Legislature in 1991 and became effective January 1, 1992. The uniform legislation came after nearly a decade of work by committees empaneled for the purpose of proposing legislation for the uniform treatment of condominiums, planned unit developments and cooperatives. The underlying concept of the UCIOA is to achieve uniform treatment of these three types of property ownership, all of which involve a combination of individual property ownership with ownership and management of common facilities.

While A.B. 612 addresses numerous technical errors in the 1991 law, which should be favorably looked upon by this committee, there are numerous other proposals which effectively gut the UCIOA of its effect and intent. What remains is a uniform act which governs a very small number or percentage of the common-interest communities in this state. While the proposed legislation was certainly well intentioned, it fails to take into consideration the practical impact on common-interest communities and those professionals or individuals dealing with the industry.

What follows is a response to various sections of A.B. 612. It by no means intends to be a complete response to each section, but merely highlights some of the problems with the proposed legislation.

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EXHIBIT H

SECTION 2

This section has been proposed to replace NRS 116.3103(4) - (10). Of primary concern is the deletion of the time periods effecting termination of declarant's control on an association. See, Section 2(4). As written, the UCIOA provides that the period of declarant's control terminates no later than the earlier of several alternatives. Some of these alternatives are time limits placed upon the declarant.

The deletion or omission of the time related tests or alternatives should not be recommended. This body should distinguish between lengthy delays in build out or sell out of a development and the actual cessation of activity, effort and production of a marketable product. As it currently reads, the UCIOA merely requires a declarant to sell one home in a two year period to avoid the termination of declarant's control under the time related alternatives. A reputable builder trying to move his product should not be offended by such a time related test. In addition, Section 2 suggests that changing the declarant's control from 75% until 80% of the units are sold is consistent with the real world industry norms. However, a review of other jurisdictions having adopted the UCIOA will reflect that the 75% is in fact the industry norm.

SECTION 6

The UCIOA can certainly benefit from the simplification of the foreclosure process as recommended in Section 6. However, it should be noted that Section 6 as proposed was drafted by Michael

E. Buckley of the law firm of Jones, Jones, Close & Brown during some preliminary drafting. It is unclear to me, how this provision worked its way into the proposed legislation. However, after Mr. Buckley met with association boards of directors, as well as property managers who are principally responsible for preparing and serving these notices, even Mr. Buckley modified his view of this proposal. He determined that it is difficult to track down lessees who more often than not, have not been identified by the owner of the unit. Thus, Section 6 appears to be the original thought of Mr. Buckley which does not have the benefit of the subsequent input he received from homeowner association boards of directors and property managers. If other portions of A.B. 612 have been incorporated in similar fashion, then it is evident that there needs to be a substantial amount of additional input before this bill should be considered for passage.

SECTION 8

This section is directly related to the proposed repeal of NRS 116.1208. It should be kept in mind that one of the purposes of the UCIOA is to provide consumer protection. By repealing NRS 116.1208, an out-of-state developer may come into the State of Nevada and sell property to Nevada residents that is located outside Nevada without complying with the requirements of a public offering statement. This would seem to place foreign developers in a better position than our local developers. In addition, by excluding out-of-state developers from the public offering statement requirement, the legislature would be depriving Nevada

residents of some remedies against the out-of-state developer.

SECTION 10

Section 10 and Sections 50 -- 57, inclusive, of A.B. 612 appear to carve out a large exemption from the UCIOA by returning governance of planned unit developments to NRS 278A. These sections substantially reduce the applicability of the UCIOA. Of perhaps greatest importance is the fact that by removing planned unit developments from the UCIOA, the legislature would be removing the requirement of the preparation of a public offering statement by declarants and the subsequent delivery of the public offering statement to purchasers in planned unit developments.

It should be noted that when the Uniform Common-Interest Ownership Act subcommittee consisting of Michael Buckley, Edward Hale, Stephen Hartman, Charles Deaner and Darrel Lincoln Clark appeared before the Assembly Judiciary Committee, it recommended and the legislature adopted the UCIOA without many of the provisions required under the uniform legislation for a public offering statement. In doing so, the subcommittee and legislature attempted to require meaningful disclosure by declarants to purchase without burdening the declarants with some of the other requirements suggested in the uniform legislation. However, these sections of A.B. 612 would remove the requirement of the public offering statement in all planned unit developments. Such a large exemption should not be recommended.

SECTION 12

Section 12 of A.B. 612 recommends that the definition of

special declarant's rights be replaced with a very general definition. While it is suggested that such a change will provide flexibility and simplicity, it also appears to restrict special declarant's rights to completion of improvements. This substantially reduces the right of declarants during the period of declarant control without a corresponding benefit to the unit's owners. Declarants should not be required to give up these rights in the absence of any consumer protection issues.

SECTIONS 15, 16 AND 41

These sections substantially restrict the applicability of the UCIOA. These provisions attempt to exempt from the UCIOA all condominium and cooperatives with 50 units or less or a budget of less than \$150,000. The net effect of this is to substantially undercut the purpose of the Act which is to provide a road map and governing rules and principals for common-interest communities. By creating this type of exemption, the legislature would be releasing declarants from the requirement of preparing a public offering statement and providing the consumer with the disclosure provided therein.

SECTION 25(4)

NRS 116.2117(4) provides that there can be no amendment to create or increase special declarant's rights, increase the number of units, change the boundaries of any unit, change the allocated interests of the unit or change the uses to which any unit is restricted, in the absence of unanimous consent of the unit's owners effected and the consent of the majority of the owners of

the remaining units. It should be noted that when this provision was adopted by the 1991 legislature, it made an accommodation for developers by adding the phrase "unit owners affected" rather than all units owners, which is the proposed uniform legislation. This section of A.B. 612 would appear to allow a declarant to effect property rights of a unit owner after the unit owner has relied upon various representations and warranties of the developer by the mere majority vote of the owners of "all substantially affected units." One should consider whether such action would constitute an unconstitutional taking of property without compensation. It should also be noted that most declarations require 67% vote of the members of the association before an amendment can be imposed on the other unit owners. Thus, it seems highly inappropriate to adopt a provision that would allow the taking of a unit owner's property interest with only a 51% vote.

SECTION 36

I certainly appreciate the fact that the Homebuilders Association recognizes the significance and importance of reserves by including the requirement of reserves in Section 36 of A.B. 612. However, attached hereto is a copy of some proposed legislation regarding reserves adopted after numerous meetings by the legislative action committee of the Community Associations Institute (CAI) of Southern Nevada. This proposed legislation adopted by CAI of Southern Nevada goes into more detail by defining reserves and what should be considered in maintaining reserves.

Section 36, while addressing very serious concerns, shows a

lack of understanding for the problems that can arise in an association 5, 10 or even 15 years after the declarant has sold all his units within the common-interest community. On Wednesday, May 19, 1993, a homeowner in a Las Vegas condominium association came to my office to discuss a potential lawsuit against an association for failure to repair the roof on the condominium that he owned. After a few moments it became clear that the association could not make the repairs because it did not have adequate reserves. Thus, my client is confronted with some rather unattractive alternatives. First, he can repair the roof at his own expense and then attempt to collect payment over a period of time or withhold his assessments until he has recouped his investment. Second, he can bring a lawsuit against the association for failure to perform its responsibilities and duties under the declaration. This would most likely result in the bankruptcy of the association.

If there is a cap on reserves, situations can arise when the statute will preclude the association from adequately preparing for the future. While some associations may be able to survive with a 10% reserve requirement, other associations with substantially more amenities would be under-capitalized and unprepared for potential maintenance problems in the future. Thus, while this section certainly addresses a primary concern of associations, it should be expanded and a cap should not be placed on the reserves.

SECTION 42(i) and SECTION 44(1)

Section 42(i) and Section 44(1) recommend the removal of perhaps the greatest consumer protection that exists under the

UCIOA. As presently drafted, the UCIOA provides each purchaser in a common-interest community with the absolute right to cancel a purchase contract with the developer for five days from the date of execution of the contract. In effect, the UCIOA provides each purchaser with a five day "cool-off" period. When one takes into consideration that the home is the most significant purchase an individual may make, and the fact that consumer legislation now provides for a 72 hour cool off or right of rescission with respect to door-to-door sales, the five day cool off period is not unreasonable and its removal should not be recommended. A right of rescission in the purchaser is a significant consumer protection. Developers throughout this state have consistently recognized this by including periods of time in their own contracts, some as high as seven days, wherein the purchaser can cancel the contract.

SECTION 45(3)

This portion of A.B. 612 appears to be drafted to assist title insurance companies as they close sales. However, this section is highly impractical and should not be recommended. A title company involved in a sale of a unit within a common-interest community knows of the existence of such a community by virtue of the recordation of the declaration, which should appear on the preliminary title report. Having determined that a declaration has been recorded against the premises, the title company can require the seller to execute a document akin to a verification of deposit, which would then be submitted to the association upon the seller's

request. The homeowners association would then provide the title company with the balance due on the account, and the payoff that must be made prior to the close of escrow.

As drafted, this section would require each homeowners association to file a notice of assessment or an assessment lien one month after a delinquency or deficiency occurs. This would not only will increase the number of encumbrances recorded against properties, but will cause homeowners that are a mere one month delinquent in their assessments to incur attorneys fees as part of curing the assessment lien. The association should not be required to file a notice of assessment lien every month a homeowner is late.

SECTIONS 50 THROUGH 57

As indicated above in the discussion on Section 10, by removing planned unit developments from the UCIOA, and placing them back under NRS 278A, planned unit developments lose some of the very rights and privileges the UCIOA intended to give. First, by removing planned unit developments from the UCIOA, the legislature would be taking away the superpriority rights of the association with respect to delinquent assessments. The assessment is the life blood of the association, and by depriving the association of this superpriority, the association would be severely hampered. It should be noted that the secondary market, FNMA and FHLMC have approved the six month priority period. In addition, the Department of Veterans Affairs and the Federal Housing Administration will accept mortgages from states with the

superpriority lien. Second, Sections 50 through 57 do not provide planned unit developments with the right and opportunity to lien unit owners that have incurred penalties and fines for violation of the recorded declaration. As presently constituted, the UCIOA allows for an association to assess for fines and penalties, after notice and opportunity to be heard. This allows the association to lien rather than file lawsuits each time a fine or penalty is incurred. Third, and finally, the removal of planned unit developments from the UCIOA deletes the requirement of the developer to provide a public offering statement.

REPEAL OF SECTION 116.3111

It is not clear to me why Section 116.3111 needs to be deleted. It is suggested that the deletion will restore the corporate shield to the declarant for tort action. However, declarants have not been deprived of the corporate shield by adoption of the UCIOA. The fact that a developer may be liable for tort liability does not result in a corporate shield being removed and, allowing the victim of the tort to seek recovery against the individuals representing the declarant.

CONCLUSION

There are numerous changes raised by A.B. 612 which are not addressed in these comments. This testimony has only attempted to address some of the highlights which at a minimum would require additional input and discussion by interested parties.

John E. Leach is a partner in the Las Vegas office of the law firm of Woodburn and Wedge. He is also on the Board of Directors of Community Associations Institute of Southern Nevada, which is a local chapter of a national organization created for the purpose of educating and training people living in and professionals working with common-interest communities.

Article ____

ANNUAL FINANCIAL STATEMENTS AND
REQUIRED DISCLOSURE, RESERVES.

116. __101. Definitions.

1. "Budget" means the financial plan of the association, which shall include the "Operating Budget" and the "Reserve Budget."
2. "Major Component of the Common Elements" means that portion of the common elements having a useful life of more than 2 years and less than 30 years or having a cost of \$25,000.00 or more to repair, replace, or restore, unless, in either case, the repair or replacement of such portion is included within the annual operating budget.
3. "Operating Budget" means the financial plan for the day-to-day operation of the association plus the contribution of funds required by the Reserve Budget.
4. "Reserve Budget" means the financial plan to provide funds to repair or replace the major components of the common elements.
5. "Reserve Funds" means funds set aside for future repairs and replacements to the major components of the common elements.

116. __102. Annual disclosure of Operating Budget, Reserve Budget and Review of Financial Statements.

1. Unless the Declaration imposes more stringent standards, the Association shall annually prepare the following documents:

EXHIBIT A

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(a) An operating budget, which shall include the estimated annual revenue and expenditures of the association, including any contribution to the reserve funds.

(b) A reserve budget, which shall include the following:

(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 Reserve Budget is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, or restore the major components of the common elements;

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the major components of the common element.

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component of the common elements or to provide adequate reserves therefore.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components of the common elements that the association is obligated to maintain. The procedures used need not include obtaining a formal reserve study, but are nevertheless subject to the duties of ordinary and reasonable care described in Subsection 1 of NRS 116.3103.

(c) A review of the financial statement of the association, which shall be prepared

in accordance with generally accepted accounting principles by a licensee of the Nevada State Board of Accountancy for any fiscal year in which the gross income to the association exceeds Seventy Five Thousand Dollars (\$75,000.00).

2. A copy of the operating budget and reserve budget shall be distributed annually to each unit's owner not less than 30 days nor more than 60 days prior to the beginning of the association's fiscal year. A copy of the review of the financial statement shall be distributed to each unit's owner within 120 days after the close of each fiscal year. In lieu of the distribution of the budgets and review of the financial statement required herein, the executive board may elect to distribute a summary of the budgets and review of the financial statement to all unit's owners with a written notice that the operating budget and reserve budget is available at the business office of the association or at another suitable location, and that copies will be provided upon request and at the expense of the association.

**TESTIMONY OF MICHAEL E. BUCKLEY
BEFORE THE ASSEMBLY JUDICIARY COMMITTEE
IN SUPPORT OF AB 612 (WITH MODIFICATIONS)
MAY 20, 1993**

This bill amends the Nevada version of the Uniform Common Interest Ownership Act (UCIOA), which, like other uniform laws, is the product of the National Conference of Commissioners on Uniform State Laws. The UCIOA was approved in 1982 and grew out of a combination of the Uniform Condominium Act, Uniform Planned Community Act and the Model Real Estate Cooperative Act. These uniform laws have been adopted in a substantial number of states in recognition, no doubt, of the increasing importance of community associations in modern housing.

A. B. 612 corrects a number of technical errors in the 1991 law and in that respect, should be considered favorably by this Committee. The bill also makes welcome changes to the foreclosure process, although neglects to pick up other beneficial changes. Time does not permit a full discussion of these all points.

The bill does, however, contain a number of problems, most of which reflect substantive, non-uniform amendments in the UCIOA. While certain of these modifications may be desirable or well intentioned, many involve significant policy issues and others involve changes that, on balance, may cause greater problems than the evil sought to be corrected. What follows then is a enumeration of some, but not all, of those sections of A.B. 612, requiring more careful analysis or perhaps reconsideration altogether.

APPLICABILITY OF CHAPTER 116

50 Units/\$150,000 Budget. A. B. 612 works a major change in the applicability of the UCIOA. As written, the law applies to planned communities, cooperatives and condominiums, that is, "*common interest communities*" — three quite different forms of ownership all of which involve individually owned units, shared common areas and management of common elements through an association.

The existing law exempts small communities, generally defined as having no more than 12 units. This bill, in Sections 15, 16, 41 and 43 increases the size of exempts common interest communities to those having fewer than *50 units* or an annual budget of less than *\$150,000.00*. Obviously, the exact level represents a policy decision to be made by the Legislature, but it is worthwhile noting that although the UCIOA often leaves exact numbers up to the different states, the number 12 is not one of those. This is no doubt in recognition of the fact that the problems which affect common interest communities are more likely to result from the nature than the size of the beast. Accordingly, a very careful analysis is necessary before such an enormous exemption is written into law. To begin with you will wish to consider, for example, what percent of common interest communities will the exemption affect.

PUDs. Section 10 and Sections 50 - 57 of the bill create an even more potentially far reaching exemption from the UCIOA by reinstating the concept of a "planned unit

development" under Chapter 278A outside of, and independent from, the UCIOA.

Prior to January 1, 1992, a condominium project was established under Chapter 117 which dealt exclusively with the creation and management of condominiums; and, what we now called a "planned community" under the UCIOA (that is, a project with common ownership that is other than a coop or condo — for example, any single family project with greenbelts or private roads) was created as a "planned unit development" (PUD) under Chapter 278A. Chapter 278A operated differently than Chapter 117, since, in addition to authorizing PUDs, it governed the zoning of those developments.

The UCIOA supplanted both Chapter 117 and Chapter 278A by requiring that condominiums and PUDs, now to be referred to as "planned communities," come under the umbrella of Chapter 116, along with cooperatives. This bill would reinstitute the PUD as a land owning concept comparable, if not the same as, a planned community, to own and manage common areas and assess owners for the upkeep of that property. Section 54 of this bill would remove the extensive provisions of the UCIOA applicable to the creation and management of planned communities, and, apparently, in lieu of the careful documentary requirements of the UCIOA, impose a watchdog obligation on the cities and counties.

By substituting the PUD, which is "an area of land controlled by a land owner which is to be developed as a single entity" the bill creates no clear line of demarkation between a planned community and a PUD. This failure is aside from any policy considerations concerning whether it makes good sense to authorize what would now be aa fourth form of community outside of the UCIOA.

RESERVES

One of the major areas of concern in any homeowner association is whether the association has properly analyzed the ongoing need for repairs and improvements of the common elements. To this end, a well managed association will properly budget the reserves necessary to supply the association with sufficient funds so that, when the required repair must be made, a special assessment is not required. By way of example, if the association knows that a new roof will be required in 10 years, the association will wish to collect from the homeowners each year, one-tenth of that cost and hold the sums aside in a reserve account.

Section 36 of this bill limits an association's ability to provide for a reserve which is greater than 10% of the assessment. It is not clear why this bill would remove the discretion to establish reserves from the board of directors of the association and arbitrarily cap it at 10%, which may have little or no relationship to the actual necessary reserves. The proposed language would not prevent an association from making a special assessment for the full cost of the repair in the year it is due, however, prudent management practices would dictate that the association plan ahead and budget accordingly!

Section 36 does point out that the UCIOA does not require that a budget include reserves. While such a requirement is not a part of the Uniform Act, many states have reserve

requirements. The Las Vegas CAI Chapter, through its Legislative Committee, has in fact, suggested proposed changes to the Nevada UCIOA to require disclosures regarding the need for reserves in light of the remaining useful life of association property. The proposal is attached hereto as Exhibit "A."

The area of reserves, then, requires careful consideration by this Committee, but the solution proposed by Section 36 of the bill is unduly restrictive.

NON-UNIFORM CHANGES

As a general proposition, it makes good sense to follow a uniform law as closely as possible, utilizing the optional suggestions in the uniform act to customize the law as necessary. The corresponding benefit — especially important in a small state like Nevada — is our own version of a uniform law with precedent in other uniform law jurisdictions. Maintaining the uniform law also makes available the very helpful explanatory comments, some of which contain illustrative examples, and all of which, like the act itself, represent not only very careful draftsmanship, but the input of all the different groups involved in the homeowner association process; that is, developers, consumers, lenders, local governmental authorities, state regulators, managers and other professionals, as well as homeowner associations themselves. Given the fact that the UCIOA basically establishes the method by which small groups can exercise quasi-governmental powers over themselves well into the next century, a careful balancing of interests is an imperative.

A number of this bill's proposed changes to the Nevada UCIOA appear designed to correct failings of the Uniform Act. Upon closer examination, however, many of these changes are either unnecessary, because the cited problem does not exist or the proposed solution would create even greater problems. Some examples:

A. Declarant Control Period. Under existing law, the declarant must turn over control of a homeowners association to the homeowners after selling a certain *percentage of units* or the passage of a certain length of *time* in which the declarant has ceased to develop the project, that is, "offer units for sale in the ordinary course of business" or annex new units into the project. Nevada follows the suggestion of the Uniform Act in adopting 75% and 2 years as the limitations. A.B. 612 changes the 75% figure to 80% and removes altogether the time limitations.

Not only does the proposed amendment overly cure the problem, if indeed one exists, it also fails to take into account other limiting factors. If the time related test of two years represents a problem for developers, a better suggestion than completely eliminating the time requirement would be to change the period from 2 years to some greater period of time, as indicated by the fact that *2 years is only a suggested period*. Moreover, it is not only the UCIOA that imposes a time limit within which developers must turn over control of the association, lenders do as well. As an example, attached as Exhibit "B" are VA requirements showing turn over periods of 3 to 7 years, depending on the size of the project. Section 607 of the FNMA Legal Requirements imposes similar limitations. Thus, even if Nevada law were to eliminate the time related requirement, it would not go away.

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The shotgun approach of A.B. 612 is uncalled for. The time related test is not a rigorous one, is likely to be imposed by lenders in addition to the statute, and may be amended in keeping with the Uniform Law by simply extending the period rather than changing the Uniform Law. As indicated in the VA example, moreover, the size of the project should be taken into account in setting the time limits.

B. Amendments. Section 19 of the bill (page 7, line 26 - 37) adds language to the UCIOA permitting a declarant to amend or restate the declaration for the purpose of causing the declaration to comply with Chapter 116. On its face, the language appears to make sense — this is a complicated law and neither a declarant nor a project should be penalized if the declarant has, perhaps inadvertently (although the language does not limit the correction to cases of negligence), made a mistake. Moreover, while the statute gives the declarant a unilateral right to make these amendments, it also provides for the award of actual damages to those adversely affected.

What, however, is the declarant gaining by this new right?

Most declarations, for example, state that amendments must be approved not only by a specified percentage of the homeowners, but the lenders as well. While the proposed change purports to allow a declarant to amend the declaration without the consent of the homeowners and the lenders, most declarants will have contractually agreed not to exercise this new right by agreeing to obtain the consent of the lenders and homeowners.

Next, it might be worthwhile to consider what is necessary to make the declaration "comply" with the chapter.

The UCIOA provides many options available to the declarant. For example, a declaration must describe any developmental rights, an example of which is the right to annex new property into the development. If a developer neglected to include a right of annexation in the declaration, the proposed legislation might allow the developer to amend the declaration to include the right of annexation. The right of annexation might be part of the original development plan and included in various promotional literature or other documentation besides the declaration (in other words, a genuine mistake). In such a case the declarant would very likely have a case for a court ordered reformation of the declaration on the basis that it was obviously intended that a right of annexation exist, and that the correction is necessary simply to incorporate what the parties knew all along. If, however, the right of annexation is simply an afterthought, no such right of reformation would exist. Section 19 of the bill does not make such a fine distinction.

Another problem with the proposal is the lack of a time limit. Supposing that a declaration was found to be in error ten years after the declarant has turned over control to the association. There is nothing in this language which would prohibit the declarant, then having no interest in the project, from coming back and amending the declaration; on the other hand, there is nothing which would enable the association which has a more important interest, from correcting the declaration in the same manner as the declarant.

Questions such as these indicate that perhaps there is wisdom in avoiding a change such as that proposed by Section 19, for it seems to raise more questions than it solves. Indeed, requiring the declarant to be quite precise and careful in the drafting of documents, which, in most cases, will live on for 50 years or more seems to make good sense. If there is a substantial failure to comply with the Chapter, the existing remedies of an amendment pursuant to the UCIOA or a court action for reformation may not be bad ideas.

C. Tort and Contract Liability. A.B. 612 proposes to delete NRS 116.3111 governing tort and contract liability. The bill's stated intention is to restoring the corporate shield to the declarant for tort actions; yet it is hard to find the objectionable language in the six sentences contained in this section, which include: "the declarant is liable for that declarant's torts" and "the declarant who the controlled the association is liable to the association . . . for all tort losses not covered by insurance . . . and all costs that the association would not have incurred but for . . . [the] wrongful act or omission." One thinks that it would take more than either of the foregoing sentences to change Nevada's long-standing policy of corporate protection.

Not only does the proposed Legislation attempt to correct a failure which does not exist, but the deletion of NRS 116.3111 would also eliminate a requirement that an action against a homeowners association must be brought in the name of the association rather than in the name of the unit owners. Again, the approach of this provision appears to throw the baby out with the bathwater.

D. Special Declarant Rights. Chapter 116 changes a long standing practice in Nevada of giving a declarant greater voting rights during the declarant control period. Typically this provision was found through the creation of class A and class B members, with class A members being homeowners, entitled to one vote per unit, and the class B member being the declarant, entitled to two or three votes for each unit. Under the UCIOA, voting rights must be equal. (See the language on page 10, line 9.) In place of weighting declarant votes, the UCIOA has something called "*special declarant rights.*" (Section 12, p.4, line 30.)

As indicated in the comments to the Uniform Act, special declarant rights are those "rights reserved for the benefit of a declarant which are unique to the declarant and not shared in common with other unit owners. . . .[and] encompasses virtually every significant right which a declarant might seek in the course of creating or expanding a common interest community."

Section 12 of this bill would eliminate all special declarant rights other than the right to complete the proposed improvements. Thus, the right to maintain sales offices, annex property, use easements through the project and, most importantly, appoint or remove officers of the association and members of the executive board are all eliminated. The explanation is that the proposed amendment "simplifies" the definition of special declarant rights and makes it more flexible — yet limiting special declarant rights to the right to complete improvements is a significant and substantial change.

A solution which will adversely affect developers with no corresponding benefit other

than "simplification" seems uncalled for.

CONCLUSION

There are a number of major changes raised by this bill which are not addressed in these comments, such as by way of example, when a right of rescission exists (Section 44), the limitation (appearing in the guise of "simplification") of rights to maintain sales signs on the common elements (Section 24) and the transfer of certain declarant's rights (Section 29) — all of which require more careful thought than are given in this bill. A number of technical corrections are also necessary.

Language is all important in Chapter 116. By adopting the Uniform Common Interest Ownership Act, Nevada has deferred to the carefully reasoned thought and language, over nine years in the making, which resulted in the Uniform Legislation. Changes to these provisions should not be lightly made in view of the desirability of maintaining a close adherence where possible to the uniform law and the creation of unintended adverse consequences by tampering with a carefully thought out piece of legislation.

Michael Buckley is a partner with Jones, Jones, Close & Brown, Las Vegas, and former chairman of the State Bar Business Law Subcommittee that considered A.B. 221 in 1991 (NRS Chapter 116). He also authored many of the technical corrections found in the current A.B. 612.

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Article ___

**ANNUAL FINANCIAL STATEMENTS AND
REQUIRED DISCLOSURE; RESERVES.**

116. __101. Definitions.

1. "Budget" means the financial plan of the association, which shall include the "Operating Budget" and the "Reserve Budget."

2. "Major Component of the Common Elements" means that portion of the common elements having a useful life of more than 2 years and less than 30 years or having a cost of \$25,000.00 or more to repair, replace, or restore, unless, in either case, the repair or replacement of such portion is included within the annual operating budget.

3. "Operating Budget" means the financial plan for the day-to-day operation of the association plus the contribution of funds required by the Reserve Budget.

4. "Reserve Budget" means the financial plan to provide funds to repair or replace the major components of the common elements.

5. "Reserve Funds" means funds set aside for future repairs and replacements to the major components of the common elements.

116. __102. Annual disclosure of Operating Budget, Reserve Budget and Review of Financial Statements.

1. Unless the Declaration imposes more stringent standards, the Association shall annually prepare the following documents:

EXHIBIT A

(a) An operating budget, which shall include the estimated annual revenue and expenditures of the association, including any contribution to the reserve funds.

(b) A reserve budget, which shall include the following:

(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 Reserve Budget is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, or restore the major components of the common elements;

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the major components of the common element.

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component of the common elements or to provide adequate reserves therefore.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components of the common elements that the association is obligated to maintain. The procedures used need not include obtaining a formal reserve study, but are nevertheless subject to the duties of ordinary and reasonable care described in Subsection 1 of NRS 116.3103.

(c) A review of the financial statement of the association, which shall be prepared

in accordance with generally accepted accounting principles by a licensee of the Nevada State Board of Accountancy for any fiscal year in which the gross income to the association exceeds Seventy Five Thousand Dollars (\$75,000.00).

2. A copy of the operating budget and reserve budget shall be distributed annually to each unit's owner not less than 30 days nor more than 60 days prior to the beginning of the association's fiscal year. A copy of the review of the financial statement shall be distributed to each unit's owner within 120 days after the close of each fiscal year. In lieu of the distribution of the budgets and review of the financial statement required herein, the executive board may elect to distribute a summary of the budgets and review of the financial statement to all unit's owners with a written notice that the operating budget and reserve budget is available at the business office of the association or at another suitable location, and that copies will be provided upon request and at the expense of the association.

so long as the encroachment is not in violation of any reasonable limits on the use of any easement created by the instrument. The declaration may provide, in reasonable limits on the use of any easement created by the instrument, common elements, and limitations on such encroachments; or monuments as boundaries. If the declaration is in violation of the governing law within the jurisdiction where the project is located, the existing physical boundaries of a unit or a common element or a boundary reconstructed in accordance with the original plans thereof become its boundaries rather than the metes and bounds expressed in the deed, plat or map, regardless of settling or lateral accretion of the building, or minor encroachments between boundaries shown on the deed or in the deed and the building. The declaration may provide reasonable limits on the extent of any such revised boundaries created by the overlap of common elements, and limitations on elements resulting from encroachments.

Right of first refusal. The right of an owner to sell, transfer, or convey his or her unit in a condominium shall not be subject to a right of first refusal or similar restriction if the declaration or similar instrument is recorded on or after December 1, 1976. If the declaration was recorded prior to December 1, 1976, a right of first refusal must comply with § 36.4350(b)(5)(ii); *Provided, however,* that restrictions on the basis of age or sex established by a State, or local government as part of a program for preference to low- and moderate-income purchasers shall be governed by § 36.4350(b)(5)(iv).

8 U.S.C. 3703(c)

Age restrictions. Except as provided in this paragraph, there shall be no restriction or limitation on a unit owner's right to lease her unit. The following restrictions are acceptable:

(1) Leases that have a maximum term of up to 1 year,

(ii) Age restrictions or restrictions imposed by State or local housing authorities which are allowable under § 36.4308(e) or § 36.4350(b)(5)(iv).

(d) **Rights of action.** The owners' association and any aggrieved unit owner should be granted a right of action against unit owners for failure to comply with the provisions of the declaration, bylaws, or equivalent documents, or with decisions of the owners' association which are made pursuant to authority granted the owners' association in such documents. Unit owners should have similar rights of action against the owners' association.

(Authority: 38 U.S.C. 501, 3703(c)(1), 3710(a)(6))

[44 FR 47339, Aug. 13, 1979, as amended at 47 FR 49394, Nov. 1, 1982; 50 FR 5979, Feb. 13, 1985]

§ 36.4359 Miscellaneous legal requirements.

(a) **Declarant transfer of control of owners' association—(1) Standards for transfer of control.** The declarant shall relinquish all special rights, expressed or implied, through which the declarant may directly or indirectly control, direct, modify, or veto any action of the owners' association, its executive board, or a majority of unit owners, and control of the owners' association shall pass to the owners of units within the project, not later than the earlier of the following:

(i) 120 days after the date by which 75 percent of the units have been conveyed to unit purchasers, or

(ii) The last date of a specified period of time following the first conveyance to a unit purchaser; such period of time is to be reasonable for the particular project. The maximum acceptable period usually will be from 3 to 5 years for single-phased condominium regimes and 5 to 7 years for expandable condominiums.

(iii) On a case basis, modifications or variations of the requirements of paragraphs (a)(1)(i) and (ii) of this section will be acceptable, particularly in circumstances involving very large condominium developments.

(2) **Declarant's unit votes after transfer of control.** The requirements

of paragraph (a)(1) of this section shall not affect the declarant's rights, as a unit owner, to exercise the votes allocated to units which declarant owns.

(3) **Unit owners' participation in management.** Declarants should provide for and foster early participation of unit owners in the management of the project.

(b) **Taxes.** Unless otherwise provided by State law, real estate taxes must be assessed and be lienable only against the individual units, together with their undivided interests in the common elements, and not against the multifamily structure. The owners' association usually owns no real estate, so it has no obligation concerning ad valorem taxes. Unless taxes are assessed only against the individual units, a tax lien could amount to more than the value of any particular unit in the structure.

(c) [Reserved]

(d) **Policies for bylaws.** The bylaws of the condominium should be sufficiently detailed for the successful governance of the condominium by unit owners. Among other things, such documents should contain adequate provisions for the election and removal of directors and officers.

(e) **Insurance and related requirements—(1) Insurance.** The holder shall require hazard and flood insurance policies to be procured and maintained in accordance with § 36.4326. Because of the nature of condominiums, additional types of insurance coverages—such as tort liability insurance for injuries sustained on the premises, personal liability insurance for directors and officers managing association affairs, boiler insurance, etc.—should be considered in appropriate circumstances.

(2) **Fidelity bond coverage.** The securing of appropriate fidelity bond coverage is recommended but not required, for any person or entity handling funds of the owners' association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the association as an obligee, and be written in an amount equal to at least the estimated maximum of funds, including reserve funds, in the custody of the

owners' association or the management agent at any given time during the term of the fidelity bond. However, the bond should not be less than a sum equal to 3 months' aggregate assessments on all units plus reserve funds.

(Authority: 38 U.S.C. 501, 3703(c)(1), 3710(a)(6))

[44 FR 47340, Aug. 13, 1979, as amended at 50 FR 5979, Feb. 13, 1985]

§ 36.4360 Documentation and related requirements—flexible condominiums and condominiums with offsite facilities.

(a) **Expandable condominiums.** The following policies apply to condominium regimes which may be increased in size by the declarant:

(1) The declarant's right to expand the regime must be fully described in the declaration. The declaration must contain provisions adequate to ensure that future improvements to the condominium will be consistent with initial improvements in terms of quality of construction. The declarant must build each phase in accordance with an approved general plan for the total development (§ 36.4357(d)(2)) supported by detailed plats and plans of each phase prior to the construction of the particular phase.

(2) The reservation of a right to expand the condominium regime, the method of expansion and the result of an expansion must not affect the statutory validity of the condominium regime or the validity of title to the units.

(3) The declaration, or equivalent document must contain a covenant that the condominium regime may not be amended or merged with a successor condominium regime without prior written approval of the Secretary. The declarant may have the proposed legal documentation to accomplish the merger reviewed prior to recordation. However, the Secretary's final approval of the merger will not be granted until the successor condominium has been legally established and construction completed. The declarant may add phases to an expandable condominium regime without the prior approval of the Secretary if an approved

M E M O R A N D U M

TO: Bob Sader, Chairman
Assembly Judiciary Committee

FROM: Andy Maline

DATE: May 20, 1993

RE: AB 612

Part II, Applicability, Sections 116.1202, 116.1203, 116.4101, 116.41035 would exempt all but large developments. All Condominium projects are governed by NRS 116. The small developer would be subject to NRS 116 where Common Interest Communities are created in Master Planned Communities. Categorically, small builders may have an advantage over large developers if they are not governed by this Act. The consumer will not have the protection of this Act in many purchases.

It appears that City and County approved subdivisions will be governed by 278 where five (5) or more units of division of land are made. In addition, above the threshold of fifty units or an annual budget of \$150,000 NRS applies.

NRS 116.2109 (7) requires a general schematic plan. This is vague, including the requirement to revise it regularly under certain circumstances. This provision ought to either be defined or deleted.

Part IV, Section 4110 requires deposits to be held by "a licensed title company, or institution whose accounts are insured by a governmental agency or instrumentality..." A list of examples is attached that favor amendment to permit more flexibility for the developer.

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AA EXHIBIT J

MAY 14, 1993

TO: ANDY MALINE

FROM: BARBARA BUSH

PER YOUR REQUEST THE FOLLOWING ARE EXAMPLES WHY BUYERS MONEY SHOULD GO DIRECTLY TO THE BUILDER RATHER THAN ESCROW.

1. Buyer wants options and/or upgrades to his home. These are non-refundable monies to the buyer and the builder must pay the sub-contractors for their work very early in construction. Items can consist of such things as soft water loop, ceiling fan outlets, additional cable connections, mirrored wardrobe, upgraded cabinets, spa tub.
2. Buyer requests that the builder make structural changes to the home, which require up front monies that, depending on the type of work being done, may be partially refundable to the buyer at close of escrow. If the buyer fails to close escrow, monies given by the buyer are used to restore the home to original condition per architectural plan. An example of this is elimination of closets, elimination of doors.
3. Buyer happens to like a certain lot and happens to prefer a different home other than the one the builder has planned for that lot. The builder may have to obtain a new permit, and perhaps the plan the buyer has selected is not in the best interest of the Builder should the buyer not close escrow and is in the position of having to resell the house. Such a change generally requires a non-refundable deposit.
4. Buyer contracts that his purchase will be "all cash" but doesn't have cash when home is finished and is ready to close. Builder is not aware of buyers inability to close until house is released by construction to begin flooring.
5. Buyer's close is contingent upon close of existing home. Buyer wishes carpet installed prior to receipt of Settlement Statement on previous home so that he can move directly from his

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old residence to the new home. Risk becomes that of the buyer and we require that our standard flooring costs plus any upgraded flooring be paid by the buyer prior to installation. Standard procedure would be that carpet installation begins when the Settlement Statement arrives. This ensures that the condition to close has been met.

6. Buyer has an approved loan and at the last minute refuses to close escrow and comply with conditions of the firm approval even though they have been known by the buyer for a long period of time.

conditions are abated; eliminating the requirement that certain mobile homes bear certificates and labels of compliance; and providing other matters properly relating thereto.”

Assemblyman Porter moved the adoption of the amendment.

Remarks by Assemblyman Porter.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 612.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 1079.

Amend section, page 1, line 2, by deleting “7,” and inserting “8,”

Amend sec. 2, page 1, line 6, after “officers” by inserting: “of the association”.

Amend sec. 2, page 1, by deleting lines 8 and 9 and inserting: “later than the earlier of:

(a) Sixty days after conveyance of 75 percent of the units that may be created to units’ owners other than a declarant, except that if a majority of the units are divided into time shares, the percentage is 80 percent;

(b) Five years after all declarants have ceased to offer units for sale in the ordinary course of business; or

(c) Five years after any right to add new units was last exercised.
A declarant may voluntarily”.

Amend sec. 5, page 3, line 16, by deleting “of” and inserting “on”.

Amend sec. 6, page 3, by deleting lines 27 through 29.

Amend sec. 6, page 3, line 30, by deleting “3.” and inserting “2.”

Amend sec. 6, page 3, line 33, by deleting “4.” and inserting “3.”

Amend sec. 7, page 3, line 44, by deleting “otherwise” and inserting “and”.

Amend sec. 7, page 4, by deleting lines 1 and 2 and inserting:

“(b) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association,”.

Amend the bill as a whole by deleting sec. 8 and adding a new section designated sec. 8, following sec. 7, to read as follows:

“Sec. 8. 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 lien holder against all of the units in the common-interest community at the time the judgment was entered. No other property of a unit 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 unit owner of an affected unit may pay to the lien holder the amount of the lien attributable to his unit, and the lien holder, 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 unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit 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 or not 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."

Amend the bill as a whole by deleting sec. 10 and inserting:

"Sec. 10. (Deleted by amendment.)"

Amend the bill as a whole by deleting sec. 12 and inserting:

"Sec. 12. (Deleted by amendment.)"

Amend sec. 13, page 5, line 5, by deleting "116.1202,"

Amend sec. 13, page 5, line 11, by deleting "116.1202,"

Amend the bill as a whole by deleting sections 14 and 15 and inserting:

"Secs. 14 and 15. (Deleted by amendment.)"

Amend sec. 16, page 5, line 48, by deleting "If" and inserting: "[If

1. Except as otherwise provided in subsection 2, if"

Amend sec. 16, page 6, by deleting lines 1 through 8 and inserting:

"[1.] (a) Contains no more than 12 units and is not subject to any developmental rights; or

[2.] (b) Provides, in its declaration, that the annual average liability for common expenses of all units restricted to residential purposes, exclusive of optional users' fees and any insurance premiums paid by the association, may not exceed \$500 [, as adjusted pursuant to NRS 116.1115,] per unit,"

Amend sec. 16, page 6, by inserting between lines 10 and 11:

"2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, NRS 116.3101 to 116.3119, inclusive, and 116.11031 to 116.110393, inclusive, to the extent necessary in construing any of those sections, apply to a residential common-interest community containing more than six units."

Amend the bill as a whole by deleting sections 18 through 20 and inserting:

“Secs. 18-20. (Deleted by amendment.)”.

Amend sec. 21, pages 7 and 8, by deleting lines 33 through 46 on page 7 and lines 1 through 40 on page 8 and inserting:

“(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 or plans, 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 [(j)] (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 (NRS 116.11034) and other special declarant’s rights (NRS 116.110385) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time 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 [recording data] *file number and book or other information to show where easements and licenses are recorded 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 and 116.2116 and subsection 4 of NRS 116.3103.

2. The declaration may contain any other matters the declarant considers appropriate.”

Amend sec. 23, pages 9 through 11, by deleting lines 39 through 46 on page 9, lines 1 through 48 on page 10 and lines 1 through 7 on page 11 and inserting: “required for all common-interest communities except cooperatives. [Separate plats and plans are not required by this chapter if all the information required by this section is contained in either a plat or plan.] Each plat and plan must be clear and legible and contain a certification that the plat or plan 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) [The approximate location and approximate dimensions of all real estate not subject to developmental rights, or subject only to the developmental right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(c) A legally] *A sufficient description of [any] the real estate ; [subject to developmental rights, labeled to identify the rights applicable to each parcel;*

(d)] *(c) The extent of any encroachments by or upon any portion of the [common-interest community;*

(e) *To the extent feasible, a legally sufficient description of all easements serving or burdening] 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;*

[(f)] *(e) The location and dimensions of any vertical unit boundaries [not shown or projected on plans recorded pursuant to subsection 4] and that unit’s identifying number;*

[(g)] *(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection 4 and that unit’s identifying number;*

[(h) *A legally sufficient description of any real estate in which the units’ owners will own only an estate for years, labeled as “leasehold real estate”;*

(i) *The distance between noncontiguous parcels of real estate comprising the common-interest community;*

(j)] *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 . [; and*

(k) In the case of real estate not subject to developmental rights, all other matters customarily shown on land surveys.

3. A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common-interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

4.] 3. To the extent not shown or projected on the plats, plans of the units must show or project [:

(a) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any] *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.

[5.] 4. Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans [.] *of the units.*

5. *A declarant shall also provide a plan of development for the common-interest community with its initial phase of development. The declarant shall revise the plan of development with each subsequent phase. The plan of development may show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common-interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT." The plan of development must also show or project:*

(a) *The location and dimensions of all real estate not subject to developmental rights, or subject only to the developmental right to withdraw, and the location and dimensions of all existing improvements within that real estate;*

(b) *A sufficient description of any real estate subject to developmental rights, labeled to identify the rights applicable to each parcel; and*

(c) *A sufficient description of any real estate in which the units' owners will own only an estate for years, labeled as "leasehold real estate."*

6. Upon exercising any developmental right, the declarant shall record [either] *new or amended* plats [and plans] necessary to conform to the requirements of [subsections 1, 2 and 4 or new certifications of plats and plans previously recorded if those plats and] *subsection 2 and provide new or amended plans of the units and a new or amended plan of development or new certifications of those plans if the plans otherwise conform to the requirements of [those subsections.*

7. A declarant shall provide a general schematic plan of the planned unit development comprising its common-interest community with its initial phase of development. The declarant shall revise the plan with each subsequent phase.

8.] *subsections 3 and 5.*

7. Each plat must be certified by an independent professional land surveyor. [Each plan] *The plans of the units* must be certified by an independent professional engineer or architect. *If the plan of development is not certified by an independent professional land surveyor or an independent professional engineer or architect, it must be acknowledged by the declarant.*"

Amend sec. 24, page 11, line 9, by deleting "1."

Amend sec. 24, page 11, by deleting line 11 and inserting: "community only if the declaration so provides . [and specifies the rights of a"]

Amend sec. 24, page 11, line 17, by inserting a closed bracket after "declaration."

Amend sec. 24, page 11, by deleting line 21.

Amend sec. 25, page 11, by deleting lines 43 through 48 and inserting: "of this chapter, no amendment may [create or increase special declarant's rights, increase the number of units,] 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 the units' owners affected and the consent of a majority of the owners of the remaining units."

Amend the bill as whole by deleting sections 28 and 29 and inserting:

"Secs. 28 and 29. (Deleted by amendment.)"

Amend the bill as a whole by deleting sec. 30 and inserting a new section, designated sec. 30, following sec. 29, to read as follows:

"Sec. 30. NRS 116.2122 is hereby amended to read as follows:

116.2122 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 [(e)] (d) of that subsection."

Amend sec. 37, page 21, lines 7 and 8, by deleting "otherwise" and inserting "and"

Amend sec. 41, page 23, by deleting lines 21 through 24 and inserting:

"(g) Disposition of a unit in a planned community in which the declaration limits the [maximum] *average* annual assessment of any unit to not more than [\$300, as adjusted pursuant to NRS 116.1115] *\$500 and which contains no more than 35 units* if:"

Amend the bill as a whole by adding a new section, designated sec. 41.5, following sec. 41, to read as follows:

"Sec. 41.5. NRS 116.4102 is hereby amended to read as follows:

116.4102 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 preparation of all or a part of the public offering statement to a successor declarant (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 [person who prepared all or a part of the public offering statement] *declarant or his 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 prepared. If a declarant or dealer did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless he 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.*"

Amend sec. 42, page 24, by deleting line 16 and inserting: "inspected the unit, [that] the purchaser may cancel, by".

Amend sec. 42, page 24, line 17, by deleting "the contract" and inserting: "[the] his contract".

Amend sec. 43, page 24, by deleting lines 33 through 35 and inserting: "116.41035 if a common-interest community composed of not more than 12 units is not subject to any developmental rights and no power is".

Amend sec. 44, page 24, lines 46 and 47, by deleting: "[,] or a model of the unit," and inserting ",".

Amend sec. 44, page 25, line 2, after "the contract" by inserting "for purchase".

Amend sec. 44, page 25, by deleting line 16 and inserting: "mon-interest community.] to actual damages, rescission or other relief, but if the purchaser has accepted a conveyance of the unit, he is not entitled to rescission."

Amend sec. 45, page 25, by deleting lines 39 through 42 and inserting: "whichever first occurs.] *If the association fails to furnish the certificate within the 10 days allowed by subsection 2, the seller is not liable for the delinquent assessment.*"

Amend the bill as a whole by deleting sec. 46 and inserting a new section, designated sec. 46, to read as follows:

"Sec. 46. NRS 116.4110 is hereby amended to read as follows:
116.4110 [Any]

1. *Except as otherwise provided in subsection 2, 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:*

[1.] (a) Delivered to the declarant at closing;

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

[3.] (c) 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.*"

Amend sec. 48, page 26, line 27, by deleting the open bracket.

Amend sec. 48, page 26, line 28, by deleting "as" and inserting "[as".

Amend the bill as a whole by deleting sections 49 through 57 and renumbering sec. 58 as sec. 49.

Amend sec. 58, page 30, line 19, by deleting: "116.1208 and 116.3111" and inserting: "116.110365 and 116.11037".

Amend the text of repealed sections by deleting the text of NRS 116.1208 and 116.3111 and adding the text of NRS 116.110365 and 116.11037.

Amend the title of the bill by deleting the second and third lines and inserting: "ship Act; and providing other matters properly".

Amend the summary of the bill to read as follows:

"Summary—Revises Uniform Common-Interest Ownership Act. (BDR 10-479)".

Assemblyman Sader moved the adoption of the amendment.

Remarks by Assemblyman Sader.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 691.

Bill read second time.

The following amendment was proposed by the Committee on Commerce:

Amendment No. 799.

Amend section 1, page 1, by deleting line 3 and inserting: "chapter 630, 630A or 633 of NRS, dentist, licensed nurse, dispens-".

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT A.B. 612

ASSEMBLY BILL No. 612—COMMITTEE ON JUDICIARY

MAY 11, 1993

Referred to Committee on Judiciary

SUMMARY—Revises Uniform Common-Interest Ownership Act. (BDR 10-479)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to property; making various changes in the Uniform Common-Interest Ownership Act; and providing other matters properly relating thereto.

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

1 **Section 1.** Chapter 116 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 2 to 8, inclusive, of this act.

3 **Sec. 2.** 1. *Except as otherwise provided in subsection 2, the declaration*
4 *may provide for a period of declarant's control of the association, during*
5 *which a declarant, or persons designated by him, may appoint and remove*
6 *the officers of the association and members of the executive board. Regardless*
7 *of the period provided in the declaration, a period of declarant's control*
8 *terminates no later than the earlier of:*

9 (a) *Sixty days after conveyance of 75 percent of the units that may be*
10 *created to units' owners other than a declarant, except that if a majority of*
11 *the units are divided into time shares, the percentage is 80 percent;*

12 (b) *Five years after all declarants have ceased to offer units for sale in the*
13 *ordinary course of business; or*

14 (c) *Five years after any right to add new units was last exercised.*
15 *A declarant may voluntarily surrender the right to appoint and remove*
16 *officers and members of the executive board before termination of that period,*
17 *but in that event the declarant may require, for the duration of the period of*
18 *declarant's control, that specified actions of the association or executive*
19 *board, as described in a recorded instrument executed by the declarant, be*
20 *approved by the declarant before they become effective.*

21 2. *Not later than 60 days after conveyance of 25 percent of the units that*
22 *may be created to units' owners other than a declarant, at least one member*
23 *and not less than 25 percent of the members of the executive board must be*
24 *elected by units' owners other than the declarant. Not later than 60 days after*
25 *conveyance of 50 percent of the units that may be created to units' owners*
26 *other than a declarant, not less than 33 1/3 percent of the members of the*
27 *executive board must be elected by units' owners other than the declarant.*

1 **Sec. 3.** 1. Except as otherwise provided in subsection 5 of NRS 116.212,
 2 not later than the termination of any period of declarant's control, the units'
 3 owners shall elect an executive board of at least three members, at least a
 4 majority of whom must be units' owners. The executive board shall elect
 5 officers. The members and officers of the executive board shall take office
 6 upon election.

7 2. An officer, employee, agent or director of a corporate owner of a unit, a
 8 trustee or designated beneficiary of a trust that owns a unit, a partner in a
 9 partnership that owns a unit, and a fiduciary of an estate that owns a unit
 10 be an officer or member of the executive board. In all events where the person
 11 serving or offering to serve as an officer or member of the executive board is
 12 not the record owner, he shall file proof of authority in the records of the
 13 association.

14 **Sec. 4.** 1. Notwithstanding any provision of the declaration or bylaws to
 15 the contrary, the units' owners, by a two-thirds vote of all persons present
 16 and entitled to vote at any meeting of the units' owners at which a quorum is
 17 present, may remove any member of the executive board with or without
 18 cause, other than a member appointed by the declarant.

19 2. If a member of an executive board is sued for liability for actions
 20 undertaken in his role as a member of the board, the association shall
 21 indemnify him for his losses or claims, and undertake all costs of defense
 22 unless it is proven that he acted with willful or wanton misfeasance or with
 23 gross negligence. After such proof the association is no longer liable for the
 24 cost of defense, and may recover costs already expended from the member of
 25 the executive board who so acted. Members of the executive board are not
 26 personally liable to the victims of crimes occurring on the property. Punitive
 27 damages may not be recovered against the association, but may be recovered
 28 from persons whose activity gave rise to the damages.

29 **Sec. 5.** Within 30 days after units' owners other than the declarant meet
 30 elect a majority of the members of the executive board, the declarant shall
 31 deliver to the association all property of the units' owners and of the associa-
 32 tion held by or controlled by him, including:

33 1. The original or a certified copy of the recorded declaration as amended
 34 the association's articles of incorporation if the association is incorporated,
 35 bylaws, minute books and other books and records of the association and its
 36 rules or regulations which may have been adopted.

37 2. An accounting for money of the association and financial statements
 38 from the date the association received money to the date the period of the
 39 declarant's control ends. The financial statements must fairly and accurately
 40 report the association's financial condition prepared in accordance with
 41 generally accepted accounting principles.

42 3. The association's money or control thereof.

43 4. All of the declarant's tangible personal property that has been repre-
 44 sented by the declarant as property of the association or, unless the declarant
 45 has disclosed in the public offering statement that all such personal property
 46 used in the common-interest community will remain the declarant's property,
 47 all of the declarant's tangible personal property that is necessary for, and be

1 been used exclusively in, the operation and enjoyment of the common ele-
 2 ments, and inventories of these properties.

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

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

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

11 8. Any renewable permits and approvals issued by governmental bodies
 12 applicable to the common-interest community which are in force and any
 13 other permits and approvals so issued and applicable which are required by
 14 law to be kept on the premises of the community.

15 9. Written warranties of the contractor, subcontractors, suppliers and
 16 manufacturers that are still effective.

17 10. A roster of owners and mortgagees of units and their addresses and
 18 telephone numbers, if known, as shown on the declarant's records.

19 11. Contracts of employment in which the association is a contracting
 20 party.

21 12. Any contract for service in which the association is a contracting party
 22 or in which the association or the units' owners have any obligation to pay a
 23 fee to the persons performing the services.

24 **Sec. 6.** The association or other person conducting the sale shall also
 25 mail, within 10 days after the notice of default and election to sell is recorded,
 26 a copy of the notice by first-class mail to:

27 1. Each person who has requested notice pursuant to NRS 107.090 or
 28 116.31168;

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

32 3. A purchaser of the unit, if the unit's owner has notified the association,
 33 30 days before the recordation of the notice, that the unit is the subject of a
 34 contract of sale and the association has been requested to furnish the certifi-
 35 cate required by subsection 2 of NRS 116.4109.

36 **Sec. 7.** The association or other person conducting the sale shall also,
 37 after the expiration of the 60 days and before selling the unit:

38 1. Give notice of the time and place of the sale in the manner and for a
 39 time not less than that required by law for the sale of real property upon
 40 execution, except that a copy of the notice of sale must be mailed, on or
 41 before the date of first publication or posting, by certified or registered mail,
 42 return receipt requested, to the unit's owner or his successor in interest at his
 43 address if known, and to the address of the unit.

44 2. Mail, on or before the date of first publication or posting, a copy of the
 45 notice by first-class mail to:

46 (a) Each person entitled to receive a copy of the notice of default and
 47 election to sell notice under section 6 of this act; and

1 (b) The holder of a recorded security interest or the purchaser of the unit
2 if either of them has notified the association, before the mailing of the notice
3 of sale, of the existence of the security interest, lease or contract of sale, is
4 applicable.

5 **Sec. 8. 1. In a condominium or planned community:**

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

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

16 (c) Whether perfected before or after the creation of the common-inter-
17 est community, if a lien, other than a deed of trust or mortgage, including a
18 judgment lien or lien attributable to work performed or materials supplied
19 before creation of the common-interest community, becomes effective against
20 two or more units, the unit owner of an affected unit may pay to the lien
21 holder the amount of the lien attributable to his unit, and the lien holder
22 upon receipt of payment, promptly shall deliver a release of the lien covering
23 that unit. The amount of the payment must be proportionate to the ratio which
24 that unit owner's common expense liability bears to the common expense
25 liabilities of all unit owners whose units are subject to the lien. After payment
26 the association may not assess or have a lien against that unit owner's unit for
27 any portion of the common expenses incurred in connection with that lien.

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

31 **2. In a cooperative:**

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

37 (b) Whether or not an owner's unit is subject to the claims of the associa-
38 tion's creditors, no other property of an owner is subject to those claims

39 **Sec. 9. NRS 116.110318 is hereby amended to read as follows:**
40 116.110318 "Common elements" means:

41 1. In a condominium or cooperative, all portions of the common-interest
42 community other than the units, including easements in favor of units or the
43 common elements over other units; and

44 2. In a planned community, any real estate within [a] the planned commu-
45 nity owned or leased by the association, other than a unit []; and

46 3. All real and personal property owned or leased by the association.]

47 **Sec. 10. (Deleted by amendment.)**

48 **Sec. 11. NRS 116.110348 is hereby amended to read as follows:**

1 116.110348 "Identifying number" means a symbol [or address that] ,
2 address or legally sufficient description of real estate which identifies only
3 one unit in a common-interest community.

4 **Sec. 12. (Deleted by amendment.)**

5 **Sec. 13. NRS 116.1115 is hereby amended to read as follows:**

6 116.1115 1. From time to time the dollar amounts specified in NRS
7 116.1203 , [and] 116.4101 and 116.41035 must change, as provided in
8 subsections 2 and 3, according to and to the extent of changes in the Con-
9 sumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City
10 Average, All Items [1967] 1982-1984 = 100, compiled by the Bureau of
11 Labor Statistics, United States Department of Labor, (the "Index"). The
12 Index for December [1982-1984] 1990 is the Reference Base Index.

13 2. The dollar amounts specified in NRS 116.1203 [and 116.4101,] ,
14 116.4101 and 116.41035, and any amount stated in the declaration pursuant
15 to those sections, must change on July 1 of each year if the percentage of
16 change, calculated to the nearest whole percentage point, between the Index
17 at the end of the preceding year and the Reference Base Index is 10 percent or
18 more, but:

19 (a) The portion of the percentage change in the Index in excess of a
20 multiple of 10 percent must be disregarded and the dollar amounts must
21 change only in multiples of 10 percent of the amounts appearing in this
22 chapter on the date of enactment;

23 (b) The dollar amounts must not change if the amounts required by this
24 section are those currently in effect pursuant to this chapter as a result of
25 earlier application of this section; and

26 (c) In no event may the dollar amounts be reduced below the amounts
27 appearing in this chapter on the date of enactment.

28 3. If the Index is revised after December [1979,] 1990, the percentage of
29 change pursuant to this section must be calculated on the basis of the revised
30 Index. If the revision of the Index changes the Reference Base Index, a
31 revised Reference Base Index must be determined by multiplying the Refer-
32 ence Base Index then applicable by the rebasing factor furnished by the
33 Bureau of Labor Statistics. If the Index is superseded, the index referred to in
34 this section is the one represented by the Bureau of Labor Statistics as
35 reflecting most accurately changes in the purchasing power of the dollar for
36 consumers.

37 **Secs. 14 and 15. (Deleted by amendment.)**

38 **Sec. 16. NRS 116.1203 is hereby amended to read as follows:**

39 116.1203 [If]

40 1. Except as otherwise provided in subsection 2, if a planned community:

41 [1.] (a) Contains no more than 12 units and is not subject to any develop-
42 mental rights; or

43 [2.] (b) Provides, in its declaration, that the annual average liability for
44 common expenses of all units restricted to residential purposes, exclusive of
45 optional users' fees and any insurance premiums paid by the association, may
46 not exceed \$500 [, as adjusted pursuant to NRS 116.1115,] per unit,
47 it is subject only to NRS 116.1105, 116.1106 and 116.1107 unless the
48 declaration provides that this entire chapter is applicable.

1 2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, 116.31139, 116.3119, inclusive, and 116.11031 to 116.110393, inclusive, to the extent necessary in construing any of those sections, apply to a residential common-interest community containing more than six units.

5 Sec. 17. NRS 116.1204 is hereby amended to read as follows:
6 116.1204 Except as otherwise provided in NRS 116.1205, [NRS 116.1105, 116.1106, 116.1107, 116.2103, 116.2104 and 116.2105] paragraphs (a) to (f), inclusive, and (k) to (r), inclusive, of subsection 1 of NRS 116.3102, NRS [116.3111,] 116.3116 to 116.31168, inclusive, 116.3118, 116.4109 and 116.4117, and [NRS] 116.11031 to 116.110393, inclusive, to the extent necessary in construing any of those sections, apply to all common-interest communities created in this state before January 1, 1992, but those sections apply only with respect to events and circumstances occurring on or after January 1, 1992, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of those common-interest communities.

17 Secs. 18-20. (Deleted by amendment.)

18 Sec. 21. NRS 116.2105 is hereby amended to read as follows:
19 116.2105 1. The declaration must contain:

- 20 (a) The names of the common-interest community and the association, a statement that the common-interest community is either a condominium, cooperative or planned community;
- 21 (b) The name of every county in which any part of the common-interest community is situated;
- 22 (c) A [legally] sufficient description of the real estate included in the common-interest community;
- 23 (d) A statement of the maximum number of units that the declarant reserves the right to create;
- 24 (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 or plans, 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;
- 25 (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;
- 26 (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;
- 27 (h) A description of any developmental rights (NRS 116.11034) and other special declarant's rights (NRS 116.110385) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time within which each of those rights must be exercised;

1 (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:

2 (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

3 (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;

4 (j) Any other conditions or limitations under which the rights described in paragraph (h) may be exercised or will lapse;

5 (k) An allocation to each unit of the allocated interests in the manner described in NRS 116.2107;

- 6 (l) Any restrictions:
 - 7 (1) On use, occupancy and alienation of the units; and
 - 8 (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;

9 (m) The [recording data] file number and book or other information to show where easements and licenses are recorded 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

10 (n) All matters required by NRS 116.2106 to 116.2109, inclusive, 116.2115 and 116.2116 and subsection 4 of NRS 116.3103.

11 2. The declaration may contain any other matters the declarant considers appropriate.

12 Sec. 22. NRS 116.2107 is hereby amended to read as follows:
13 116.2107 1. The declaration must allocate to each unit:

- 14 (a) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association (NRS 116.3115) and a portion of the votes in the association;
- 15 (b) In a cooperative, a proportionate ownership in the association, a fraction or percentage of the common expenses of the association (NRS 116.3115) and a portion of the votes in the association; and
- 16 (c) In a planned community, a fraction or percentage of the common expenses of the association (NRS 116.3115) and a portion of the votes in the association.

17 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.

18 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.

1 4. The declaration may provide:

2 (a) That different allocations of votes are made to the units on partic-
3 matters specified in the declaration;

4 (b) For cumulative voting only for the purpose of electing members of a
5 executive board; and

6 (c) For class voting on specified issues affecting the class if necessary;
7 protect valid interests of the class.

8 Except as otherwise provided in [NRS 116.3103,] *section 2 of this act*
9 declarant may not utilize cumulative or class voting for the purpose of
10 evading any limitation imposed on declarants by this chapter nor may units
11 constitute a class because they are owned by a declarant.

12 5. Except for minor variations because of rounding, the sum of the liabilities
13 for common expenses and, in a condominium, the sum of the undivided
14 interests in the common elements allocated at any time to all the units must
15 each equal one if stated as a fraction or 100 percent if stated as a percentage.
16 In the event of discrepancy between an allocated interest and the result
17 derived from application of the pertinent formula, the allocated interest
18 prevails.

19 6. In a condominium, the common elements are not subject to partition
20 and any purported conveyance, encumbrance, judicial sale or other voluntary
21 or involuntary transfer of an undivided interest in the common elements made
22 without the unit to which that interest is allocated is void.

23 7. In a cooperative, any purported conveyance, encumbrance, judicial sale
24 or other voluntary or involuntary transfer of an ownership interest in the
25 association made without the possessory interest in the unit to which the
26 interest is related is void.

27 **Sec. 23.** NRS 116.2109 is hereby amended to read as follows:

28 116.2109 1. Plats and plans are a part of the declaration, and
29 required for all common-interest communities except cooperatives. [Separate
30 plats and plans are not required by this chapter if all the information required
31 by this section is contained in either a plat or plan.] Each plat and plan must
32 be clear and legible and contain a certification that the plat or plan contains all
33 information required by this section.

34 2. Each plat must *comply with the provisions of chapter 278 of NRS*
35 *and* show:

36 (a) The name and a survey of the area which is the subject of the plat;

37 (b) [The approximate location and approximate dimensions of all real
38 estate not subject to developmental rights, or subject only to the developmental
39 right to withdraw, and the location and dimensions of all existing improve-
40 ments within that real estate;

41 (c) A legally sufficient description of [any] the real estate; [subject to
42 developmental rights, labeled to identify the rights applicable to each parcel

43 (d)] (c) The extent of any encroachments by or upon any portion of the
44 [common-interest community;

45 (e) To the extent feasible, a legally sufficient description of all easements
46 [serving or burdening] *property which is the subject of the plat;*

1 (d) *The location and dimensions of all easements having a specific location*
2 *and dimension which serve or burden any portion of the common-interest*
3 *community;*

4 [(f)] (e) The location and dimensions of any vertical unit boundaries [not
5 shown or projected on plans recorded pursuant to subsection 4] and that
6 unit's identifying number;

7 [(g)] (f) The location with reference to an established datum of any hori-
8 zontal unit boundaries not shown or projected on plans recorded pursuant to
9 subsection 4 and that unit's identifying number;

10 [(h)] A legally sufficient description of any real estate in which the units'
11 owners will own only an estate for years, labeled as "leasehold real estate";

12 (i) The distance between noncontiguous parcels of real estate comprising
13 the common-interest community;

14 (j) *and*

15 (g) The location and dimensions of limited common elements, including
16 porches, balconies and patios, other than parking spaces and the other limited
17 common elements described in subsections 2 and 4 of NRS 116.2102. [; and

18 (k) In the case of real estate not subject to developmental rights, all other
19 matters customarily shown on land surveys.

20 3. A plat may also show the intended location and dimensions of any
21 contemplated improvement to be constructed anywhere within the common-
22 interest community. Any contemplated improvement shown must be labeled
23 either "MUST BE BUILT" or "NEED NOT BE BUILT."

24 4.] 3. To the extent not shown or projected on the plats, plans of the units
25 must show or project [;

26 (a) The location and dimensions of the vertical boundaries of each unit,
27 and that unit's identifying number;

28 (b) Any horizontal unit boundaries, with reference to an established datum,
29 and that unit's identifying number; and

30 (c) Any] *any* units in which the declarant has reserved the right to create
31 additional units or common elements (paragraph (h) of subsection 1 of NRS
32 116.2105), identified appropriately.

33 [5.] 4. Unless the declaration provides otherwise, the horizontal bounda-
34 ries of part of a unit located outside a building have the same elevation as the
35 horizontal boundaries of the inside part and need not be depicted on the plats
36 and plans [.] *of the units.*

37 5. *A declarant shall also provide a plan of development for the common-*
38 *interest community with its initial phase of development. The declarant shall*
39 *revise the plan of development with each subsequent phase. The plan of*
40 *development may show the intended location and dimensions of any contem-*
41 *plated improvement to be constructed anywhere within the common-interest*
42 *community. Any contemplated improvement shown must be labeled either*
43 *"MUST BE BUILT" or "NEED NOT BE BUILT." The plan of development*
44 *must also show or project:*

45 (a) *The location and dimensions of all real estate not subject to develop-*
46 *mental rights, or subject only to the developmental right to withdraw, and the*
47 *location and dimensions of all existing improvements within that real estate;*

1 (b) A sufficient description of any real estate subject to develop-
 2 rights, labeled to identify the rights applicable to each parcel; and
 3 (c) A sufficient description of any real estate in which the units' owners
 4 own only an estate for years, labeled as "leasehold real estate."

5 6. Upon exercising any developmental right, the declarant shall rec-
 6 [either] new or amended plats [and plans] necessary to conform to
 7 requirements of [subsections 1, 2 and 4 or new certifications of plats
 8 plans previously recorded if those plats and] subsection 2 and provide ne-
 9 amended plans of the units and a new or amended plan of development or
 10 certifications of those plans if the plans otherwise conform to the req-
 11 uirements of [those subsections].

12 7. A declarant shall provide a general schematic plan of the planned
 13 development comprising its common-interest community with its initial
 14 of development. The declarant shall revise the plan with each subsec-
 15 phase.

16 8.] subsections 3 and 5.

17 7. Each plat must be certified by an independent professional land
 18 veyor. [Each plan] The plans of the units must be certified by an indepen-
 19 professional engineer or architect. If the plan of development is not cert-
 20 by an independent professional land surveyor or an independent profes-
 21 sional engineer or architect, it must be acknowledged by the declarant.

22 Sec. 24. NRS 116.2115 is hereby amended to read as follows:

23 116.2115 A declarant may maintain offices for sales and management
 24 models in units or on common elements in the common-interest commu-
 25 nity only if the declaration so provides. [and specifies the rights of a declar-
 26 ant with regard to the number, size, location and relocation thereof. In a coop-
 27 erative or condominium, any office for sales or management or model
 28 designated a unit by the declaration is a common element. If a declar-
 29 ant ceases to be a unit's owner, he ceases to have any rights with regard there-
 30 to unless it is removed promptly from the common-interest community in accor-
 31 dance with a right to remove reserved in the declaration.] Subject to
 32 limitations in the declaration, a declarant may maintain signs on the comm-
 33 on elements advertising the common-interest community. This section is subje-
 34 ct to the provisions of other state law and to local ordinances.

35 Sec. 25. NRS 116.2117 is hereby amended to read as follows:

36 116.2117 1. Except in cases of amendments that may be executed by a
 37 declarant under NRS 116.2109 or 116.2110 or by the association under NRS
 38 116.1107, subsection 3 of NRS 116.2108, or NRS 116.2113, or by cert-
 39 ain units' owners under subsection 2 of NRS 116.2108 or NRS 116.2112
 40 or 116.2118, and except as limited by subsection 4, the declaration, includ-
 41 ing any plats and plans, may be amended only by vote or agreement of unit
 42 owners of units to which at least a majority of the votes in the association
 43 are allocated, or any larger majority the declaration specifies. The declaration
 44 may specify a smaller number only if all of the units are restricted exclusiv-
 45 ely to nonresidential use.

46 2. No action to challenge the validity of an amendment adopted by the
 47 association pursuant to this section may be brought more than one year after
 48 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 pursu-
 ant 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 [create or increase special declarant's
 rights, increase the number of units,] 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 the units' owners
 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.

Sec. 26. NRS 116.2120 is hereby amended to read as follows:

116.2120 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, 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 para-
 graph (b) of subsection 1 of NRS 116.3102 only to the extent expressly
 permitted in 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.

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, 116.3108, 116.3109,
 116.3110 and 116.3112 and sections 2 to 5, inclusive, of this act 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 declarant's control in any of the following
 ways:

52

1 (a) All units' owners of all common-interest communities subject
2 master association may elect all members of the master association's
3 tive board.

4 (b) All members of the executive boards of all common-interest com
5 ties subject to the master association may elect all members of the
6 association's executive board.

7 (c) All units' owners of each common-interest community subject
8 master association may elect specified members of the master associ
9 executive board.

10 (d) All members of the executive board of each common-interest com
11 nity subject to the master association may elect specified members of
12 master association's executive board.

13 Sec. 27. NRS 116.3103 is hereby amended to read as follows:

14 116.3103 1. Except as otherwise provided in the declaration,
15 bylaws, this section or other provisions of this chapter, the executive
16 may act in all instances on behalf of the association. In the performance
17 their duties, the officers and members of the executive board are fiduci
18 and are subject to the insulation from liability provided for directors
19 corporations by the laws of this state. The members of the executive
20 are required to exercise the ordinary and reasonable care of directors
21 corporation, subject to the business-judgment rule.

22 2. The executive board may not act on behalf of the association to
23 the declaration (NRS 116.2117), to terminate the common-interest com
24 nity (NRS 116.2118), or to elect members of the executive board or de
25 mine their qualifications, powers and duties or terms of office (subsection
26 but the executive board may fill vacancies in its membership for
27 unexpired portion of any term.

28 3. Within 30 days after adoption of any proposed budget for the common
29 interest community, the executive board shall provide a summary of
30 budget to all the units' owners, and shall set a date for a meeting of the
31 owners to consider ratification of the budget not less than 14 nor more than
32 days after mailing of the summary. Unless at that meeting a majority of
33 units' owners or any larger vote specified in the declaration reject the
34 budget is ratified, whether or not a quorum is present. If the proposed
35 budget is rejected, the periodic budget last ratified by the units' owners
36 be continued until such time as the units' owners ratify a subsequent budget
37 proposed by the executive board.

38 [4. Subject to subsection 5, the declaration may provide for a period
39 declarant's control of the association, during which a declarant, or person
40 designated by him, may appoint and remove the officers and members of the
41 executive board. Regardless of the period provided in the declaration,
42 period of declarant's control terminates no later than the earlier of:

43 (a) Sixty days after conveyance of 75 percent of the units that may be
44 created to units' owners other than a declarant;

45 (b) Two years after all declarants have ceased to offer units for sale in the
46 ordinary course of business; or

47 (c) Two years after any right to add new units was last exercised.

1 A declarant may voluntarily surrender the right to appoint and remove
2 officers and members of the executive board before termination of that
3 period, but in that event the declarant may require, for the duration of the
4 period of declarant's control, that specified actions of the association or
5 executive board, as described in a recorded instrument executed by the
6 declarant, be approved by the declarant before they become effective.

7 5. Not later than 60 days after conveyance of 25 percent of the units that
8 may be created to units' owners other than a declarant, at least one member
9 and not less than 25 percent of the members of the executive board must be
10 elected by units' owners other than the declarant. Not later than 60 days after
11 conveyance of 50 percent of the units that may be created to units' owners
12 other than a declarant, not less than 33 1/3 percent of the members of the
13 executive board must be elected by units' owners other than the declarant.

14 6. Except as otherwise provided in subsection 5 of NRS 116.2120, not
15 later than the termination of any period of declarants' control, the units'
16 owners shall elect an executive board of at least three members, at least a
17 majority of whom must be units' owners. The executive board shall elect the
18 officers. The members and officers of the executive board shall take office
19 upon election.

20 7. Notwithstanding any provision of the declaration or bylaws to the
21 contrary, the units' owners, by a two-thirds vote of all persons present and
22 entitled to vote at any meeting of the units' owners at which a quorum is
23 present, may remove any member of the executive board with or without
24 cause, other than a member appointed by the declarant.

25 8. When a member of an executive board is sued for liability for actions
26 undertaken in his role as a member of the board, the association shall indemnify
27 him for his losses or claims, and undertake all costs of defense, until and
28 unless it is proven that he acted with willful or wanton misfeasance or with
29 gross negligence. After such proof the association is no longer liable for the
30 cost of defense, and may recover costs already expended from the member of
31 the executive board who so acted. Members of the executive board are not
32 personally liable to the victims of crimes occurring on the property. Punitive
33 damages may not be recovered against the association, but may be recovered
34 from persons whose activity gave rise to the damages.

35 9. An officer, employee, agent or director of a corporate owner of a unit, a
36 trustee or designated beneficiary of a trust that owns a unit, a partner of a
37 partnership that owns a unit, and a fiduciary of an estate that owns a unit may
38 be an officer or member of the executive board. In all events where the person
39 serving or offering to serve as an officer or member of the executive board is
40 not the record owner, he shall file proof of authority in the records of the
41 association.

42 10. Within 30 days after units' owners other than the declarant may elect a
43 majority of the members of the executive board, the declarant shall deliver to
44 the association all property of the units' owners and of the association held by
45 or controlled by him, including:

46 (a) The original or a certified copy of the recorded declaration as amended,
47 the association's articles of incorporation if the association is incorporated,

1 bylaws, minute books and other books and records of the association and
2 rules or regulations which may have been adopted.

3 (b) An accounting for money of the association and financial statements
4 from the date the association received money to the date the period of a
5 declarant's control ends. The financial statements must fairly and accurately
6 report the association's financial condition prepared in accordance with generally
7 accepted accounting principles.

8 (c) The association's money or control thereof.

9 (d) All of the declarant's tangible personal property that has been represented
10 by the declarant as property of the association or, unless the declarant
11 has disclosed in the public offering statement that all such personal property
12 used in the common-interest community will remain the declarant's property,
13 all of the declarant's tangible personal property that is necessary for, and has
14 been used exclusively in, the operation and enjoyment of the common-interest
15 community, and inventories of these properties.

16 (e) A copy of any plans and specifications used in the construction of
17 improvements in the common-interest community which were completed
18 within 2 years before the declaration was recorded.

19 (f) All insurance policies then in force, in which the units' owners, the
20 association, or its directors and officers are named as insured persons.

21 (g) Copies of any certificates of occupancy that may have been issued with
22 respect to any improvements comprising the common-interest community.

23 (h) Any other permits and approvals issued by governmental bodies applicable
24 to the common-interest community which are in force or which were
25 issued within 1 year before the date on which units' owners other than the
26 declarant took control of the association.

27 (i) Written warranties of the contractor, subcontractors, suppliers or
28 manufacturers that are still effective.

29 (j) A roster of owners and mortgagees of units and their addresses and
30 telephone numbers, if known, as shown on the declarant's records.

31 (k) Contracts of employment in which the association is a contracting
32 party.

33 (l) Any contract for service in which the association is a contracting party
34 or in which the association or the units' owners have any obligation to pay a
35 fee to the persons performing the services.]

36 Secs. 28 and 29. (Deleted by amendment.)

37 Sec. 30. NRS 116.2122 is hereby amended to read as follows:

38 116.2122 In a planned community, if the right is originally reserved in the
39 declaration, the declarant, in addition to any other developmental right, may
40 amend the declaration at any time during as many years as are specified in the
41 declaration for adding additional real estate to the planned community without
42 describing the location of that real estate in the original declaration; but the
43 amount of real estate added to the planned community pursuant to this section
44 may not exceed 10 percent of the real estate described in paragraph (c) of
45 subsection 1 of NRS 116.2105 and the declarant may not in any event
46 increase the number of units in the planned community beyond the number
47 stated in the original declaration pursuant to paragraph [(c)] (d) of this
48 subsection.

1 Sec. 31. NRS 116.3105 is hereby amended to read as follows:

2 116.3105 If entered into before the executive board elected by the units'
3 owners pursuant to [subsection 6 of NRS 116.3103] section 3 of this act takes
4 office, any management contract, employment contract, or lease of recreational
5 or parking areas or facilities, any other contract or lease between the
6 association and a declarant or an affiliate of a declarant or any contract or
7 lease that is not in good faith or was unconscionable to the units' owners at
8 the time entered into under the circumstances then prevailing may be terminated
9 without penalty by the association at any time after the executive board
10 elected by the units' owners takes office upon not less than 90 days' notice to
11 the other party. This section does not apply to any lease the termination of
12 which would terminate the common-interest community or reduce its size,
13 unless the real estate subject to that lease was included in the common-interest
14 community for the purpose of avoiding the right of the association to terminate
15 a lease under this section, or to a proprietary lease.

16 Sec. 32. NRS 116.3106 is hereby amended to read as follows:

17 116.3106 1. The bylaws of the association must provide:

18 (a) The number of members of the executive board and the titles of the
19 officers of the association;

20 (b) For election by the executive board of a president, treasurer, secretary
21 and any other officers of the association the bylaws specify;

22 (c) The qualifications, powers and duties, terms of office and manner of
23 electing and removing officers of the association and members [and officers]
24 of the executive board and filling vacancies;

25 (d) Which, if any, of its powers the executive board or officers may
26 delegate to other persons or to a managing [agency] agent;

27 (e) Which of its officers may prepare, execute, certify and record amendments
28 to the declaration on behalf of the association; and

29 (f) A method for amending the bylaws.

30 2. [Subject to the provisions of] Except as otherwise provided in the
31 declaration, the bylaws may provide for any other matters the association
32 deems necessary and appropriate.

33 Sec. 33. NRS 116.3107 is hereby amended to read as follows:

34 116.3107 1. Except to the extent provided by the declaration, subsection
35 2 [of] and NRS 116.31135, the association is responsible for maintenance,
36 repair and replacement of the common elements, and each unit's owner is
37 responsible for maintenance, repair and replacement of his unit. Each unit's
38 owner shall afford to the association and the other units' owners, and to their
39 agents or employees, access through his unit reasonably necessary for those
40 purposes. If damage is inflicted on the common elements or on any unit
41 through which access is taken, the unit's owner responsible for the damage,
42 or the association if it is responsible, is liable for the prompt repair thereof.

43 2. In addition to the liability that a declarant as a unit's owner has under
44 this chapter, the declarant alone is liable for all expenses in connection with
45 real estate subject to developmental rights. No other unit's owner and no
46 other portion of the common-interest community is subject to a claim for
47 payment of those expenses. Unless the declaration provides otherwise, any

1 income or proceeds from real estate subject to developmental rights inures
2 the declarant.

3 3. In a planned community, if all developmental rights have expired
4 respect to any real estate, the declarant remains liable for all expenses of the
5 real estate unless, upon expiration, the declaration provides that the real
6 estate becomes common elements or units.

7 Sec. 34. NRS 116.3112 is hereby amended to read as follows:

8 116.3112 1. In a condominium or planned community, portions of the
9 common elements may be conveyed or subjected to a security interest by the
10 association if persons entitled to cast at least a majority of the votes in the
11 association, including a majority of the votes allocated to units not owned by
12 a declarant, or any larger percentage the declaration specifies, agree to that
13 action; but all owners of units to which any limited common element is
14 allocated must agree *in order* to convey that limited common element or
15 subject it to a security interest. The declaration may specify a smaller per-
16 centage only if all of the units are restricted exclusively to nonresidential
17 uses. Proceeds of the sale are an asset of the association.

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

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

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

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

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

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

10 8. In a cooperative, the association may acquire, hold, encumber or con-
11 vey a proprietary lease without complying with this section.

12 Sec. 35. NRS 116.31135 is hereby amended to read as follows:

13 116.31135 1. Any portion of the common-interest community for which
14 insurance is required under [this section] NRS 116.3113 which is damaged or
15 destroyed must be repaired or replaced promptly by the association unless:

16 (a) The common-interest community is terminated, in which case NRS
17 116.2118, 116.21183 and 116.21185 apply;

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

20 (c) Eighty percent of the units' owners, including every owner of a unit or
21 assigned limited common element that will not be rebuilt, vote not to rebuild.
22 The cost of repair or replacement in excess of insurance proceeds and
23 reserves is a common expense.

24 2. If the entire common-interest community is not repaired or replaced,
25 the proceeds attributable to the damaged common elements, must be used to
26 restore the damaged area to a condition compatible with the remainder of the
27 common-interest community, and except to the extent that other persons will
28 be distributees (subparagraph 2 of paragraph [(1)] (k) of subsection 1 of NRS
29 116.2105):

30 (a) The proceeds attributable to units and limited common elements that
31 are not rebuilt must be distributed to the owners of those units and the owners
32 of the units to which those limited common elements were allocated, or to
33 lien holders, as their interests may appear; and

34 (b) The remainder of the proceeds must be distributed to all the units'
35 owners or lien holders, as their interests may appear, as follows:

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

38 (2) In a cooperative or planned community, in proportion to the liabili-
39 ties of all the units for common expenses.

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

45 Sec. 36. NRS 116.3115 is hereby amended to read as follows:

46 116.3115 1. Until the association makes an assessment for common
47 expenses, the declarant shall pay all common expenses. After an assessment

1 has been made by the association, assessments must be made at least
 2 ally, based on a budget adopted at least annually by the association.
 3 2. Except for assessments under subsections 3, 4 and 5, all common
 4 expenses, including a reserve not exceeding 10 percent of the assessments
 5 must be assessed against all the units in accordance with the allocations set
 6 forth in the declaration pursuant to subsections 1 and 2 of NRS 116.216.
 7 Any past due assessment for common expenses or installment thereof bears
 8 interest at the rate established by the association not exceeding 18 percent
 9 year.
 10 3. To the extent required by the declaration:
 11 (a) Any common expense associated with the maintenance, repair or
 12 replacement of a limited common element must be assessed against the unit
 13 to which that limited common element is assigned, equally, or in any other
 14 proportion the declaration provides;
 15 (b) Any common expense or portion thereof benefiting fewer than all of the
 16 units must be assessed exclusively against the units benefited; and
 17 (c) The costs of insurance must be assessed in proportion to risk and the
 18 costs of utilities must be assessed in proportion to usage.
 19 4. Assessments to pay a judgment against the association [(subsection 1 of
 20 NRS 116.31164)] may be made only against the units in the common-interest
 21 community at the time the judgment was entered, in proportion to their
 22 liabilities for common expenses.
 23 5. If any common expense is caused by the misconduct of any unit's
 24 owner, the association may assess that expense exclusively against his unit.
 25 6. If liabilities for common expenses are reallocated, assessments for com-
 26 mon expenses and any installment thereof not yet due must be recalculated in
 27 accordance with the reallocated liabilities.
 28 **Sec. 37.** NRS 116.31162 is hereby amended to read as follows:
 29 116.31162 1. In a condominium, a cooperative where the owner's inter-
 30 est in a unit is real estate (NRS 116.1105), or a planned community, the
 31 association may foreclose its lien by sale after:
 32 (a) The association has [caused to be recorded, with the county recorder
 33 the county in which the common-interest community or any part of it is
 34 situated,] mailed by certified or registered mail, return receipt requested, to
 35 the unit's owner or his successor in interest, at his address if known, and to
 36 the address of the unit, a notice of delinquent assessment [,] which states the
 37 amount of the assessments and other sums which are due in accordance with
 38 subsection 1 of NRS 116.3116, a description of the unit against which the lien
 39 is imposed, and the name of the record owner of the [units;] unit;
 40 (b) The association or other person conducting the sale has executed and
 41 caused to be recorded, with the county recorder of the county in which the
 42 common-interest community or any part of it is situated, a notice of default
 43 and election to sell the unit to satisfy the lien, which contains the same
 44 information as the notice of delinquent assessment, but must also describe the
 45 deficiency in payment and the name and address of the person authorized by
 46 the association to enforce the lien by sale; and

1 (c) The unit's owner or his successor in interest has failed to pay the
 2 amount of the lien, including costs, fees and expenses incident to its enforce-
 3 ment, for 60 days following the recording of the notice of default and election
 4 to sell.
 5 2. The notice of [delinquent assessment] default and election to sell must
 6 be signed by the person designated in the declaration or by the association for
 7 that purpose, or if no one is designated, by the president of the association.
 8 3. The period of 60 days begins on the first day following the later of:
 9 (a) The day on which the notice of default is recorded; or
 10 (b) The day on which a copy of the notice of default is mailed by certified
 11 or registered mail, return receipt requested, to the unit's owner or his succes-
 12 sor in interest at his address if known, otherwise to the address of the unit.
 13 4. The association or other person conducting the sale shall also, after the
 14 expiration of the 60 days and before selling the unit, give notice of the time
 15 and place of the sale in the manner and for a time not less than that required
 16 by law for the sale of real property upon execution, except that a copy of the
 17 notice of sale must be mailed, on or before the date of first publication or
 18 posting, by certified or registered mail, return receipt requested, to the unit's
 19 owner or his successor in interest at his address if known, otherwise to the
 20 address of the unit.]
 21 **Sec. 38.** NRS 116.31164 is hereby amended to read as follows:
 22 116.31164 1. The sale must be conducted in the county in which the
 23 common-interest community or part of it is situated, and may be conducted
 24 by the association, its agent or attorney, or a title insurance company or
 25 escrow agent licensed to do business in this state, except that the sale may be
 26 made at the office of the association if the notice of the sale so provided,
 27 whether the unit is located within the same county as the office of the
 28 association or not. The association or other person conducting the sale may
 29 from time to time postpone the sale by such advertisement and notice as it
 30 considers reasonable or, without further advertisement or notice, by procla-
 31 mation made to the persons assembled at the time and place previously set
 32 and advertised for the sale.
 33 2. On the day of sale originally advertised or to which the sale is post-
 34 poned, at the time and place specified in the notice or postponement, the
 35 person conducting the sale may sell the unit at public auction to the highest
 36 cash bidder. Unless otherwise provided in the declaration or by agreement,
 37 the association may purchase the unit and hold, lease, mortgage or convey it.
 38 [If so authorized to purchase, the] The association may [enter] purchase by a
 39 credit bid up to the amount of the unpaid assessments and any permitted
 40 costs, fees and expenses incident to the enforcement of its lien.
 41 3. After the sale, the person conducting the sale shall make, execute and,
 42 after payment is made, deliver to the purchaser, or his successor or assign, a
 43 deed without warranty which conveys to the grantee all title of the unit's
 44 owner to the unit, and shall apply the proceeds of the sale for the following
 45 purposes in the following order:
 46 (a) The reasonable expenses of sale;
 (b) The reasonable expenses of securing possession before sale, holding,
 maintaining, and preparing the unit for sale, including payment of taxes and

1 other governmental charges, premiums on hazard and liability insurance
2 and, to the extent provided for by [agreement between the association and the
3 unit's owner,] *the declaration*, reasonable attorney's fees and other
4 expenses incurred by the association;

- 5 (c) Satisfaction of the association's lien;
- 6 (d) Satisfaction in the order of priority of any subordinate claim of record
7 and
- 8 (e) Remittance of any excess to the unit's owner.

9 **Sec. 39.** NRS 116.31166 is hereby amended to read as follows:
10 116.31166 1. The recitals in [such] a deed made pursuant to NRS
11 116.31164 of:

- 12 (a) Default [and the recording], *the mailing* of the notice of delinquent
13 assessment, and *the recording of the* notice of default and election to sell
14 (b) The elapsing of the 60 days; and
- 15 (c) The giving of notice of sale,
16 are conclusive proof of the matters recited.

17 2. Such a deed containing those recitals is conclusive against the unit's
18 former owner, his heirs and assigns, and all other persons. The receipt for
19 purchase money contained in such a deed is sufficient to discharge the pur-
20 chaser from obligation to see to the proper application of the purchase
21 money.

22 3. The sale of a unit pursuant to NRS 116.31162 and 116.31164
23 *section 6 of this act* vests in the purchaser the title of the unit's owner with
24 equity or right of redemption.

25 **Sec. 40.** NRS 116.31168 is hereby amended to read as follows:

26 116.31168 1. The provisions of NRS 107.090 apply to the foreclosure
27 an association's lien as if a deed of trust were being foreclosed. The re-
28 must identify the lien by stating the names of the unit's owner and the
29 common-interest community. [The association must also give reasonable
30 notice of its intent to foreclose to all holders of liens in the unit who
31 known to it.]

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

36 **Sec. 41.** NRS 116.4101 is hereby amended to read as follows:

37 116.4101 1. NRS 116.4101 to 116.4120, inclusive, apply to all
38 subject to this chapter, except as otherwise provided in subsection 2 or
39 modified or waived by agreement of purchasers of units in a common-interest
40 community in which all units are restricted to nonresidential use.

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

- 43 (a) Gratuitous disposition of a unit;
- 44 (b) Disposition pursuant to court order;
- 45 (c) Disposition by a government or governmental agency;
- 46 (d) Disposition by foreclosure or deed in lieu of foreclosure;
- 47 (e) Disposition to a dealer;

1 (f) Disposition that may be canceled at any time and for any reason by the
2 purchaser without penalty; or

3 (g) Disposition of a unit in a planned community in which the declaration
4 limits the [maximum] *average* annual assessment of any unit to not more than
5 \$500, as adjusted pursuant to NRS 116.1115] \$500 and which contains no
6 more than 35 units if:

7 (1) The declarant reasonably believes in good faith that the maximum
8 stated assessment will be sufficient to pay the expenses of the planned com-
9 munity; and

10 (2) The declaration cannot be amended to increase the assessment dur-
11 ing the period of declarant's control without the consent of all units' owners.
12 [; and

13 (3) The planned community is not subject to any developmental rights.]

14 **Sec. 41.5.** NRS 116.4102 is hereby amended to read as follows:

15 116.4102 1. Except as otherwise provided in subsection 2, a declarant,
16 before offering any interest in a unit to the public, shall prepare a public
17 offering statement conforming to the requirements of NRS 116.4103 to
18 116.4106, inclusive.

19 2. A declarant may transfer responsibility for preparation of all or a part
20 of the public offering statement to a successor declarant (NRS 116.3104 and
21 116.31043) or to a dealer who intends to offer units in the common-interest
22 community. In the event of any such transfer, the transferor shall provide the
23 transferee with any information necessary to enable the transferee to fulfill
24 the requirements of subsection 1.

25 3. Any declarant or dealer who offers a unit to a purchaser shall deliver a
26 public offering statement in the manner prescribed in subsection 1 of NRS
27 116.4108. The [person who prepared all or a part of the public offering
28 statement] *declarant or his transferee under subsection 2* is liable under NRS
29 116.4108 and 116.4117 for any false or misleading statement set forth therein
30 or for any omission of a material fact therefrom with respect to that portion
31 of the public offering statement which he prepared. If a declarant *or dealer* did
32 not prepare any part of a public offering statement that he delivers, he is not
33 liable for any false or misleading statement set forth therein or for any
34 omission of a material fact therefrom unless he had actual knowledge of the
35 statement or omission or, in the exercise of reasonable care, should have
36 known of the statement or omission.

37 4. If a unit is part of a common-interest community and is part of any
38 other real estate in connection with the sale of which the delivery of a public
39 offering statement is required under the laws of this state, a single public
40 offering statement conforming to the requirements of NRS 116.4103 to
41 116.4106, inclusive, as those requirements relate to the real estate in which
42 the unit is located, and to any other requirements imposed under the laws of
43 this state, may be prepared and delivered in lieu of providing two or more
44 public offering statements. *If the requirements of this chapter conflict with*
45 *those of another law of this state, the requirements of this chapter prevail.*

46 **Sec. 42.** NRS 116.4103 is hereby amended to read as follows:

1 116.4103 1. Except as otherwise provided in NRS 116.41035, a public
2 offering statement must contain or fully and accurately disclose each of the
3 following:

4 [1.] (a) The name and principal address of the declarant and of the com-
5 mon-interest community, and a statement that the common-interest commu-
6 nity is either a condominium, cooperative or planned community.

7 [2.] (b) A general description of the common-interest community, inclu-
8 ding to the extent possible, the types, number and declarant's schedule of
9 commencement and completion of construction of buildings, and amenities
10 that the declarant anticipates including in the common-interest community.

11 [3.] (c) The estimated number of units in the common-interest community.

12 [4.] (d) Copies of the declaration, bylaws, and any rules or regulations of
13 the association [

14 5.], but a plat or plan is not required.

15 (e) Any current balance sheet and a projected budget for the association,
16 either within or as an exhibit to the public offering statement, for 1 year after
17 the date of the first conveyance to a purchaser, and thereafter the current
18 budget of the association. The budget must include, without limitation:

19 [(a)] (1) A statement of the amount, or a statement that there is no amount,
20 included in the budget as a reserve for repairs and replacement; and

21 [(b)] (2) The projected monthly assessment for common expenses for each
22 type of unit.

23 [6.] (f) A description of any services or subsidies being provided by the
24 [developer,] declarant or an affiliate of the declarant, not reflected in the
25 budget.

26 [7.] (g) Any initial or special fee due from the purchaser at closing,
27 together with a description of the purpose and method of calculating the fee.

28 [8.] (h) The terms and significant limitations of any warranties provided by
29 the declarant, including statutory warranties and limitations on the enforce-
30 ment thereof or on damages.

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

36 [10.] (j) A statement of any unsatisfied judgments or pending suits against
37 the association, and the status of any pending suits material to the common-
38 interest community of which a declarant has actual knowledge.

39 [11.] (k) Any current or expected fees or charges to be paid by unit
40 owners for the use of the common elements and other facilities related to the
41 common-interest community.

42 2. A declarant is not required to revise a public offering statement
43 than once each calendar quarter, if the following warning is given promi-
44 nence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CUR-
45 RENT AS OF (insert a specified date). RECENT DEVELOPMENTS
46 REGARDING (here refer to particular provisions of NRS 116.4103
47 116.4105) MAY NOT BE REFLECTED IN THIS STATEMENT."

48 Sec. 43. NRS 116.41035 is hereby amended to read as follows:

1 116.41035 If a common-interest community composed of not more than
2 12 units is not subject to any developmental rights and no power is reserved
3 to a declarant to make the common-interest community part of a larger
4 common-interest community, group of common-interest communities or
5 other real estate, a public offering statement may but need not include the
6 information otherwise required by [subsections 8 and 11] paragraphs (h) and
7 (k) of subsection 1 of NRS 116.4103.

8 Sec. 44. NRS 116.4108 is hereby amended to read as follows:

9 116.4108 1. A person required to deliver a public offering statement
10 pursuant to subsection 3 of NRS 116.4102 shall provide a purchaser with a
11 copy of the current public offering statement [and all amendments thereto
12 before conveyance of the unit, and] not later than the date of any contract of
13 sale. Unless the purchaser has personally inspected the unit, the purchaser
14 may cancel, by written notice, the contract of purchase until midnight of the
15 fifth calendar day following the date of execution of the contract, and the
16 contract for purchase must contain a provision to that effect.

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

22 3. If a person required to deliver a public offering statement pursuant to
23 subsection 3 of NRS 116.4102 fails to provide a purchaser to whom a unit is
24 conveyed with [that] a current public offering statement, [and all amend-
25 ments thereto as required by subsection 1,] the purchaser [, in addition to any
26 rights to damages or other relief,] is entitled [to receive from that person an
27 amount equal to 10 percent of the sale price of the unit, plus 10 percent of the
28 share, proportionate to his liability for common expenses, of any indebted-
29 ness of the association secured by security interests encumbering the com-
30 mon-interest community.] to actual damages, rescission or other relief, but if
31 the purchaser has accepted a conveyance of the unit, he is not entitled to
32 rescission.

33 Sec. 45. NRS 116.4109 is hereby amended to read as follows:

34 116.4109 1. Except in the case of a sale in which delivery of a public
35 offering statement is required, or unless exempt under subsection 2 of NRS
36 116.4101, a unit's owner shall furnish to a purchaser before execution of any
37 contract for sale of a unit, or otherwise before conveyance:

38 (a) A copy of the declaration (other than any plats and plans), the bylaws,
39 and the rules or regulations of the association;

40 (b) A statement setting forth the amount of the monthly assessment for
41 common expenses and any unpaid assessment of any kind currently due from
42 the selling unit's owner; and

43 (c) The current operating budget of the association.

44 2. The association, within 10 days after a request by a unit's owner, shall
45 furnish a certificate containing the information necessary to enable the unit's
46 owner to comply with this section. A unit's owner providing a certificate
47 pursuant to subsection 1 is not liable to the purchaser for any erroneous
48 information provided by the association and included in the certificate.

1 3. Neither a purchaser nor the purchaser's interest in a unit is liable for
 2 any unpaid assessment or fee greater than the amount set forth in the certifi-
 3 cate prepared by the association. [A unit's owner is not liable to a purchaser
 4 for the failure or delay of the association to provide the certificate in a timely
 5 manner, but the contract to purchase is voidable by the purchaser until the
 6 certificate has been provided and for 5 days thereafter or until conveyance,
 7 whichever first occurs.] *If the association fails to furnish the certificate within*
 8 *the 10 days allowed by subsection 2, the seller is not liable for the delinquent*
 9 *assessment.*

10 Sec. 46. NRS 116.4110 is hereby amended to read as follows:

11 116.4110 [Any]

12 1. *Except as otherwise provided in subsection 2, a deposit made in con-*
 13 *nection with the purchase or reservation of a unit from a person required to*
 14 *deliver a public offering statement pursuant to subsection 3 of NRS 116.410*
 15 *must be placed in escrow and held either in this state or in the state where the*
 16 *unit is located in an account designated solely for that purpose by a licensed*
 17 *title insurance company, an independent bonded escrow company, or an*
 18 *institution whose accounts are insured by a governmental agency or insur-*
 19 *mentality until:*

20 [1.] (a) Delivered to the declarant at closing;

21 [2.] (b) Delivered to the declarant because of the purchaser's default under
 22 a contract to purchase the unit; or

23 [3.] (c) Refunded to the purchaser.

24 2. *A deposit or advance payment made for an additional item, improve-*
 25 *ment, optional item or alteration may be deposited in escrow or delivered*
 26 *directly to the declarant, as the parties may contract.*

27 Sec. 47. NRS 116.4117 is hereby amended to read as follows:

28 116.4117 If a declarant or any other person subject to this chapter fails to
 29 comply with any of its provisions or any provision of the declaration or
 30 bylaws, any person or class of persons [adversely affected by] suffering
 31 actual damages from the failure to comply has a claim for appropriate relief.
 32 Punitive damages may be awarded for a willful and material failure to
 33 comply with this chapter [.] *if the failure is established by clear and convinc-*
 34 *ing evidence.* The court [.] *in an appropriate case,* may award reasonable
 35 attorney's fees [.] *to the prevailing party.*

36 Sec. 48. NRS 116.4120 is hereby amended to read as follows:

37 116.4120 In the case of a sale of a unit in which delivery of a public
 38 offering statement is required, a contract of sale may be executed, but the
 39 interest in that unit may be conveyed, until the declaration is recorded and the
 40 unit is substantially completed, [as evidenced by a recorded certificate of
 41 substantial completion executed by an independent registered architect or
 42 professional engineer, or by issuance of a certificate of occupancy authorized
 43 by law.] *in accordance with local ordinances.*

44 Sec. 49. NRS 116.110365 and 116.11037 are hereby repealed.

TEXT OF REPEALED SECTIONS

116.110365 "Plan" defined. "Plan" means those items set forth in sub-
 section 4 of NRS 116.2109, including drawings of improvements which are
 filed with agencies which issue permits but do not need to be recorded.

116.11037 "Plat" defined. "Plat" means a map created in accordance
 with subsection 2 of NRS 116.2109 and chapter 278 or 278A of NRS which
 is recorded in the office of the county recorder of the county in which the real
 property is situated.

(30)

JOURNAL OF THE ASSEMBLY

6-25-93

SIXTY-SEVENTH SESSION

1581

Roll call on Assembly Bill No. 455:

YEAS—41.

NAYS—None.

Absent—Carpenter.

Assembly Bill No. 455 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 483.

Bill read third time.

Remarks by Assemblyman Humke.

Roll call on Assembly Bill No. 483:

YEAS—41.

NAYS—None.

Absent—Carpenter.

Assembly Bill No. 483 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 612.

Bill read third time.

Remarks by Assemblyman Sader.

Roll call on Assembly Bill No. 612:

YEAS—41.

NAYS—None.

Absent—Carpenter.

Assembly Bill No. 612 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 643.

Bill read third time.

Remarks by Assemblyman Giunchigliani.

Roll call on Assembly Bill No. 643:

YEAS—41.

NAYS—None.

Absent—Carpenter.

Assembly Bill No. 643 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 691.

Bill read third time.

Remarks by Assemblyman Bennett.

Roll call on Assembly Bill No. 691:

YEAS—41.

NAYS—None.

Absent—Carpenter.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-seventh Session
June 28, 1993

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 2:55 p.m., on Monday, June 28, 1993, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Lawrence E. Jacobsen
Senator Mike McGinness
Senator Dina Titus
Senator Ernest E. Adler

COMMITTEE MEMBERS ABSENT:

Senator R. Hal Smith, Vice Chairman (Excused)
Senator Raymond C. Shaffer (Excused)

STAFF MEMBERS PRESENT:

Dennis Neilander, Senior Research Analyst
Marilyn Hofmann, Committee Secretary

OTHERS PRESENT:

Chris Ritland, Private Citizen
Mary Ritland, Private Citizen
Sandy Allenson, Registered Nurse
Janine Hansen, State President, Nevada Eagle Forum
Pat Furrie, Private Citizen
Myla Hawkins, Administrative Director, Diabetic Educational Center of Nevada
Raymond L. Sparks, Chief, Registration Division, State of Nevada, Department of Motor Vehicles and Public Safety
Donna Wadey, Assistant Chief, Registration and Title Bureau, State of Nevada, Department of Motor Vehicles and Public Safety
Debbie Williams, Washoe County Sheriff's Office, Washoe County, Nevada
Kayleen Dickerson, Reno Police Department and Chair, Northern Subcommittee, Criminal History Repository
John Sarb, Administrator, Department of Human Resources, Division of Child and Family Services

The first bill to be discussed was Assembly Bill 612.

ASSEMBLY BILL 612: Revises Uniform Common-Interest Ownership Act.

Senator James advised he would appoint himself a subcommittee of one to meet with Frank Daykin, Uniform Law Commissioner and the bill drafter, in order to expedite placing the bill into its final form.

The next bill to be heard was Assembly Bill (A.B.) 583.

ASSEMBLY BILL 583: Authorizes contracts for assisted conception and provides for determination of parentage under such contracts.

The first persons to testify were Chris Ritland and Mary Ritland, Private Citizens. Ms. Ritland presented a prepared statement in support of A.B. 583, which is attached as Exhibit C. She indicated the bill was introduced by Assemblywoman Vivian Freeman, on behalf of a surrogate mother who is carrying twins, the biological children of Mr. and Mrs. Ritland. Ms. Ritland stated as it now stands, they must adopt their own biological children.

Senator Jacobsen asked if any stigma was attached to the way the law is currently written, and Ms. Ritland answered there was no law regarding surrogacy currently in effect in Nevada. Senator Adler stated at this time, a name of a surrogate who delivers a baby would appear on the birth certificate. He said passage of A.B. 583 would allow the biological parents' names to appear on the birth certificate. Ms. Ritland said presently her husband, as a "natural relative" would have to go through a "relative adoption," and she would have to do a "stepparent adoption." She added the surrogate is a married person and in Nevada at this time, the law as it exists would list her as the natural mother and the surrogate's husband as the father of the children.

The next person to testify was Sandy Allenson, Registered Nurse. Ms. Allenson said she was a nurse at the fertility center where the gestational in vitro fertilization took place. She provided the committee with an informational packet, set forth in these minutes as Exhibit D. Ms. Allenson reiterated the surrogate "will be delivering children which are not biologically hers at all...she is a gestational carrier." She added it was her belief this was the first time this has happened in Nevada.

The next to appear was Janine Hansen, State President, Nevada Eagle Forum. Ms. Hansen said when the bill was first introduced in the assembly, they had some serious concerns but are pleased with the amendments which have been added to the bill. She indicated one of the organization's concerns was the matter of "commercial surrogacy (the buying and selling of babies) versus compassionate surrogacy. Ms. Hansen said the bill now will allow only the payment of money for

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-seventh Session
June 29, 1993

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 2:45 p.m., on Tuesday, June 29, 1993, in Room 238 of the Legislative Building, Carson City, Nevada. The meeting was held at the call of the chair; there is no Meeting Agenda and no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator R. Hal Smith, Vice Chairman
Senator Lawrence E. Jacobsen
Senator Mike McGinness
Senator Dina Titus
Senator Raymond C. Shaffer
Senator Ernest E. Adler

GUEST LEGISLATORS PRESENT:

Assemblyman William A. Petrak, Clark County Assembly District No. 18

STAFF MEMBERS PRESENT:

Dennis Neillander, Senior Research Analyst
Marilyn Hofmann, Committee Secretary

OTHERS PRESENT:

Mark Brown, Nevada State Apartment Association
Vicki Morley, Bigelow Management, Inc., Las Vegas, Nevada
Neil Dexter, Ty-Dee Management Company, Las Vegas, Nevada
Ray Rodriguez, Nevada Legal Services, Carson City, Nevada
Ernest Nielsen, Nevada Legal Services, Reno, Nevada
Barbara Buckley, Nevada Legal Services, Las Vegas, Nevada
Nancy Palini, Executive Director, Project Restart, Reno, Nevada.
Thelma Clark, Nevada Seniors Coalition

The chairman announced the purpose of the meeting was to take testimony on Assembly Bill (A.B.) 687.

ASSEMBLY BILL 687: Lessens length of notice to quit for certain short-term tenancies.

ASSEMBLY BILL 325: Makes various changes to procedure for summary eviction of tenant.

Senate Committee on Judiciary
June 29, 1993
Page 7

be done, the time would extend an additional 3 days to allow for mailing.

Ms. Morley stated, "Everybody on the property will understand they can do this...all they have to do is not answer the door...it will spread like wildfire...we are not accomplishing a thing." She concluded, "If we have a 2-day notice and we are strict...the message is going to be clear...pay your rent...." Ms. Buckley reiterated a 2-day notice would violate due process of law.

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS A.B. 687.

SENATOR JACOBSEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TITUS AND SENATOR ADLER VOTED NO. SENATOR SMITH ABSTAINED FROM VOTING.)

* * * * *

The chairman opened a work session on Assembly Bill (A.B.) 612 and Assembly Bill (A.B.) 244.

ASSEMBLY BILL 612: Revises Uniform Common-Interest Ownership Act.

Following an explanation of the amendments to the bill, the chairman explained he had discussed the legislation in detail with Assemblyman Robert Sader who had worked with persons representing developers and homeowners associations. He said he and Mr. Sader reached what they felt was a "good balance on all issues...protecting the rights of the homeowners associations during a time when the developer is trying to phase out ownership of property...." The chairman indicated he was comfortable with the final result.

SENATOR SMITH MOVED TO AMEND AND DO PASS A.B. 612.

SENATOR JACOBSEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS SHAFFER, MCGINNESS AND ADLER WERE ABSENT FOR THE VOTE.)

* * * * *

ASSEMBLY BILL 244: Makes identifying information concerning victim of sexual assault confidential.

Senator James indicated a compromise had been reached with Assemblywoman Chris Giunchigliani on the amendments to the bill. He asked for a motion to not recede from the senate amendments.

community spouse or a division of the income or [property] *resources* would allow one spouse to qualify for services under NRS 427A.250 to 427A.280, inclusive.

[4. Upon the entrance of such a decree, or at the time such an agreement becomes effective, the separate income or property of each spouse is not liable for the costs of supporting the other spouse, including the costs of the necessities of life or medical care.

5.] 8. An agreement [or decree] entered into *or decree entered* pursuant to this section may not be binding on the welfare division of the department of human resources in making determinations under the state plan for assistance to the medically indigent.

9. *As used in this section, "community spouse" and "institutionalized spouse" have the meanings respectively ascribed to them in 42 U.S.C. § 1369r-5."*

Amend the bill as a whole by deleting sec. 2.

Senator Adler moved the adoption of the amendment.

Remarks by Senator Adler.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 612.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary: Amendment No. 1310.

Amend sec. 8, page 4, line 11, by deleting "*unit*" and inserting "*unit's*".

Amend sec. 8, page 4, line 20, by deleting "*unit owner*" and inserting "*owner*".

Amend sec. 8, page 4, by deleting lines 24 through 26 and inserting: "*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*".

Amend sec. 16, page 6, line 4, by deleting "*common-interest*" and inserting "*planned*".

Amend the bill as a whole by deleting sections 17 and 18 through 20 and inserting:

"Secs. 17-19. (Deleted by amendment.)

Sec. 20. NRS 116.2104 is hereby amended to read as follows:

116.2104 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."

Amend sec. 21, page 7, by deleting line 28 and inserting: "116.2115 and 116.2116 and [subsection 4 of NRS 116.3103.] *section 2 of this act.*"

Amend the bill as a whole by renumbering sec. 30 as sec. 27 and sec. 27 as sec. 28, and placing in correct order.

Amend sections 28 and 29, page 14, by deleting line 36 and inserting:

“Sec. 29. NRS 116.3104 is hereby amended to read as follows:

116.3104 1. A special declarant’s right (NRS 116.110385) 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 him 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 (NRS 116.11031), 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 his 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 [(subsection 4 of NRS 116.3103)] (*section 2 of this act*) 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.

Sec. 30. NRS 116.31043 is hereby amended to read as follows:

116.31043 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 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 his 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 transferor to control the executive board in accordance with [subsection 4 of NRS 116.3103] *section 2 of this act* 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 acts and omissions under [subsection 4 of NRS 116.3103.] *section 2 of this act.*"

Amend sec. 35, page 17, line 28, by deleting "[(l) (k) " and inserting "(l)".

Amend sec. 36, page 18, by deleting line 4 and inserting: "expenses , including a reserve,".

Amend sec. 41.5, page 21, line 44, by deleting "If" and inserting: "Except as otherwise provided in section 49 of this act, if".

Amend sec. 46, page 24, by deleting lines 22 and 23 and inserting: "a contract to purchase the unit; [or

3.] (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."*

Amend the bill as a whole by renumbering sec. 49 as sec. 52 and adding new sections designated sections 49 through 51, following sec. 48, to read as follows:

"Sec. 49. Chapter 119A of NRS is hereby amended by adding thereto a new section to read as follows:

If a matter governed by this chapter is also governed by chapter 116 of NRS, compliance with the provisions of chapter 116 of NRS governing the matter which are in addition to or different from the provisions in this chapter governing the same matter is not required. In the event of a conflict between provisions of this chapter and chapter 116 of NRS, the provisions of this chapter prevail.

Sec. 50. NRS 119A.520 is hereby amended to read as follows:

119A.520 1. Each owner is a member of the association for the time-share project. The association may be incorporated.

2. The state of incorporation may be:

(a) This state;

(b) The state in which the time-share project is located; or

(c) Any state where the developer has obtained a permit to sell time shares under statutes which govern the sale of time shares.

3. The developer shall transfer to the owners the control of the association within 120 days after 80 percent of the time shares have been sold.

4. Except as *otherwise* provided in NRS [78.355,] 82.321, any proxy which is executed by an owner to an association is valid for an indefinite period if the owner may revoke his proxy, by written notice to the association, to vote at a particular meeting.

Sec. 51. NRS 278.374 is hereby amended to read as follows:

278.374 1. [A] *Except as otherwise provided in subsection 2, a final map presented for filing shall include a certificate signed and acknowledged, in the manner provided in section 14 or 15 of [this act,] Assembly Bill No. 362 of this session, by any person who is the owner of the land:*

(a) *Consenting to the preparation and recordation of the final map.*

(b) *Offering for dedication that part of the land which the person wishes to dedicate for public use, subject to any reservation contained therein.*

(c) *Reserving any parcel from dedication.*

(d) *Granting any permanent easement for utility installation or access, as designated on the final map, together with a statement approving such easement, signed by the public utility or person in whose favor the easement is created or whose services are required.*

2. If the map presented for filing is an amended map of a common-interest community, the certificate need only be signed and acknowledged by a person authorized to record the map under chapter 116 of NRS.

3. For the purpose of this section the following shall be deemed not to be an interest in land under this section:

- (a) A lien for taxes or special assessments.
- (b) A trust interest under a bond indenture.

[3.] 4. Upon the final map presented for filing by a common-interest community, a title company must, and for any other subdivision a local government may by ordinance require a title company to:

(a) Certify that each person signing the final map owns of record an interest in the land and that, *except as otherwise provided in subsection 2*, all of the owners of record of the land have signed the final map; and

(b) List any lien or mortgage holders of record. For a common-interest community, the certificate must show that there are no liens against the common-interest community or any part thereof for delinquent state, county, municipal, federal or local taxes or assessments collected as taxes or special assessments.”.

Amend the bill as a whole by adding a new section designated sec. 53, following sec. 49, to read as follows:

“Sec. 53. Section 51 of this act becomes effective at 12:01 a.m. on October 1, 1993.”.

Senator James moved the adoption of the amendment.

Remarks by Senator James.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 786.

Bill read second time.

The following amendment was proposed by the Committee on Taxation:

Amendment No. 1286.

Amend section 1, page 1, line 7, by deleting: “\$225 plus [\$90]” and inserting: “[\$225 plus \$90] \$305 plus”.

Senator Rhoads moved the adoption of the amendment.

Remarks by Senator Rhoads.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved that the rules be suspended, that the reprinting of Assembly Bill No. 786 be dispensed with, and that the Secretary be authorized to insert Amendment No. 1286 adopted by the Senate.

Motion carried.

(REPRINTED WITH ADOPTED AMENDMENTS)
SECOND REPRINT A.B. 612

ASSEMBLY BILL NO. 612—COMMITTEE ON JUDICIARY

MAY 11, 1993

Referred to Committee on Judiciary

SUMMARY—Revises Uniform Common-Interest Ownership Act. (BDR 10-479)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to property; making various changes in the Uniform Common-Interest Ownership Act; and providing other matters properly relating thereto.

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. 1. *Except as otherwise provided in subsection 2, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by him, may appoint and remove the officers of the association and members of the executive board. Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earlier of:*

(a) *Sixty days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant, except that if a majority of the units are divided into time shares, the percentage is 80 percent;*

(b) *Five years after all declarants have ceased to offer units for sale in the ordinary course of business; or*

(c) *Five years after any right to add new units was last exercised.*

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but 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.

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 33 1/3 percent of the members of the executive board must be elected by units' owners other than the declarant.*

1 **Sec. 3.** 1. Except as otherwise provided in subsection 5 of NRS 116
2 not later than the termination of any period of declarant's control, the
3 owners shall elect an executive board of at least three members, a
4 majority of whom must be units' owners. The executive board shall elect
5 officers. The members and officers of the executive board shall take
6 upon election.

7 2. An officer, employee, agent or director of a corporate owner of a
8 trustee or designated beneficiary of a trust that owns a unit, a partner
9 partnership that owns a unit, and a fiduciary of an estate that owns a unit
10 be an officer or member of the executive board. In all events where the
11 serving or offering to serve as an officer or member of the executive board
12 not the record owner, he shall file proof of authority in the records of
13 association.

14 **Sec. 4.** 1. Notwithstanding any provision of the declaration or by
15 the contrary, the units' owners, by a two-thirds vote of all persons
16 and entitled to vote at any meeting of the units' owners at which a quorum
17 present, may remove any member of the executive board with or
18 cause, other than a member appointed by the declarant.

19 2. If a member of an executive board is sued for liability for
20 undertaken in his role as a member of the board, the association
21 indemnify him for his losses or claims, and undertake all costs of
22 unless it is proven that he acted with willful or wanton misfeasance or
23 gross negligence. After such proof the association is no longer liable for
24 cost of defense, and may recover costs already expended from the members
25 the executive board who so acted. Members of the executive board are
26 personally liable to the victims of crimes occurring on the property. Past
27 damages may not be recovered against the association, but may be recovered
28 from persons whose activity gave rise to the damages.

29 **Sec. 5.** Within 30 days after units' owners other than the declarant
30 elect a majority of the members of the executive board, the declarant
31 deliver to the association all property of the units' owners and of the as-
32 socation held by or controlled by him, including:

33 1. The original or a certified copy of the recorded declaration as amended
34 the association's articles of incorporation if the association is incorporated,
35 bylaws, minute books and other books and records of the association and
36 rules or regulations which may have been adopted.

37 2. An accounting for money of the association and financial statements
38 from the date the association received money to the date the period of
39 declarant's control ends. The financial statements must fairly and accurately
40 report the association's financial condition prepared in accordance with
41 generally accepted accounting principles.

42 3. The association's money or control thereof.

43 4. All of the declarant's tangible personal property that has been re-
44 sented by the declarant as property of the association or, unless the declarant
45 has disclosed in the public offering statement that all such personal prop-
46 erty used in the common-interest community will remain the declarant's prop-
47 erty, all of the declarant's tangible personal property that is necessary for,

1 been used exclusively in, the operation and enjoyment of the common ele-
2 ments, and inventories of these properties.

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

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

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

11 8. Any renewable permits and approvals issued by governmental bodies
12 applicable to the common-interest community which are in force and any
13 other permits and approvals so issued and applicable which are required by
14 law to be kept on the premises of the community.

15 9. Written warranties of the contractor, subcontractors, suppliers and
16 manufacturers that are still effective.

17 10. A roster of owners and mortgagees of units and their addresses and
18 telephone numbers, if known, as shown on the declarant's records.

19 11. Contracts of employment in which the association is a contracting
20 party.

21 12. Any contract for service in which the association is a contracting party
22 or in which the association or the units' owners have any obligation to pay a
23 fee to the persons performing the services.

24 **Sec. 6.** The association or other person conducting the sale shall also
25 mail, within 10 days after the notice of default and election to sell is recorded,
26 a copy of the notice by first-class mail to:

27 1. Each person who has requested notice pursuant to NRS 107.090 or
28 116.31168;

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

32 3. A purchaser of the unit, if the unit's owner has notified the association,
33 30 days before the recordation of the notice, that the unit is the subject of a
34 contract of sale and the association has been requested to furnish the certi-
35 ficate required by subsection 2 of NRS 116.4109.

36 **Sec. 7.** The association or other person conducting the sale shall also,
37 after the expiration of the 60 days and before selling the unit:

38 1. Give notice of the time and place of the sale in the manner and for a
39 time not less than that required by law for the sale of real property upon
40 execution, except that a copy of the notice of sale must be mailed, on or
41 before the date of first publication or posting, by certified or registered mail,
42 return receipt requested, to the unit's owner or his successor in interest at his
43 address if known, and to the address of the unit.

44 2. Mail, on or before the date of first publication or posting, a copy of the
45 notice by first-class mail to:

46 (a) Each person entitled to receive a copy of the notice of default and
47 election to sell notice under section 6 of this act; and

1 (b) The holder of a recorded security interest or the purchaser of the unit
2 if either of them has notified the association, before the mailing of the notice
3 of sale, of the existence of the security interest, lease or contract of sale, is
4 applicable.

5 **Sec. 8. 1.** In a condominium or planned community:

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

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

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

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

31 2. In a cooperative:

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

37 (b) Whether or not an owner's unit is subject to the claims of the assoc-
38 tion's creditors, no other property of an owner is subject to those claims.

39 **Sec. 9.** NRS 116.110318 is hereby amended to read as follows:

40 116.110318 "Common elements" means:

41 1. In a condominium or cooperative, all portions of the common-interest
42 community other than the units, including easements in favor of units or of the
43 common elements over other units; and

44 2. In a planned community, any real estate within [a] the planned commu-
45 nity owned or leased by the association, other than a unit . . . ; and

46 3. All real and personal property owned or leased by the association.]

47 **Sec. 10.** (Deleted by amendment.)

48 **Sec. 11.** NRS 116.110348 is hereby amended to read as follows:

1 116.110348 "Identifying number" means a symbol [or address that] ,
2 address or legally sufficient description of real estate which identifies only
3 one unit in a common-interest community.

4 **Sec. 12.** (Deleted by amendment.)

5 **Sec. 13.** NRS 116.1115 is hereby amended to read as follows:

6 116.1115 1. From time to time the dollar amounts specified in NRS
7 116.1203 , [and] 116.4101 and 116.41035 must change, as provided in
8 subsections 2 and 3, according to and to the extent of changes in the Con-
9 sumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City
10 Average, All Items [1967] 1982-1984 = 100, compiled by the Bureau of
11 Labor Statistics, United States Department of Labor, (the "Index"). The
12 Index for December [1982-1984] 1990 is the Reference Base Index.

13 2. The dollar amounts specified in NRS 116.1203 [and 116.4101,] ,
14 116.4101 and 116.41035, and any amount stated in the declaration pursuant
15 to those sections, must change on July 1 of each year if the percentage of
16 change, calculated to the nearest whole percentage point, between the Index
17 at the end of the preceding year and the Reference Base Index is 10 percent or
18 more, but:

19 (a) The portion of the percentage change in the Index in excess of a
20 multiple of 10 percent must be disregarded and the dollar amounts must
21 change only in multiples of 10 percent of the amounts appearing in this
22 chapter on the date of enactment;

23 (b) The dollar amounts must not change if the amounts required by this
24 section are those currently in effect pursuant to this chapter as a result of
25 earlier application of this section; and

26 (c) In no event may the dollar amounts be reduced below the amounts
27 appearing in this chapter on the date of enactment.

28 3. If the Index is revised after December [1979,] 1990, the percentage of
29 change pursuant to this section must be calculated on the basis of the revised
30 Index. If the revision of the Index changes the Reference Base Index, a
31 revised Reference Base Index must be determined by multiplying the Refer-
32 ence Base Index then applicable by the rebasing factor furnished by the
33 Bureau of Labor Statistics. If the Index is superseded, the index referred to in
34 this section is the one represented by the Bureau of Labor Statistics as
35 reflecting most accurately changes in the purchasing power of the dollar for
36 consumers.

37 **Secs. 14 and 15.** (Deleted by amendment.)

38 **Sec. 16.** NRS 116.1203 is hereby amended to read as follows:

39 116.1203 [If]

40 1. Except as otherwise provided in subsection 2, if a planned community:
41 [1.] (a) Contains no more than 12 units and is not subject to any develop-
42 mental rights; or

43 [2.] (b) Provides, in its declaration, that the annual average liability for
44 common expenses of all units restricted to residential purposes, exclusive of
45 optional users' fees and any insurance premiums paid by the association, may
46 not exceed \$500 [, as adjusted pursuant to NRS 116.1115,] per unit,
47 it is subject only to NRS 116.1105, 116.1106 and 116.1107 unless the
48 declaration provides that this entire chapter is applicable.

1 2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, NRS
2 116.3101 to 116.3119, inclusive, and 116.11031 to 116.110393, inclusive, to
3 the extent necessary in construing any of those sections, apply to a residential
4 planned community containing more than six units.

5 Secs. 17-19. (Deleted by amendment.)

6 Sec. 20. NRS 116.2104 is hereby amended to read as follows:

7 116.2104 A description of a unit which sets forth the name of the com-
8 mon-interest community, the file number and book or other information to
9 show where the declaration is recorded, the county in which the common-
10 interest community is located and the identifying number of the unit, is a
11 legally sufficient description of that unit and all rights, obligations and inter-
12 ests appurtenant to that unit which were created by the declaration or by law.

13 Sec. 21. NRS 116.2105 is hereby amended to read as follows:

14 116.2105 1. The declaration must contain:

15 (a) The names of the common-interest community and the association and
16 a statement that the common-interest community is either a condominium,
17 cooperative or planned community;

18 (b) The name of every county in which any part of the common-interest
19 community is situated;

20 (c) A [legally] sufficient description of the real estate included in the
21 common-interest community;

22 (d) A statement of the maximum number of units that the declarant
23 reserves the right to create;

24 (e) In a condominium or planned community, a description of the bound-
25 aries of each unit created by the declaration, including the unit's identifying
26 number or, in a cooperative, a description, which may be by plats or plans, of
27 each unit created by the declaration, including the unit's identifying number,
28 its size or number of rooms, and its location within a building if it is within a
29 building containing more than one unit;

30 (f) A description of any limited common elements, other than those speci-
31 fied in subsections 2 and 4 of NRS 116.2102, as provided in paragraph (g)
32 (g) of subsection 2 of NRS 116.2109 and, in a planned community, any real
33 estate that is or must become common elements;

34 (g) A description of any real estate, except real estate subject to develop-
35 mental rights, that may be allocated subsequently as limited common ele-
36 ments, other than limited common elements specified in subsections 2 and 4
37 of NRS 116.2102, together with a statement that they may be so allocated;

38 (h) A description of any developmental rights (NRS 116.11034) and other
39 special declarant's rights (NRS 116.110385) reserved by the declarant,
40 together with a legally sufficient description of the real estate to which each of
41 those rights applies, and a time within which each of those rights must be
42 exercised;

43 (i) If any developmental right may be exercised with respect to different
44 parcels of real estate at different times, a statement to that effect together
45 with:

46 (1) Either a statement fixing the boundaries of those portions and regu-
47 lating the order in which those portions may be subjected to the exercise of

1 each developmental right or a statement that no assurances are made in those
2 regards; and

3 (2) A statement whether, if any developmental right is exercised in any
4 portion of the real estate subject to that developmental right, that develop-
5 mental right must be exercised in all or in any other portion of the remainder
6 of that real estate;

7 (j) Any other conditions or limitations under which the rights described in
8 paragraph (h) may be exercised or will lapse;

9 (k) An allocation to each unit of the allocated interests in the manner
10 described in NRS 116.2107;

11 (l) Any restrictions:

12 (1) On use, occupancy and alienation of the units; and

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

17 (m) The [recording data] file number and book or other information to
18 show where easements and licenses are recorded appurtenant to or included in
19 the common-interest community or to which any portion of the common-
20 interest community is or may become subject by virtue of a reservation in the
21 declaration; and

22 (n) All matters required by NRS 116.2106 to 116.2109, inclusive,
23 116.2115 and 116.2116 and [subsection 4 of NRS 116.3103.] section 2 of
24 this act.

25 2. The declaration may contain any other matters the declarant considers
26 appropriate.

27 Sec. 22. NRS 116.2107 is hereby amended to read as follows:

28 116.2107 1. The declaration must allocate to each unit:

29 (a) In a condominium, a fraction or percentage of undivided interests in the
30 common elements and in the common expenses of the association (NRS
31 116.3115) and a portion of the votes in the association;

32 (b) In a cooperative, a proportionate ownership in the association, a frac-
33 tion or percentage of the common expenses of the association (NRS
34 116.3115) and a portion of the votes in the association; and

35 (c) In a planned community, a fraction or percentage of the common
36 expenses of the association (NRS 116.3115) and a portion of the votes in the
37 association.

38 2. The declaration must state the formulas used to establish allocations of
39 interests. Those allocations may not discriminate in favor of units owned by
40 the declarant or an affiliate of the declarant.

41 3. If units may be added to or withdrawn from the common-interest
42 community, the declaration must state the formulas to be used to reallocate
43 the allocated interests among all units included in the common-interest com-
44 munity after the addition or withdrawal.

45 4. The declaration may provide:

46 (a) That different allocations of votes are made to the units on particular
47 matters specified in the declaration;

1 (b) For cumulative voting only for the purpose of electing members of
2 executive board; and

3 (c) For class voting on specified issues affecting the class if necessary to
4 protect valid interests of the class.

5 Except as otherwise provided in [NRS 116.3103,] section 2 of this act,
6 declarant may not utilize cumulative or class voting for the purpose of
7 evading any limitation imposed on declarants by this chapter nor may units
8 constitute a class because they are owned by a declarant.

9 5. Except for minor variations because of rounding, the sum of the limited
10 ties for common expenses and, in a condominium, the sum of the undivided
11 interests in the common elements allocated at any time to all the units must
12 each equal one if stated as a fraction or 100 percent if stated as a percentage.
13 In the event of discrepancy between an allocated interest and the result
14 derived from application of the pertinent formula, the allocated interest
15 prevails.

16 6. In a condominium, the common elements are not subject to partition,
17 and any purported conveyance, encumbrance, judicial sale or other voluntary
18 or involuntary transfer of an undivided interest in the common elements must
19 without the unit to which that interest is allocated is void.

20 7. In a cooperative, any purported conveyance, encumbrance, judicial sale
21 or other voluntary or involuntary transfer of an ownership interest in the
22 association made without the possessory interest in the unit to which the
23 interest is related is void.

24 Sec. 23. NRS 116.2109 is hereby amended to read as follows:

25 116.2109 1. Plats and plans are a part of the declaration, and are
26 required for all common-interest communities except cooperatives. [Separate
27 plats and plans are not required by this chapter if all the information required
28 by this section is contained in either a plat or plan.] Each plat and plan must
29 be clear and legible and contain a certification that the plat or plan contains all
30 information required by this section.

31 2. Each plat must comply with the provisions of chapter 278 of NRS and
32 show:

33 (a) The name and a survey of the area which is the subject of the plat;

34 (b) [The approximate location and approximate dimensions of all real
35 estate not subject to developmental rights, or subject only to the developmental
36 right to withdraw, and the location and dimensions of all existing improvements
37 within that real estate;

38 (c) A legally sufficient description of [any] the real estate; [subject to
39 developmental rights, labeled to identify the rights applicable to each parcel

40 (d)] (c) The extent of any encroachments by or upon any portion of the
41 [common-interest community;

42 (e) To the extent feasible, a legally sufficient description of all easements
43 serving or burdening] property which is the subject of the plat;

44 (d) The location and dimensions of all easements having a specific location
45 and dimension which serve or burden any portion of the common-interest
46 community;

1 [(f)] (e) The location and dimensions of any vertical unit boundaries [not
2 shown or projected on plans recorded pursuant to subsection 4] and that
3 unit's identifying number;

4 [(g)] (f) The location with reference to an established datum of any hori-
5 zontal unit boundaries not shown or projected on plans recorded pursuant to
6 subsection 4 and that unit's identifying number;

7 [(h)] A legally sufficient description of any real estate in which the units'
8 owners will own only an estate for years, labeled as "leasehold real estate";

9 (i) The distance between noncontiguous parcels of real estate comprising
10 the common-interest community;

11 (j)] and

12 (g) The location and dimensions of limited common elements, including
13 porches, balconies and patios, other than parking spaces and the other limited
14 common elements described in subsections 2 and 4 of NRS 116.2102. [; and

15 (k) In the case of real estate not subject to developmental rights, all other
16 matters customarily shown on land surveys.

17 3. A plat may also show the intended location and dimensions of any
18 contemplated improvement to be constructed anywhere within the common-
19 interest community. Any contemplated improvement shown must be labeled
20 either "MUST BE BUILT" or "NEED NOT BE BUILT."

21 4.] 3. To the extent not shown or projected on the plats, plans of the units
22 must show or project [:

23 (a) The location and dimensions of the vertical boundaries of each unit,
24 and that unit's identifying number;

25 (b) Any horizontal unit boundaries, with reference to an established datum,
26 and that unit's identifying number; and

27 (c) Any units in which the declarant has reserved the right to create
28 additional units or common elements (paragraph (h) of subsection 1 of NRS
29 116.2105), identified appropriately.

30 [5.] 4. Unless the declaration provides otherwise, the horizontal bounda-
31 ries of part of a unit located outside a building have the same elevation as the
32 horizontal boundaries of the inside part and need not be depicted on the plats
33 and plans [.] of the units.

34 5. A declarant shall also provide a plan of development for the common-
35 interest community with its initial phase of development. The declarant shall
36 revise the plan of development with each subsequent phase. The plan of
37 development may show the intended location and dimensions of any contem-
38 plated improvement to be constructed anywhere within the common-interest
39 community. Any contemplated improvement shown must be labeled either
40 "MUST BE BUILT" or "NEED NOT BE BUILT." The plan of development
41 must also show or project:

42 (a) The location and dimensions of all real estate not subject to develop-
43 mental rights, or subject only to the developmental right to withdraw, and the
44 location and dimensions of all existing improvements within that real estate;

45 (b) A sufficient description of any real estate subject to developmental
46 rights, labeled to identify the rights applicable to each parcel; and

47 (c) A sufficient description of any real estate in which the units' owners will
48 own only an estate for years, labeled as "leasehold real estate."

1 6. Upon exercising any developmental right, the declarant shall record
2 [either] new or amended plats [and plans] necessary to conform to the
3 requirements of [subsections 1, 2 and 4 or new certifications of plats and
4 plans previously recorded if those plats and] subsection 2 and provide new or
5 amended plans of the units and a new or amended plan of development or new
6 certifications of those plans if the plans otherwise conform to the require-
7 ments of [those subsections.

8 7. A declarant shall provide a general schematic plan of the planned and
9 development comprising its common-interest community with its initial plan
10 of development. The declarant shall revise the plan with each subsequent
11 phase.

12 8.] subsections 3 and 5.

13 7. Each plat must be certified by an independent professional land sur-
14 veyor. [Each plan] The plans of the units must be certified by an independent
15 professional engineer or architect. If the plan of development is not certified
16 by an independent professional land surveyor or an independent professional
17 engineer or architect, it must be acknowledged by the declarant.

18 Sec. 24. NRS 116.2115 is hereby amended to read as follows:

19 116.2115 A declarant may maintain offices for sales and management, and
20 models in units or on common elements in the common-interest community
21 only if the declaration so provides . [and specifies the rights of a declarant
22 with regard to the number, size, location and relocation thereof. In a cooper-
23 tive or condominium, any office for sales or management or model not
24 designated a unit by the declaration is a common element. If a declarant
25 ceases to be a unit's owner, he ceases to have any rights with regard thereto
26 unless it is removed promptly from the common-interest community in accom-
27 dance with a right to remove reserved in the declaration.] Subject to any
28 limitations in the declaration, a declarant may maintain signs on the common
29 elements advertising the common-interest community. This section is subject
30 to the provisions of other state law and to local ordinances.

31 Sec. 25. NRS 116.2117 is hereby amended to read as follows:

32 116.2117 1. Except in cases of amendments that may be executed by a
33 declarant under NRS 116.2109 or 116.2110 or by the association under NRS
34 116.1107, subsection 3 of NRS 116.2108, or NRS 116.2113, or by certain
35 units' owners under subsection 2 of NRS 116.2108 or NRS 116.2112 or
36 116.2118, and except as limited by subsection 4, the declaration, including
37 any plats and plans, may be amended only by vote or agreement of units'
38 owners of units to which at least a majority of the votes in the association are
39 allocated, or any larger majority the declaration specifies. The declaration
40 may specify a smaller number only if all of the units are restricted exclusively
41 to nonresidential use.

42 2. No action to challenge the validity of an amendment adopted by the
43 association pursuant to this section may be brought more than one year after
44 the amendment is recorded.

45 3. Every amendment to the declaration must be recorded in every county
46 in which any portion of the common-interest community is located and is
47 effective only upon recordation. An amendment, except an amendment pursu-
48 ant to NRS 116.2112, must be indexed in the grantee's index in the name of

1 the common-interest community and the association and in the grantor's
2 index in the name of the parties executing the amendment.

3 4. Except to the extent expressly permitted or required by other provisions
4 of this chapter, no amendment may [create or increase special declarant's
5 rights, increase the number of units,] change the boundaries of any unit,
6 [change] the allocated interests of a unit or [change] the uses to which any
7 unit is restricted, in the absence of unanimous consent of the units' owners
8 affected and the consent of a majority of the owners of the remaining units.

9 5. Amendments to the declaration required by this chapter to be recorded
10 by the association must be prepared, executed, recorded and certified on
11 behalf of the association by any officer of the association designated for that
12 purpose or, in the absence of designation, by the president of the association.

13 Sec. 26. NRS 116.2120 is hereby amended to read as follows:

14 116.2120 1. If the declaration provides that any of the powers described
15 in NRS 116.3102, are to be exercised by or may be delegated to a profit or
16 nonprofit corporation that exercises those or other powers on behalf of one or
17 more common-interest communities or for the benefit of the units' owners of
18 one or more common-interest communities, all provisions of this chapter
19 applicable to unit-owners' associations apply to any such corporation, except
20 as modified by this section.

21 2. Unless it is acting in the capacity of an association described in NRS
22 116.3101, a master association may exercise the powers set forth in para-
23 graph (b) of subsection 1 of NRS 116.3102 only to the extent expressly
24 permitted in the declarations of common-interest communities which are part
25 of the master association or expressly described in the delegations of power
26 from those common-interest communities to the master association.

27 3. If the declaration of any common-interest community provides that the
28 executive board may delegate certain powers to a master association, the
29 members of the executive board have no liability for the acts or omissions of
30 the master association with respect to those powers following delegation.

31 4. The rights and responsibilities of units' owners with respect to the unit-
32 owners' association set forth in NRS 116.3103, 116.3108, 116.3109,
33 116.3110 and 116.3112 and sections 2 to 5, inclusive, of this act apply in the
34 conduct of the affairs of a master association only to persons who elect the
35 board of a master association, whether or not those persons are otherwise
36 units' owners within the meaning of this chapter.

37 5. Even if a master association is also an association described in NRS
38 116.3101, the certificate of incorporation or other instrument creating the
39 master association and the declaration of each common-interest community,
40 the powers of which are assigned by the declaration or delegated to the master
41 association, may provide that the executive board of the master association
42 must be elected after the period of declarant's control in any of the following
43 ways:

44 (a) All units' owners of all common-interest communities subject to the
45 master association may elect all members of the master association's execu-
46 tive board.

1 (b) All members of the executive boards of all common-interest commu-
2 ties subject to the master association may elect all members of the master
3 association's executive board.

4 (c) All units' owners of each common-interest community subject to the
5 master association may elect specified members of the master association's
6 executive board.

7 (d) All members of the executive board of each common-interest commu-
8 nity subject to the master association may elect specified members of the
9 master association's executive board.

10 Sec. 27. NRS 116.2122 is hereby amended to read as follows:

11 116.2122 In a planned community, if the right is originally reserved in the
12 declaration, the declarant, in addition to any other developmental right, may
13 amend the declaration at any time during as many years as are specified in the
14 declaration for adding additional real estate to the planned community without
15 describing the location of that real estate in the original declaration; but the
16 amount of real estate added to the planned community pursuant to this section
17 may not exceed 10 percent of the real estate described in paragraph (c) of
18 subsection 1 of NRS 116.2105 and the declarant may not in any event
19 increase the number of units in the planned community beyond the number
20 stated in the original declaration pursuant to paragraph [(c)] (d) of the
21 subsection.

22 Sec. 28. NRS 116.3103 is hereby amended to read as follows:

23 116.3103 1. Except as otherwise provided in the declaration, the
24 bylaws, this section or other provisions of this chapter, the executive board
25 may act in all instances on behalf of the association. In the performance of
26 their duties, the officers and members of the executive board are fiduciaries
27 and are subject to the insulation from liability provided for directors of
28 corporations by the laws of this state. The members of the executive board
29 are required to exercise the ordinary and reasonable care of directors of a
30 corporation, subject to the business-judgment rule.

31 2. The executive board may not act on behalf of the association to amend
32 the declaration (NRS 116.2117), to terminate the common-interest commu-
33 nity (NRS 116.2118), or to elect members of the executive board or deter-
34 mine their qualifications, powers and duties or terms of office (subsection 4,
35 but the executive board may fill vacancies in its membership for the
36 unexpired portion of any term.

37 3. Within 30 days after adoption of any proposed budget for the commu-
38 nity, the executive board shall provide a summary of the budget to all the units'
39 owners, and shall set a date for a meeting of the units' owners to consider
40 ratification of the budget not less than 14 nor more than 30
41 days after mailing of the summary. Unless at that meeting a majority of the
42 units' owners or any larger vote specified in the declaration reject the budget,
43 the budget is ratified, whether or not a quorum is present. If the proposed
44 budget is rejected, the periodic budget last ratified by the units' owners may
45 be continued until such time as the units' owners ratify a subsequent budget
46 proposed by the executive board.

47 [4. Subject to subsection 5, the declaration may provide for a period of
48 declarant's control of the association, during which a declarant, or person

1 designated by him, may appoint and remove the officers and members of the
2 executive board. Regardless of the period provided in the declaration, a
3 period of declarant's control terminates no later than the earlier of:

4 (a) Sixty days after conveyance of 75 percent of the units that may be
5 created to units' owners other than a declarant;

6 (b) Two years after all declarants have ceased to offer units for sale in the
7 ordinary course of business; or

8 (c) Two years after any right to add new units was last exercised.

9 A declarant may voluntarily surrender the right to appoint and remove
10 officers and members of the executive board before termination of that
11 period, but in that event the declarant may require, for the duration of the
12 period of declarant's control, that specified actions of the association or
13 executive board, as described in a recorded instrument executed by the
14 declarant, be approved by the declarant before they become effective.

15 5. Not later than 60 days after conveyance of 25 percent of the units that
16 may be created to units' owners other than a declarant, at least one member
17 and not less than 25 percent of the members of the executive board must be
18 elected by units' owners other than the declarant. Not later than 60 days after
19 conveyance of 50 percent of the units that may be created to units' owners
20 other than a declarant, not less than 33 1/3 percent of the members of the
21 executive board must be elected by units' owners other than the declarant.

22 6. Except as otherwise provided in subsection 5 of NRS 116.2120, not
23 later than the termination of any period of declarants' control, the units'
24 owners shall elect an executive board of at least three members, at least a
25 majority of whom must be units' owners. The executive board shall elect the
26 officers. The members and officers of the executive board shall take office
27 upon election.

28 7. Notwithstanding any provision of the declaration or bylaws to the
29 contrary, the units' owners, by a two-thirds vote of all persons present and
30 entitled to vote at any meeting of the units' owners at which a quorum is
31 present, may remove any member of the executive board with or without
32 cause, other than a member appointed by the declarant.

33 8. When a member of an executive board is sued for liability for actions
34 undertaken in his role as a member of the board, the association shall indem-
35 nify him for his losses or claims, and undertake all costs of defense, until and
36 unless it is proven that he acted with willful or wanton misfeasance or with
37 gross negligence. After such proof the association is no longer liable for the
38 cost of defense, and may recover costs already expended from the member of
39 the executive board who so acted. Members of the executive board are not
40 personally liable to the victims of crimes occurring on the property. Punitive
41 damages may not be recovered against the association, but may be recovered
42 from persons whose activity gave rise to the damages.

43 9. An officer, employee, agent or director of a corporate owner of a unit, a
44 trustee or designated beneficiary of a trust that owns a unit, a partner of a
45 partnership that owns a unit, and a fiduciary of an estate that owns a unit may
46 be an officer or member of the executive board. In all events where the person
47 serving or offering to serve as an officer or member of the executive board is

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1 not the record owner, he shall file proof of authority in the records of the
2 association.

3 10. Within 30 days after units' owners other than the declarant may change
4 majority of the members of the executive board, the declarant shall deliver
5 the association all property of the units' owners and of the association held
6 or controlled by him, including:

7 (a) The original or a certified copy of the recorded declaration as amended
8 the association's articles of incorporation if the association is incorporated
9 bylaws, minute books and other books and records of the association and its
10 rules or regulations which may have been adopted.

11 (b) An accounting for money of the association and financial statements
12 from the date the association received money to the date the period of the
13 declarant's control ends. The financial statements must fairly and accurately
14 report the association's financial condition prepared in accordance with gen-
15 erally accepted accounting principles.

16 (c) The association's money or control thereof.

17 (d) All of the declarant's tangible personal property that has been rep-
18 sented by the declarant as property of the association or, unless the declarant
19 has disclosed in the public offering statement that all such personal property
20 used in the common-interest community will remain the declarant's property,
21 all of the declarant's tangible personal property that is necessary for, and has
22 been used exclusively in, the operation and enjoyment of the common inter-
23 est communities, and inventories of these properties.

24 (e) A copy of any plans and specifications used in the construction of the
25 improvements in the common-interest community which were completed
26 within 2 years before the declaration was recorded.

27 (f) All insurance policies then in force, in which the units' owners, the
28 association, or its directors and officers are named as insured persons.

29 (g) Copies of any certificates of occupancy that may have been issued with
30 respect to any improvements comprising the common-interest community.

31 (h) Any other permits and approvals issued by governmental bodies applic-
32 cable to the common-interest community which are in force or which were
33 issued within 1 year before the date on which units' owners other than the
34 declarant took control of the association.

35 (i) Written warranties of the contractor, subcontractors, suppliers and
36 manufacturers that are still effective.

37 (j) A roster of owners and mortgagees of units and their addresses and
38 telephone numbers, if known, as shown of the declarant's records.

39 (k) Contracts of employment in which the association is a contracting
40 party.

41 (l) Any contract for service in which the association is a contracting party
42 or in which the association or the units' owners have any obligation to pay
43 fee to the persons performing the services.]

44 Sec. 29. NRS 116.3104 is hereby amended to read as follows:

45 116.3104 1. A special declarant's right (NRS 116.110385) created by
46 reserved under this chapter may be transferred only by an instrument
47 denoting the transfer recorded in every county in which any portion of the

1 common-interest community is located. The instrument is not effective unless
2 executed by the transferee.

3 2. Upon transfer of any special declarant's right, the liability of a trans-
4 feror declarant is as follows:

5 (a) A transferor is not relieved of any obligation or liability arising before
6 the transfer and remains liable for warranties imposed upon him by this
7 chapter. Lack of privity does not deprive any unit's owner of standing to
8 maintain an action to enforce any obligation of the transferor.

9 (b) If a successor to any special declarant's right is an affiliate of a declar-
10 ant (NRS 116.11031), the transferor is jointly and severally liable with the
11 successor for any obligations or liabilities of the successor relating to the
12 common-interest community.

13 (c) If a transferor retains any special declarant's rights, but transfers other
14 special declarant's rights to a successor who is not an affiliate of the declar-
15 ant, the transferor is liable for any obligations or liabilities imposed on a
16 declarant by this chapter or by the declaration relating to the retained special
17 declarant's rights and arising after the transfer.

18 (d) A transferor has no liability for any act or omission or any breach of a
19 contractual obligation or warranty arising from the exercise of a special
20 declarant's right by a successor declarant who is not an affiliate of the
21 transferor.

22 3. Unless otherwise provided in a mortgage, deed of trust or other agree-
23 ment creating a security interest, in case of foreclosure of a security interest,
24 sale by a trustee under an agreement creating a security interest, tax sale,
25 judicial sale or sale under the Bankruptcy Code or a receivership, of any units
26 owned by a declarant or real estate in a common-interest community subject
27 to developmental rights, a person acquiring title to all the property being
28 foreclosed or sold, but only upon his request, succeeds to all special declar-
29 ant's rights related to that property held by that declarant, or only to any
30 rights reserved in the declaration pursuant to NRS 116.2115 and held by that
31 declarant to maintain models, offices for sales and signs. The judgment or
32 instrument conveying title must provide for transfer of only the special
33 declarant's rights requested.

34 4. Upon foreclosure of a security interest, sale by a trustee under an
35 agreement creating a security interest, tax sale, judicial sale or sale under the
36 Bankruptcy Code or a receivership of all interests in a common-interest
37 community owned by a declarant:

38 (a) The declarant ceases to have any special declarant's rights; and

39 (b) The period of declarant's control [(subsection 4 of NRS 116.3103)]
40 (section 2 of this act) terminates unless the judgment or instrument conveying
41 title provides for transfer of all special declarant's rights held by that declar-
42 ant to a successor declarant.

43 Sec. 30. NRS 116.31043 is hereby amended to read as follows:
44 116.31043 The liabilities and obligations of a person who succeeds to
45 special declarant's rights are as follows:

46 1. A successor to any special declarant's right who is an affiliate of a
47 declarant is subject to all obligations and liabilities imposed on the transferor
48 by this chapter or by the declaration.

1 2. A successor to any special declarant's right, other than a success
2 described in subsection 3 or 4 or a successor who is an affiliate of a declarant
3 is subject to the obligations and liabilities imposed by this chapter or the
4 declaration:

5 (a) On a declarant which relate to the successor's exercise or nonexercise
6 of special declarant's rights; or

7 (b) On his transferor, other than:

8 (1) Misrepresentations by any previous declarant;

9 (2) Warranties on improvements made by any previous declarant, or
10 made before the common-interest community was created;

11 (3) Breach of any fiduciary obligation by any previous declarant or his
12 appointees to the executive board; or

13 (4) Any liability or obligation imposed on the transferor as a result of
14 the transferor's acts or omissions after the transfer.

15 3. A successor to only a right reserved in the declaration to maintain
16 models, offices for sales and signs (NRS 116.2115), may not exercise an
17 other special declarant's right, and is not subject to any liability or obligation
18 as a declarant, except the obligation to provide a public offering statement and
19 any liability arising as a result thereof.

20 4. A successor to all special declarant's rights held by a transferor who
21 succeeded to those rights pursuant to a deed or other instrument of conveyance
22 in lieu of foreclosure or a judgment or instrument conveying title under
23 subsection 3 of NRS 116.3104, may declare in a recorded instrument the
24 intention to hold those rights solely for transfer to another person. Thereafter
25 until transferring all special declarant's rights to any person acquiring title in
26 any unit or real estate subject to developmental rights owned by the successor,
27 or until recording an instrument permitting exercise of all those rights,
28 that successor may not exercise any of those rights other than any right held
29 by his transferor to control the executive board in accordance with [subsec-
30 tion 4 of NRS 116.3103] *section 2 of this act* for the duration of any period of
31 declarant's control, and any attempted exercise of those rights is void. In
32 long as a successor declarant may not exercise special declarant's rights
33 under this subsection, the successor declarant is not subject to any liability or
34 obligation as a declarant other than liability for his acts and omissions under
35 [subsection 4 of NRS 116.3103.] *section 2 of this act*.

36 **Sec. 31.** NRS 116.3105 is hereby amended to read as follows:

37 116.3105 If entered into before the executive board elected by the unit
38 owners pursuant to [subsection 6 of NRS 116.3103] *section 3 of this act* takes
39 office, any management contract, employment contract, or lease of recre-
40 ational or parking areas or facilities, any other contract or lease between the
41 association and a declarant or an affiliate of a declarant or any contract or
42 lease that is not in good faith or was unconscionable to the units' owners at
43 the time entered into under the circumstances then prevailing may be termi-
44 nated without penalty by the association at any time after the executive board
45 elected by the units' owners takes office upon not less than 90 days' notice to
46 the other party. This section does not apply to any lease the termination of
47 which would terminate the common-interest community or reduce its size,
48 unless the real estate subject to that lease was included in the common-inter-

1 community for the purpose of avoiding the right of the association to termi-
2 nate a lease under this section, or to a proprietary lease.

3 **Sec. 32.** NRS 116.3106 is hereby amended to read as follows:

4 116.3106 1. The bylaws of the association must provide:

5 (a) The number of members of the executive board and the titles of the
6 officers of the association;

7 (b) For election by the executive board of a president, treasurer, secretary
8 and any other officers of the association the bylaws specify;

9 (c) The qualifications, powers and duties, terms of office and manner of
10 electing and removing *officers of the association and* members [and officers]
11 of the executive board and filling vacancies;

12 (d) Which, if any, of its powers the executive board or officers may
13 delegate to other persons or to a managing [agency:] *agent*;

14 (e) Which of its officers may prepare, execute, certify and record amend-
15 ments to the declaration on behalf of the association; and

16 (f) A method for amending the bylaws.

17 2. [Subject to the provisions of] *Except as otherwise provided in the*
18 declaration, the bylaws may provide for any other matters the association
19 deems necessary and appropriate.

20 **Sec. 33.** NRS 116.3107 is hereby amended to read as follows:

21 116.3107 1. Except to the extent provided by the declaration, subsection
22 2 [of] *and* NRS 116.31135, the association is responsible for maintenance,
23 repair and replacement of the common elements, and each unit's owner is
24 responsible for maintenance, repair and replacement of his unit. Each unit's
25 owner shall afford to the association and the other units' owners, and to their
26 agents or employees, access through his unit reasonably necessary for those
27 purposes. If damage is inflicted on the common elements or on any unit
28 through which access is taken, the unit's owner responsible for the damage,
29 or the association if it is responsible, is liable for the prompt repair thereof.

30 2. In addition to the liability that a declarant as a unit's owner has under
31 this chapter, the declarant alone is liable for all expenses in connection with
32 real estate subject to developmental rights. No other unit's owner and no
33 other portion of the common-interest community is subject to a claim for
34 payment of those expenses. Unless the declaration provides otherwise, any
35 income or proceeds from real estate subject to developmental rights inures to
36 the declarant.

37 3. In a planned community, if all developmental rights have expired with
38 respect to any real estate, the declarant remains liable for all expenses of that
39 real estate unless, upon expiration, the declaration provides that the real
40 estate becomes common elements or units.

41 **Sec. 34.** NRS 116.3112 is hereby amended to read as follows:

42 116.3112 1. In a condominium or planned community, portions of the
43 common elements may be conveyed or subjected to a security interest by the
44 association if persons entitled to cast at least a majority of the votes in the
45 association, including a majority of the votes allocated to units not owned by
46 a declarant, or any larger percentage the declaration specifies, agree to that
47 action; but all owners of units to which any limited common element is
48 allocated must agree *in order* to convey that limited common element or

1 subject it to a security interest. The declaration may specify a smaller
2 centage only if all of the units are restricted exclusively to nonresidential
3 uses. Proceeds of the sale are an asset of the association.

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

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

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

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

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

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

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

44 **Sec. 35.** NRS 116.31135 is hereby amended to read as follows:
45 116.31135 1. Any portion of the common-interest community for which
46 insurance is required under [this section] NRS 116.3113 which is damaged or
47 destroyed must be repaired or replaced promptly by the association

(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.
The cost of repair or replacement in excess of insurance proceeds and
reserves is a common expense.

2. If the entire common-interest community is not repaired or replaced,
the 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 except to the extent that other persons will
be distributees (subparagraph 2 of paragraph (1) of subsection 1 of NRS
116.2105):

(a) The 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
lien holders, as their interests may appear; and

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

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

(2) 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.

Sec. 36. NRS 116.3115 is hereby amended to read as follows:

116.3115 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.

2. Except for assessments under subsections 3, 4 and 5, all common
expenses, including a reserve, 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. Any past due assessment for common
expenses or installment thereof bears interest at the rate established by the
association not exceeding 18 percent per year.

3. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair 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 or portion thereof benefiting fewer than all of the
units must be assessed exclusively against the units benefited; and

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

3 4. Assessments to pay a judgment against the association [(subsection 1 of
4 NRS 116.31164)] may be made only against the units in the common-interest
5 community at the time the judgment was entered, in proportion to the
6 liabilities for common expenses.

7 5. If any common expense is caused by the misconduct of any unit's
8 owner, the association may assess that expense exclusively against his unit.

9 6. If liabilities for common expenses are reallocated, assessments for com-
10 mon expenses and any installment thereof not yet due must be recalculated
11 accordance with the reallocated liabilities.

12 Sec. 37. NRS 116.31162 is hereby amended to read as follows:

13 116.31162 1. In a condominium, a cooperative where the owner's in-
14 terest in a unit is real estate (NRS 116.1105), or a planned community, the
15 association may foreclose its lien by sale after:

16 (a) The association has [caused to be recorded, with the county recorder of
17 the county in which the common-interest community or any part of it is
18 situated,] mailed by certified or registered mail, return receipt requested,
19 the unit's owner or his successor in interest, at his address if known, and at
20 the address of the unit, a notice of delinquent assessment [,] which states the
21 amount of the assessments and other sums which are due in accordance with
22 subsection 1 of NRS 116.3116, a description of the unit against which the lien
23 is imposed, and the name of the record owner of the [units;] unit;

24 (b) The association or other person conducting the sale has executed and
25 caused to be recorded, with the county recorder of the county in which the
26 common-interest community or any part of it is situated, a notice of default
27 and election to sell the unit to satisfy the lien, which contains the
28 information as the notice of delinquent assessment, but must also describe the
29 deficiency in payment and the name and address of the person authorized by
30 the association to enforce the lien by sale; and

31 (c) The unit's owner or his successor in interest has failed to pay the
32 amount of the lien, including costs, fees and expenses incident to its enforce-
33 ment, for 60 days following the recording of the notice of default and election
34 to sell.

35 2. The notice of [delinquent assessment] default and election to sell
36 be signed by the person designated in the declaration or by the association for
37 that purpose, or if no one is designated, by the president of the association.

38 3. The period of 60 days begins on the first day following the later of:

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

40 (b) The day on which a copy of the notice of default is mailed by certified
41 or registered mail, return receipt requested, to the unit's owner or his suc-
42 cessor in interest at his address if known, otherwise to the address of the unit.

43 [4. The association or other person conducting the sale shall also, after the
44 expiration of the 60 days and before selling the unit, give notice of the time
45 and place of the sale in the manner and for a time not less than that required
46 by law for the sale of real property upon execution, except that a copy of the
47 notice of sale must be mailed, on or before the date of first publication or
48 posting, by certified or registered mail, return receipt requested, to the unit's

1 owner or his successor in interest at his address if known, otherwise to the
2 address of the unit.]

3 Sec. 38. NRS 116.31164 is hereby amended to read as follows:

4 116.31164 1. The sale must be conducted in the county in which the
5 common-interest community or part of it is situated, and may be conducted
6 by the association, its agent or attorney, or a title insurance company or
7 escrow agent licensed to do business in this state, except that the sale may be
8 made at the office of the association if the notice of the sale so provided,
9 whether the unit is located within the same county as the office of the
10 association or not. The association or other person conducting the sale may
11 from time to time postpone the sale by such advertisement and notice as it
12 considers reasonable or, without further advertisement or notice, by procla-
13 mation made to the persons assembled at the time and place previously set
14 and advertised for the sale.

15 2. On the day of sale originally advertised or to which the sale is post-
16 poned, at the time and place specified in the notice or postponement, the
17 person conducting the sale may sell the unit at public auction to the highest
18 cash bidder. Unless otherwise provided in the declaration or by agreement,
19 the association may purchase the unit and hold, lease, mortgage or convey it.
20 [If so authorized to purchase, the] The association may [enter] purchase by a
21 credit bid up to the amount of the unpaid assessments and any permitted
22 costs, fees and expenses incident to the enforcement of its lien.

23 3. After the sale, the person conducting the sale shall make, execute and,
24 after payment is made, deliver to the purchaser, or his successor or assign, a
25 deed without warranty which conveys to the grantee all title of the unit's
26 owner to the unit, and shall apply the proceeds of the sale for the following
27 purposes in the following order:

- 28 (a) The reasonable expenses of sale;
- 29 (b) The reasonable expenses of securing possession before sale, holding,
30 maintaining, and preparing the unit for sale, including payment of taxes and
31 other governmental charges, premiums on hazard and liability insurance,
32 and, to the extent provided for by [agreement between the association and the
33 unit's owner,] the declaration, reasonable attorney's fees and other legal
34 expenses incurred by the association;
- 35 (c) Satisfaction of the association's lien;
- 36 (d) Satisfaction in the order of priority of any subordinate claim of record;
37 and
- 38 (e) Remittance of any excess to the unit's owner.

39 Sec. 39. NRS 116.31166 is hereby amended to read as follows:

40 116.31166 1. The recitals in [such] a deed made pursuant to NRS
41 116.31164 of:

- 42 (a) Default [and the recording], the mailing of the notice of delinquent
43 assessment, and the recording of the notice of default and election to sell;
 - 44 (b) The elapsing of the 60 days; and
 - 45 (c) The giving of notice of sale,
- 46 are conclusive proof of the matters recited.

47 2. Such a deed containing those recitals is conclusive against the unit's
48 former owner, his heirs and assigns, and all other persons. The receipt for the

1 purchase money contained in such a deed is sufficient to discharge the
2 chaser from obligation to see to the proper application of the pur
3 money.

4 3. The sale of a unit pursuant to NRS 116.31162 and 116.31164
5 section 6 of this act vests in the purchaser the title of the unit's owner with
6 equity or right of redemption.

7 **Sec. 40.** NRS 116.31168 is hereby amended to read as follows:
8 116.31168 1. The provisions of NRS 107.090 apply to the foreclo
9 an association's lien as if a deed of trust were being foreclosed. The re
10 must identify the lien by stating the names of the unit's owner and
11 common-interest community. [The association must also give reason
12 notice of its intent to foreclose to all holders of liens in the unit who
13 known to it.]

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

18 **Sec. 41.** NRS 116.4101 is hereby amended to read as follows:
19 116.4101 1. NRS 116.4101 to 116.4120, inclusive, apply to all
20 subject to this chapter, except as otherwise provided in subsection 2
21 modified or waived by agreement of purchasers of units in a common-int
22 community in which all units are restricted to nonresidential use.

23 2. Neither a public offering statement nor a certificate of resale need
24 prepared or delivered in the case of a:
25 (a) Gratuitous disposition of a unit;
26 (b) Disposition pursuant to court order;
27 (c) Disposition by a government or governmental agency;
28 (d) Disposition by foreclosure or deed in lieu of foreclosure;
29 (e) Disposition to a dealer;
30 (f) Disposition that may be canceled at any time and for any reason by
31 purchaser without penalty; or
32 (g) Disposition of a unit in a planned community in which the declar
33 limits the [maximum] average annual assessment of any unit to not more
34 [\$300, as adjusted pursuant to NRS 116.1115] \$500 and which contains
35 more than 35 units if:

36 (1) The declarant reasonably believes in good faith that the maxim
37 stated assessment will be sufficient to pay the expenses of the planned com
38 munity; and

39 (2) The declaration cannot be amended to increase the assessment
40 ing the period of declarant's control without the consent of all units' own
41 [; and

42 (3) The planned community is not subject to any developmental rig

43 **Sec. 41.5.** NRS 116.4102 is hereby amended to read as follows:
44 116.4102 1. Except as otherwise provided in subsection 2, a declar
45 before offering any interest in a unit to the public, shall prepare a pub
46 offering statement conforming to the requirements of NRS 116.4103
47 116.4106, inclusive.

1 2. A declarant may transfer responsibility for preparation of all or a part
2 of the public offering statement to a successor declarant (NRS 116.3104 and
3 116.31043) or to a dealer who intends to offer units in the common-interest
4 community. In the event of any such transfer, the transferor shall provide the
5 transferee with any information necessary to enable the transferee to fulfill
6 the requirements of subsection 1.

7 3. Any declarant or dealer who offers a unit to a purchaser shall deliver a
8 public offering statement in the manner prescribed in subsection 1 of NRS
9 116.4108. The [person who prepared all or a part of the public offering
10 statement] declarant or his transferee under subsection 2 is liable under NRS
11 116.4108 and 116.4117 for any false or misleading statement set forth therein
12 or for any omission of a material fact therefrom with respect to that portion of
13 the public offering statement which he prepared. If a declarant or dealer did
14 not prepare any part of a public offering statement that he delivers, he is not
15 liable for any false or misleading statement set forth therein or for any
16 omission of a material fact therefrom unless he had actual knowledge of the
17 statement or omission or, in the exercise of reasonable care, should have
18 known of the statement or omission.

19 4. If a unit is part of a common-interest community and is part of any
20 other real estate in connection with the sale of which the delivery of a public
21 offering statement is required under the laws of this state, a single public
22 offering statement conforming to the requirements of NRS 116.4103 to
23 116.4106, inclusive, as those requirements relate to the real estate in which
24 the unit is located, and to any other requirements imposed under the laws of
25 this state, may be prepared and delivered in lieu of providing two or more
26 public offering statements. *Except as otherwise provided in section 49 of this*
27 *act, if the requirements of this chapter conflict with those of another law of*
28 *this state, the requirements of this chapter prevail.*

29 **Sec. 42.** NRS 116.4103 is hereby amended to read as follows:
30 116.4103 1. Except as otherwise provided in NRS 116.41035, a public
31 offering statement must contain or fully and accurately disclose each of the
32 following:

33 [1.] (a) The name and principal address of the declarant and of the com-
34 mon-interest community, and a statement that the common-interest commu-
35 nity is either a condominium, cooperative or planned community.

36 [2.] (b) A general description of the common-interest community, includ-
37 ing to the extent possible, the types, number and declarant's schedule of
38 commencement and completion of construction of buildings, and amenities
39 that the declarant anticipates including in the common-interest community.

40 [3.] (c) The estimated number of units in the common-interest community.

41 [4.] (d) Copies of the declaration, bylaws, and any rules or regulations of
42 the association [.

43 5.] , but a plat or plan is not required.

44 (e) Any current balance sheet and a projected budget for the association,
45 either within or as an exhibit to the public offering statement, for 1 year after
46 the date of the first conveyance to a purchaser, and thereafter the current
47 budget of the association. The budget must include, without limitation:

1 [(a)] (1) A statement of the amount, or a statement that there is no amount
2 included in the budget as a reserve for repairs and replacement; and

3 [(b)] (2) The projected monthly assessment for common expenses for each
4 type of unit.

5 [6.] (f) A description of any services or subsidies being provided by the
6 [developer,] declarant or an affiliate of the declarant, not reflected in the
7 budget.

8 [7.] (g) Any initial or special fee due from the purchaser at closing,
9 together with a description of the purpose and method of calculating the fee.

10 [8.] (h) The terms and significant limitations of any warranties provided by
11 the declarant, including statutory warranties and limitations on the enforce-
12 ment thereof or on damages.

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

18 [10.] (j) A statement of any unsatisfied judgments or pending suits against
19 the association, and the status of any pending suits material to the common-
20 interest community of which a declarant has actual knowledge.

21 [11.] (k) Any current or expected fees or charges to be paid by the
22 owners for the use of the common elements and other facilities related to the
23 common-interest community.

24 2. A declarant is not required to revise a public offering statement
25 than once each calendar quarter, if the following warning is given prom-
26 nence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT
27 RENT AS OF (insert a specified date). RECENT DEVELOPMENTS
28 REGARDING (here refer to particular provisions of NRS 116.4103
29 116.4105) MAY NOT BE REFLECTED IN THIS STATEMENT."

30 Sec. 43. NRS 116.41035 is hereby amended to read as follows:

31 116.41035 If a common-interest community composed of not more than
32 12 units is not subject to any developmental rights and no power is reserved
33 to a declarant to make the common-interest community part of a larger
34 common-interest community, group of common-interest communities or
35 other real estate, a public offering statement may but need not include the
36 information otherwise required by [subsections 8 and 11] paragraphs (h) and
37 (k) of subsection 1 of NRS 116.4103.

38 Sec. 44. NRS 116.4108 is hereby amended to read as follows:

39 116.4108 1. A person required to deliver a public offering statement
40 pursuant to subsection 3 of NRS 116.4102 shall provide a purchaser with a
41 copy of the current public offering statement [and all amendments thereto]
42 before conveyance of the unit, and] not later than the date of any contract
43 sale. Unless the purchaser has personally inspected the unit, the purchaser
44 may cancel, by written notice, the contract of purchase until midnight of the
45 fifth calendar day following the date of execution of the contract, and the
46 contract for purchase must contain a provision to that effect.

47 2. If a purchaser elects to cancel a contract pursuant to subsection 1,
48 may do so by hand delivering notice thereof to the offeror or by mail

1 notice thereof by prepaid United States mail to the offeror or to his agent for
2 service of process. Cancellation is without penalty, and all payments made by
3 the purchaser before cancellation must be refunded promptly.

4 3. If a person required to deliver a public offering statement pursuant to
5 subsection 3 of NRS 116.4102 fails to provide a purchaser to whom a unit is
6 conveyed with [that] a current public offering statement, [and all amend-
7 ments thereto as required by subsection 1,] the purchaser [, in addition to any
8 rights to damages or other relief,] is entitled [to receive from that person an
9 amount equal to 10 percent of the sale price of the unit, plus 10 percent of the
10 share, proportionate to his liability for common expenses, of any indebted-
11 ness of the association secured by security interests encumbering the com-
12 mon-interest community.] to actual damages, rescission or other relief, but if
13 the purchaser has accepted a conveyance of the unit, he is not entitled to
14 rescission.

15 Sec. 45. NRS 116.4109 is hereby amended to read as follows:

16 116.4109 1. Except in the case of a sale in which delivery of a public
17 offering statement is required, or unless exempt under subsection 2 of NRS
18 116.4101, a unit's owner shall furnish to a purchaser before execution of any
19 contract for sale of a unit, or otherwise before conveyance:

20 (a) A copy of the declaration (other than any plats and plans), the bylaws,
21 and the rules or regulations of the association;

22 (b) A statement setting forth the amount of the monthly assessment for
23 common expenses and any unpaid assessment of any kind currently due from
24 the selling unit's owner; and

25 (c) The current operating budget of the association.

26 2. The association, within 10 days after a request by a unit's owner, shall
27 furnish a certificate containing the information necessary to enable the unit's
28 owner to comply with this section. A unit's owner providing a certificate
29 pursuant to subsection 1 is not liable to the purchaser for any erroneous
30 information provided by the association and included in the certificate.

31 3. Neither a purchaser nor the purchaser's interest in a unit is liable for
32 any unpaid assessment or fee greater than the amount set forth in the certi-
33 ficate prepared by the association. [A unit's owner is not liable to a purchaser
34 for the failure or delay of the association to provide the certificate in a timely
35 manner, but the contract to purchase is voidable by the purchaser until the
36 certificate has been provided and for 5 days thereafter or until conveyance,
37 whichever first occurs.] If the association fails to furnish the certificate within
38 the 10 days allowed by subsection 2, the seller is not liable for the delinquent
39 assessment.

40 Sec. 46. NRS 116.4110 is hereby amended to read as follows:

41 116.4110 [Any]

42 1. Except as otherwise provided in subsection 2, a deposit made in con-
43 nection with the purchase or reservation of a unit from a person required to
44 deliver a public offering statement pursuant to subsection 3 of NRS 116.4102
45 must be placed in escrow and held either in this state or in the state where the
46 unit is located in an account designated solely for that purpose by a licensed
47 title insurance company, an independent bonded escrow company, or an

1 institution whose accounts are insured by a governmental agency or insur-
2 mentality until:

3 [1.] (a) Delivered to the declarant at closing;

4 [2.] (b) Delivered to the declarant because of the purchaser's default under
5 a contract to purchase the unit; [or

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

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

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

12 (d) Refunded to the purchaser.

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

16 Sec. 47. NRS 116.4117 is hereby amended to read as follows:

17 116.4117 If a declarant or any other person subject to this chapter fails to
18 comply with any of its provisions or any provision of the declaration or
19 bylaws, any person or class of persons [adversely affected by] suffering
20 actual damages from the failure to comply has a claim for appropriate relief.
21 Punitive damages may be awarded for a willful and material failure to
22 comply with this chapter [.] if the failure is established by clear and convinc-
23 ing evidence. The court [, in an appropriate case,] may award reasonable
24 attorney's fees [.] to the prevailing party.

25 Sec. 48. NRS 116.4120 is hereby amended to read as follows:

26 116.4120 In the case of a sale of a unit in which delivery of a public
27 offering statement is required, a contract of sale may be executed, but no
28 interest in that unit may be conveyed, until the declaration is recorded and the
29 unit is substantially completed, [as evidenced by a recorded certificate of
30 substantial completion executed by an independent registered architect or
31 professional engineer, or by issuance of a certificate of occupancy author-
32 ized by law.] in accordance with local ordinances.

33 Sec. 49. Chapter 119A of NRS is hereby amended by adding there-
34 new section to read as follows:

35 If a matter governed by this chapter is also governed by chapter 116
36 NRS, compliance with the provisions of chapter 116 of NRS governing the
37 matter which are in addition to or different from the provisions in this chapter
38 governing the same matter is not required. In the event of a conflict between
39 provisions of this chapter and chapter 116 of NRS, the provisions of this
40 chapter prevail.

41 Sec. 50. NRS 119A.520 is hereby amended to read as follows:

42 119A.520 1. Each owner is a member of the association for the
43 share project. The association may be incorporated.

44 2. The state of incorporation may be:

45 (a) This state;

46 (b) The state in which the time-share project is located; or

47 (c) Any state where the developer has obtained a permit to sell time
48 under statutes which govern the sale of time shares.

1 3. The developer shall transfer to the owners the control of the association
2 within 120 days after 80 percent of the time shares have been sold.

3 4. Except as otherwise provided in NRS [78.355,] 82.321, any proxy
4 which is executed by an owner to an association is valid for an indefinite
5 period if the owner may revoke his proxy, by written notice to the associa-
6 tion, to vote at a particular meeting.

7 Sec. 51. NRS 278.374 is hereby amended to read as follows:

8 278.374 1. [A] Except as otherwise provided in subsection 2, a final
9 map presented for filing shall include a certificate signed and acknowledged,
10 in the manner provided in section 14 or 15 of [this act,] Assembly Bill No.
11 362 of this session, by any person who is the owner of the land:

12 (a) Consenting to the preparation and recordation of the final map.

13 (b) Offering for dedication that part of the land which the person wishes to
14 dedicate for public use, subject to any reservation contained therein.

15 (c) Reserving any parcel from dedication.

16 (d) Granting any permanent easement for utility installation or access, as
17 designated on the final map, together with a statement approving such ease-
18 ment, signed by the public utility or person in whose favor the easement is
19 created or whose services are required.

20 2. If the map presented for filing is an amended map of a common-interest
21 community, the certificate need only be signed and acknowledged by a person
22 authorized to record the map under chapter 116 of NRS.

23 3. For the purpose of this section the following shall be deemed not to be
24 an interest in land under this section:

25 (a) A lien for taxes or special assessments.

26 (b) A trust interest under a bond indenture.

27 [3.] 4. Upon the final map presented for filing by a common-interest
28 community, a title company must, and for any other subdivision a local
29 government may by ordinance require a title company to:

30 (a) Certify that each person signing the final map owns of record an
31 interest in the land and that, except as otherwise provided in subsection 2, all
32 of the owners of record of the land have signed the final map; and

33 (b) List any lien or mortgage holders of record. For a common-interest
34 community, the certificate must show that there are no liens against the
35 common-interest community or any part thereof for delinquent state, county,
36 municipal, federal or local taxes or assessments collected as taxes or special
37 assessments.

38 Sec. 52. NRS 116.110365 and 116.11037 are hereby repealed.

39 Sec. 53. Section 51 of this act becomes effective at 12:01 a.m. on October
40 1, 1993.

TEXT OF REPEALED SECTIONS

116.110365 "Plan" defined. "Plan" means those items set forth in subsection 4 of NRS 116.2109, including drawings of improvements which are filed with agencies which issue permits but do not need to be recorded.

116.11037 "Plat" defined. "Plat" means a map created in accordance with subsection 2 of NRS 116.2109 and chapter 278 or 278A of NRS which is recorded in the office of the county recorder of the county in which the real property is situated.

⑩

Remarks by Senators Rawson and Nevin.

Roll call on Assembly Bill No. 593:

YEAS—21.

NAYS—None.

Assembly Bill No. 593 having received a constitutional majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 612.

Bill read third time.

Roll call on Assembly Bill No. 612:

YEAS—21.

NAYS—None.

Assembly Bill No. 612 having received a constitutional majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 645.

Bill read third time.

Roll call on Assembly Bill No. 645:

YEAS—21.

NAYS—None.

Assembly Bill No. 645 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 665.

Bill read third time.

Remarks by Senators O'Donnell and Rhoads.

Roll call on Assembly Bill No. 665:

YEAS—21.

NAYS—None.

Assembly Bill No. 665 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 680.

Bill read third time.

Roll call on Assembly Bill No. 680:

YEAS—21.

NAYS—None.

Assembly Bill No. 680 having received a constitutional majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senate Concurrent Resolution No. 57.

Senator Raggio requested that the entire resolution be read into the Journal.

Assembly Bill No. 612—Committee on Judiciary

CHAPTER 573

AN ACT relating to property; making various changes in the Uniform Common-Interest Ownership Act; and providing other matters properly relating thereto.

[Approved July 12, 1993]

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. 1. *Except as otherwise provided in subsection 2, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by him, may appoint and remove the officers of the association and members of the executive board. Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earlier of:*

(a) Sixty days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant, except that if a majority of the units are divided into time shares, the percentage is 80 percent;

(b) Five years after all declarants have ceased to offer units for sale in the ordinary course of business; or

(c) Five years after any right to add new units was last exercised.

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but 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.

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 33 1/3 percent of the members of the executive board must be elected by units' owners other than the declarant.

Sec. 3. 1. *Except as otherwise provided in subsection 5 of NRS 116.2120, 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, at least a majority of whom must be units' owners. The executive board shall elect the officers. The members and officers of the executive board shall take office upon election.*

2. 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, and a fiduciary of an estate that owns a unit may be an officer or member of the executive board. In all events where the person serving or offering to serve as an officer or member of the executive board is

not the record owner, he shall file proof of authority in the records of the association.

Sec. 4. 1. Notwithstanding any provision of the declaration or bylaws to the contrary, the units' owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the units' owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

2. If a member of an executive board is sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, unless it is proven that he 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. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against the association, but may be recovered from persons whose activity gave rise to the damages.

Sec. 5. 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 him, including:

1. The original or a certified copy of the recorded declaration as amended, the association's articles of incorporation if the association is incorporated, 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 financial statements from the date the association received money to the date the period of the declarant's control ends. The financial statements must fairly and accurately report the association's financial condition prepared in accordance with generally accepted accounting principles.

3. The association's money or control thereof.

4. 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.

5. 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.

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

7. 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.

8. 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.

9. Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective.

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

11. Contracts of employment in which the association is a contracting party.

12. 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.

Sec. 6. 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 subsection 2 of NRS 116.4109.

Sec. 7. The association or other person conducting the sale shall also, after the expiration of the 60 days and before selling the unit:

1. 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 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 successor in interest at his address if known, and to the address of the unit.

2. Mail, on or before the date of first publication or posting, a copy of the notice by first-class mail to:

(a) Each person entitled to receive a copy of the notice of default and election to sell notice under section 6 of this act; and

(b) 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.

Sec. 8. 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 lien holder against 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 lien holder the amount of the lien attributable to his unit, and the lien holder, 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 or not 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.

Sec. 9. NRS 116.110318 is hereby amended to read as follows:

116.110318 "Common elements" means:

1. In 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; and

2. In a planned community, any real estate within [a] the planned community owned or leased by the association, other than a unit . [; and

3. All real and personal property owned or leased by the association.]

Sec. 10. (Deleted by amendment.)

Sec. 11. NRS 116.110348 is hereby amended to read as follows:

116.110348 "Identifying number" means a symbol [or address that] , address or legally sufficient description of real estate which identifies only one unit in a common-interest community.

Sec. 12. (Deleted by amendment.)

Sec. 13. NRS 116.1115 is hereby amended to read as follows:

116.1115 1. From time to time the dollar amounts specified in NRS 116.1203 , [and] 116.4101 and 116.41035 must change, as provided in subsections 2 and 3, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items [1967] 1982-1984 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the "Index"). The Index for December [1982-1984] 1990 is the Reference Base Index.

2. The dollar amounts specified in NRS 116.1203 [and 116.4101,] , 116.4101 and 116.41035, and any amount stated in the declaration pursuant

to those sections, must change on July 1 of each year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 10 percent or more, but:

(a) The portion of the percentage change in the Index in excess of a multiple of 10 percent must be disregarded and the dollar amounts must change only in multiples of 10 percent of the amounts appearing in this chapter on the date of enactment;

(b) The dollar amounts must not change if the amounts required by this section are those currently in effect pursuant to this chapter as a result of earlier application of this section; and

(c) In no event may the dollar amounts be reduced below the amounts appearing in this chapter on the date of enactment.

3. If the Index is revised after December [1979,] 1990, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

Secs. 14 and 15. (Deleted by amendment.)

Sec. 16. NRS 116.1203 is hereby amended to read as follows:

116.1203 [I]

1. Except as otherwise provided in subsection 2, if a planned community:

[1.] (a) Contains no more than 12 units and is not subject to any developmental rights; or

[2.] (b) Provides, in its declaration, that the annual average liability for common expenses of all units restricted to residential purposes, exclusive of optional users' fees and any insurance premiums paid by the association, may not exceed \$500 [, as adjusted pursuant to NRS 116.1115,] per unit, it is subject only to NRS 116.1105, 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, NRS 116.3101 to 116.3119, inclusive, and 116.11031 to 116.110393, inclusive, to the extent necessary in construing any of those sections, apply to a residential planned community containing more than six units.

Secs. 17-19. (Deleted by amendment.)

Sec. 20. NRS 116.2104 is hereby amended to read as follows:

116.2104 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.

Sec. 21. NRS 116.2105 is hereby amended to read as follows:

116.2105 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 or plans, 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 [(j)]

(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 (NRS 116.11034) and other special declarant's rights (NRS 116.110385) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time 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 [recording data] *file number and book or other information to show* where easements and licenses are recorded 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 and 116.2116 and [subsection 4 of NRS 116.3103.] *section 2 of this act.*

2. The declaration may contain any other matters the declarant considers appropriate.

Sec. 22. NRS 116.2107 is hereby amended to read as follows:

116.2107 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 (NRS 116.3115) 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 (NRS 116.3115) 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 (NRS 116.3115) 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 116.3103.] *section 2 of this act*, 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.

Sec. 23. NRS 116.2109 is hereby amended to read as follows:

116.2109 1. Plats and plans are a part of the declaration, and are required for all common-interest communities except cooperatives. [Separate plats and plans are not required by this chapter if all the information required by this section is contained in either a plat or plan.] Each plat and plan must be clear and legible and contain a certification that the plat or plan 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) [The approximate location and approximate dimensions of all real estate not subject to developmental rights, or subject only to the developmental right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(c) A legally] *A sufficient description of [any] the real estate ; [subject to developmental rights, labeled to identify the rights applicable to each parcel;*

(d)] *(c) The extent of any encroachments by or upon any portion of the [common-interest community;*

(e) To the extent feasible, a legally sufficient description of all easements serving or burdening] *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;*

[(f)] *(e) The location and dimensions of any vertical unit boundaries [not shown or projected on plans recorded pursuant to subsection 4] and that unit's identifying number;*

[(g)] *(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection 4 and that unit's identifying number;*

[(h)] *A legally sufficient description of any real estate in which the units' owners will own only an estate for years, labeled as "leasehold real estate";*

(i) *The distance between noncontiguous parcels of real estate comprising the common-interest community;*

(j)] *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 . [; and*

(k) *In the case of real estate not subject to developmental rights, all other matters customarily shown on land surveys.*

3. A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common-interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

4.] 3. To the extent not shown or projected on the plats, plans of the units must show or project [:

(a) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any] *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.*

[5.] 4. Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans [.] *of the units.*

5. *A declarant shall also provide a plan of development for the common-interest community with its initial phase of development. The declarant shall revise the plan of development with each subsequent phase. The plan of development may show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common-interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT." The plan of development must also show or project:*

(a) *The location and dimensions of all real estate not subject to developmental rights, or subject only to the developmental right to withdraw, and the location and dimensions of all existing improvements within that real estate;*

(b) *A sufficient description of any real estate subject to developmental rights, labeled to identify the rights applicable to each parcel; and*

(c) *A sufficient description of any real estate in which the units' owners will own only an estate for years, labeled as "leasehold real estate."*

6. Upon exercising any developmental right, the declarant shall record [either] *new or amended plats [and plans] necessary to conform to the requirements of [subsections 1, 2 and 4 or new certifications of plats and plans previously recorded if those plats and] subsection 2 and provide new or amended plans of the units and a new or amended plan of development or new certifications of those plans if the plans otherwise conform to the requirements of [those subsections.*

7. A declarant shall provide a general schematic plan of the planned unit development comprising its common-interest community with its initial phase of development. The declarant shall revise the plan with each subsequent phase.

8.] *subsections 3 and 5.*

7. Each plat must be certified by an independent professional land surveyor. [Each plan] *The plans of the units must be certified by an independent professional engineer or architect. If the plan of development is not certified by an independent professional land surveyor or an independent professional engineer or architect, it must be acknowledged by the declarant.*

Sec. 24. NRS 116.2115 is hereby amended to read as follows:

116.2115 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 . [and specifies the rights of a declarant

with regard to the number, size, location and relocation thereof. In a cooperative or condominium, any office for sales or management or model not designated a unit by the declaration is a common element. If a declarant ceases to be a unit's owner, he ceases to have any rights with regard thereto unless it is removed promptly from the common-interest community in accordance with a right to remove reserved in the declaration.] 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.

Sec. 25. NRS 116.2117 is hereby amended to read as follows:

116.2117 1. Except in cases of amendments that may be executed by a declarant under NRS 116.2109 or 116.2110 or by the association under NRS 116.1107, subsection 3 of NRS 116.2108, or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108 or NRS 116.2112 or 116.2118, and except as limited by subsection 4, the declaration, including any plats and plans, 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, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one 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 [create or increase special declarant's rights, increase the number of units,] 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 the units' owners 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.

Sec. 26. NRS 116.2120 is hereby amended to read as follows:

116.2120 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, 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 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.

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, 116.3108, 116.3109, 116.3110 and 116.3112 *and sections 2 to 5, inclusive, of this act* 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 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.

Sec. 27. NRS 116.2122 is hereby amended to read as follows:

116.2122 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 [(c)] (d) of that subsection.

Sec. 28. NRS 116.3103 is hereby amended to read as follows:

116.3103 1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries and are subject to the insulation from liability provided for directors of corporations by the laws of this state. The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.

2. The executive board may not act on behalf of the association to amend the declaration (NRS 116.2117), to terminate the common-interest community (NRS 116.2118), or to elect members of the executive board or determine their qualifications, powers and duties or terms of office (subsection 6), but the executive board may fill vacancies in its membership for the unexpired portion of any term.

3. Within 30 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the budget to all the units' owners, and shall set a date for a meeting of the units' owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all units' owners or any larger vote specified in the declaration reject the budget, the 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. Subject to subsection 5, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earlier of:

(a) Sixty days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant;

(b) Two years after all declarants have ceased to offer units for sale in the ordinary course of business; or

(c) Two years after any right to add new units was last exercised.

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but 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.

5. 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 33 1/3 percent of the members of the executive board must be elected by units' owners other than the declarant.

6. Except as otherwise provided in subsection 5 of NRS 116.2120, not later than the termination of any period of declarants' control, the units' owners shall elect an executive board of at least three members, at least a majority of whom must be units' owners. The executive board shall elect the officers. The members and officers of the executive board shall take office upon election.

7. Notwithstanding any provision of the declaration or bylaws to the contrary, the units' owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the units' owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

8. When a member of an executive board is sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he 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. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against the association, but may be recovered from persons whose activity gave rise to the damages.

9. 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, and a fiduciary of an estate that owns a unit may be an officer or member of the executive board. In all events where the person serving or offering to serve as an officer or member of the executive board is not the record owner, he shall file proof of authority in the records of the association.

10. 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 him, including:

(a) The original or a certified copy of the recorded declaration as amended, the association's articles of incorporation if the association is incorporated, bylaws, minute books and other books and records of the association and any rules or regulations which may have been adopted.

(b) An accounting for money of the association and financial statements from the date the association received money to the date the period of the declarant's control ends. The financial statements must fairly and accurately report the association's financial condition prepared in accordance with generally accepted accounting principles.

(c) The association's money or control thereof.

(d) 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.

(e) 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.

(f) All insurance policies then in force, in which the units' owners, the association, or its directors and officers are named as insured persons.

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the common-interest community.

(h) Any other permits and approvals issued by governmental bodies applicable to the common-interest community which are in force or which were issued within 1 year before the date on which units' owners other than the declarant took control of the association.

(i) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective.

(j) A roster of owners and mortgagees of units and their addresses and telephone numbers, if known, as shown of the declarant's records.

(k) Contracts of employment in which the association is a contracting party.

(l) 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.]

Sec. 29. NRS 116.3104 is hereby amended to read as follows:

116.3104 1. A special declarant's right (NRS 116.110385) 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 him 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 (NRS 116.11031), 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 his 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 [(subsection 4 of NRS 116.3103)] (*section 2 of this act*) 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.

Sec. 30. NRS 116.31043 is hereby amended to read as follows:

116.31043 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 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 his 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 transferor to control the executive board in accordance with [subsection 4 of NRS 116.3103] *section 2 of this act* 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 acts and omissions under [subsection 4 of NRS 116.3103.] *section 2 of this act.*

Sec. 31. NRS 116.3105 is hereby amended to read as follows:

116.3105 If entered into before the executive board elected by the units' owners pursuant to [subsection 6 of NRS 116.3103] *section 3 of this act* takes office, any management contract, employment contract, or lease of recreational or parking areas or facilities, any other contract or lease between the association and a declarant or an affiliate of a declarant or any contract or lease that is not in good faith or was unconscionable to the units' owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the units' owners takes office upon not less than 90 days' notice to the other party. This section does not apply to 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 to a proprietary lease.

Sec. 32. NRS 116.3106 is hereby amended to read as follows:

116.3106 1. The bylaws of the association must provide:

- (a) The number of members of the executive board and the titles of the officers of the association;
- (b) For election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;
- (c) The qualifications, powers and duties, terms of office and manner of electing and removing *officers of the association and members [and officers]* of the executive board and filling vacancies;
- (d) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing [agency:] *agent*;
- (e) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association; and
- (f) A method for amending the bylaws.

2. [Subject to the provisions of] *Except as otherwise provided in the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.*

Sec. 33. NRS 116.3107 is hereby amended to read as follows:

116.3107 1. Except to the extent provided by the declaration, subsection 2 [of] *and* NRS 116.31135, the association is responsible for maintenance, repair and replacement of the common elements, and each unit's owner is responsible for maintenance, repair and replacement of his unit. Each unit's owner shall afford to the association and the other units' owners, and to their agents or employees, access through his 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.

Sec. 34. NRS 116.3112 is hereby amended to read as follows:

116.3112 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.

Sec. 35. NRS 116.31135 is hereby amended to read as follows:

116.31135 1. Any portion of the common-interest community for which insurance is required under [this section] *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. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

2. If the entire common-interest community is not repaired or replaced, the 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 except to the extent that other persons will be distributees (subparagraph 2 of paragraph (l) of subsection 1 of NRS 116.2105):

(a) The 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 lien holders, as their interests may appear; and

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

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

(2) 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.

Sec. 36. NRS 116.3115 is hereby amended to read as follows:

116.3115 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.

2. Except for assessments under subsections 3, 4 and 5, all common expenses, including a reserve, 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. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

3. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair 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 or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units 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.

4. Assessments to pay a judgment against the association [(subsection 1 of NRS 116.31164)] 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.

5. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

6. 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.

Sec. 37. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. In a condominium, a cooperative where the owner's interest in a unit is real estate (NRS 116.1105), or a planned community, the association may foreclose its lien by sale after:

(a) The association has [caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated,] *mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest, at his 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 [units;] *unit;*

(b) 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 contains the same information as the notice of delinquent assessment, but must also describe the

deficiency in payment and the name and address of the person authorized by the association to enforce the lien by sale; and

(c) The unit's owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 60 days following the recording of the notice of default and election to sell.

2. The notice of [delinquent assessment] *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 60 days begins on the first day following the later of:

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

(b) The day 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 successor in interest at his address if known, otherwise to the address of the unit.

[4. The association or other person conducting the sale shall also, after the expiration of the 60 days and before selling the unit, 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 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 successor in interest at his address if known, otherwise to the address of the unit.]

Sec. 38. NRS 116.31164 is hereby amended to read as follows:

116.31164 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. [If so authorized to purchase, the] *The* association may [enter] *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 make, execute and, after payment is made, deliver to the purchaser, or his successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit, and shall apply the proceeds of the sale for the following purposes in the following order:

(a) The reasonable expenses of sale;

(b) 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 [agreement between the association and the unit's owner,] *the declaration*, reasonable attorney's fees and other legal expenses incurred by the association;

(c) Satisfaction of the association's lien;

(d) Satisfaction in the order of priority of any subordinated claim of record; and

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

Sec. 39. NRS 116.31166 is hereby amended to read as follows:

116.31166 1. The recitals in [such] a deed *made pursuant to NRS 116.31164* of:

(a) Default [and the recording] , *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 60 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 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 and 116.31164 *and section 6 of this act* vests in the purchaser the title of the unit's owner without equity or right of redemption.

Sec. 40. NRS 116.31168 is hereby amended to read as follows:

116.31168 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. [The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.]

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.

Sec. 41. NRS 116.4101 is hereby amended to read as follows:

116.4101 1. NRS 116.4101 to 116.4120, 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 canceled at any time and for any reason by the purchaser without penalty; or

(g) Disposition of a unit in a planned community in which the declaration limits the [maximum] average annual assessment of any unit to not more than [\$300, as adjusted pursuant to NRS 116.1115] \$500 and which contains no more than 35 units if:

(1) The declarant reasonably believes in good faith that the maximum stated assessment 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 declarant's control without the consent of all units' owners. [; and

(3) The planned community is not subject to any developmental rights.]

Sec. 41.5. NRS 116.4102 is hereby amended to read as follows:

116.4102 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 preparation of all or a part of the public offering statement to a successor declarant (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 [person who prepared all or a part of the public offering statement] declarant or his 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 prepared. If a declarant or dealer did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless he 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. *Except as otherwise provided in section 49 of this act, if the requirements of this chapter conflict with those of another law of this state, the requirements of this chapter prevail.*

Sec. 42. NRS 116.4103 is hereby amended to read as follows:

116.4103 1. Except as otherwise provided in NRS 116.41035, a public offering statement must contain or fully and accurately disclose each of the following:

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

[2.] (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.

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

[4.] (d) Copies of the declaration, bylaws, and any rules or regulations of the association [.

5.] , but a plat or plan is not required.

(e) 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. The budget must include, without limitation:

[(a)] (1) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement; and

[(b)] (2) The projected monthly assessment for common expenses for each type of unit.

[6.] (f) A description of any services or subsidies being provided by the [developer,] declarant or an affiliate of the declarant, not reflected in the budget.

[7.] (g) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

[8.] (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.

[9.] (i) A statement that unless the purchaser or his agent has personally inspected the unit, [that] the purchaser may cancel, by written notice, [the] his 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.

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

[11.] (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.

2. *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."*

Sec. 43. NRS 116.41035 is hereby amended to read as follows:

116.41035 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 but need not include the information otherwise required by [subsections 8 and 11] paragraphs (h) and (k) of subsection 1 of NRS 116.4103.

Sec. 44. NRS 116.4108 is hereby amended to read as follows:

116.4108 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 [and all amendments thereto before conveyance of the unit, and] not later than the date of any contract of sale. 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, he 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 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 [that] a *current* public offering statement, [and all amendments thereto as required by subsection 1,] the purchaser [, in addition to any rights to damages or other relief,] is entitled [to receive from that person an amount equal to 10 percent of the sale price of the unit, plus 10 percent of the share, proportionate to his liability for common expenses, of any indebtedness of the association secured by security interests encumbering the common-interest community.] *to actual damages, rescission or other relief, but if the purchaser has accepted a conveyance of the unit, he is not entitled to rescission.*

Sec. 45. NRS 116.4109 is hereby amended to read as follows:

116.4109 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 shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance:

(a) A copy of the declaration (other than any plats and plans), the bylaws, and the rules or regulations of the association;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner; and

(c) The current operating budget of the association.

2. *The association, within 10 days after a request by a unit's owner, shall furnish a certificate containing the information necessary to enable the unit's owner to comply with this section. A unit's owner providing a certificate pursuant to subsection 1 is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.*

3. 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 certificate prepared by the association. [A unit's owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the contract to purchase is voidable by the purchaser until the certificate has been provided and for 5 days thereafter or until conveyance, whichever first occurs.] *If the association fails to furnish the certificate within the 10 days allowed by subsection 2, the seller is not liable for the delinquent assessment.*

Sec. 46. NRS 116.4110 is hereby amended to read as follows:

116.4110 [Any]

1. *Except as otherwise provided in subsection 2, 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:*

[1.] (a) Delivered to the declarant at closing;

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

3.] (c) *Released 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.*

Sec. 47. NRS 116.4117 is hereby amended to read as follows:

116.4117 If a declarant 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 [adversely affected by] *suffering actual damages from the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful and material failure to comply with this chapter [.] if the failure is established by clear and convincing evidence. The court [, in an appropriate case,] may award reasonable attorney's fees [.] to the prevailing party.*

Sec. 48. NRS 116.4120 is hereby amended to read as follows:

116.4120 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, [as evidenced by a recorded certificate of substantial completion executed by an independent registered architect or professional engineer, or by issuance of a certificate of occupancy authorized by law.] *in accordance with local ordinances.*

Sec. 49. Chapter 119A of NRS is hereby amended by adding thereto a new section to read as follows:

If a matter governed by this chapter is also governed by chapter 116 of NRS, compliance with the provisions of chapter 116 of NRS governing the matter which are in addition to or different from the provisions in this chapter governing the same matter is not required. In the event of a conflict between provisions of this chapter and chapter 116 of NRS, the provisions of this chapter prevail.

Sec. 50. NRS 119A.520 is hereby amended to read as follows:

119A.520 1. Each owner is a member of the association for the time-share project. The association may be incorporated.

2. The state of incorporation may be:

(a) This state;

(b) The state in which the time-share project is located; or

(c) Any state where the developer has obtained a permit to sell time shares under statutes which govern the sale of time shares.

3. The developer shall transfer to the owners the control of the association within 120 days after 80 percent of the time shares have been sold.

4. Except as *otherwise* provided in NRS [78.355.] 82.321, any proxy which is executed by an owner to an association is valid for an indefinite period if the owner may revoke his proxy, by written notice to the association, to vote at a particular meeting.

Sec. 51. NRS 278.374 is hereby amended to read as follows:

278.374 1. [A] *Except as otherwise provided in subsection 2, a final map presented for filing shall include a certificate signed and acknowledged, in the manner provided in section 14 or 15 of [this act,] Assembly Bill No. 362 of this session, by any person who is the owner of the land:*

(a) Consenting to the preparation and recordation of the final map.

(b) Offering for dedication that part of the land which the person wishes to dedicate for public use, subject to any reservation contained therein.

(c) Reserving any parcel from dedication.

(d) Granting any permanent easement for utility installation or access, as designated on the final map, together with a statement approving such easement, signed by the public utility or person in whose favor the easement is created or whose services are required.

2. *If the map presented for filing is an amended map of a common-interest community, the certificate need only be signed and acknowledged by a person authorized to record the map under chapter 116 of NRS.*

3. For the purpose of this section the following shall be deemed not to be an interest in land under this section:

(a) A lien for taxes or special assessments.

(b) A trust interest under a bond indenture.

[3.] 4. Upon the final map presented for filing by a common-interest community, a title company must, and for any other subdivision a local government may by ordinance require a title company to:

(a) Certify that each person signing the final map owns of record an interest in the land and that, *except as otherwise provided in subsection 2*, all of the owners of record of the land have signed the final map; and

(b) List any lien or mortgage holders of record. For a common-interest community, the certificate must show that there are no liens against the common-interest community or any part thereof for delinquent state, county, municipal, federal or local taxes or assessments collected as taxes or special assessments.

Sec. 52. NRS 116.110365 and 116.11037 are hereby repealed.

Sec. 53. Section 51 of this act becomes effective at 12:01 a.m. on October 1, 1993.

Assembly Bill No. 593—Assemblymen Perkins, Heller, Petrak, Segerblom, Duni, Giunchigliani, Kenny, Chowning, Bonaventura, Bache, Collins, Gibbons, de Braga, Neighbors, Scherer, Price, Humke, Sader, Arberry, Spiller, Myrna Williams, Garner, Tiffany, Gregory, Bennett, Schneider, Wendell Williams and Anderson

CHAPTER 574

AN ACT relating to peace officers; requiring a law enforcement agency which conducts an investigation of the alleged misconduct of a peace officer to provide the officer with written notice of any interrogation or hearing he is required to attend; allowing a peace officer to explain an answer or refute a negative implication which results from questioning during such an interrogation or hearing; and providing other matters properly relating thereto.

[Approved July 12, 1993]

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

Section 1. NRS 289.060 is hereby amended to read as follows:

289.060 [If an investigation is conducted of any activities of a peace officer which could result in punitive action before any hearing, the agency shall:

1. Inform the officer of:

(a) The]

1. *The agency shall, within a reasonable time before any interrogation or hearing is held relating to an investigation of the activities of a peace officer which may result in punitive action, provide written notice to the officer if practical under the circumstances.*

2. *The notice must include:*

(a) *A description of the nature of the investigation;*

(b) *A summary of alleged misconduct of the peace officer;*

(c) *The date, time and place of the interrogation or hearing;*

(d) *The name and rank of the officer in charge of the investigation and the officers who will conduct any interrogation; [and*

(c)] (e) *The name of any other person who will be present at any interrogation [*

2.] *or hearing; and*

(f) *A statement setting forth the provisions of subsection 1 of NRS 289.080.*

TAB 6

NEVADA REVISED STATUTES

Containing All Statute Laws of Nevada of a
General, Public and Permanent Nature

VOLUME 10

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(Pursuant to chapter 220 of NRS)

BY THE
LEGISLATIVE COUNSEL
STATE OF NEVADA



LEGISLATIVE COUNSEL BUREAU
CARSON CITY, NEVADA

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AA_0167

CITE NEVADA REVISED STATUTES

NRS

Thus: NRS 19.010

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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 60 days begins on the first day following the later of:

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

(b) The day 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 successor in interest at his address if known, otherwise to the address of the unit.

(Added to NRS by 1991, 569; A 1993, 2371)

116.31163 Mailing of notice of default and election to sell. 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 subsection 2 of NRS 116.4109.

(Added to NRS by 1993, 2355)

116.311635 Notice of time and place of sale. The association or other person conducting the sale shall also, after the expiration of the 60 days and before selling the unit:

1. 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 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 successor in interest at his address if known, and to the address of the unit.

2. Mail, on or before the date of first publication or posting, a copy of the notice by first-class mail to:

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

(b) 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.

(Added to NRS by 1993, 2355)

116.31164 Sale upon foreclosure of lien.

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 make, execute and, after payment is made, deliver to the purchaser, or his successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit, and shall apply the proceeds of the sale for the following purposes in the following order:

(a) The reasonable expenses of sale;

(b) 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;

(c) Satisfaction of the association's lien;

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

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

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

116.31166 Recitals in deed; title of purchaser.

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 60 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 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)

116.31168 Requests for notice of default and sale.

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)

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 make, execute and, after payment is made, deliver to the purchaser, or his successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit, and shall apply the proceeds of the sale for the following purposes in the following order:

- (a) The reasonable expenses of sale;
 - (b) 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;
 - (c) Satisfaction of the association's lien;
 - (d) Satisfaction in the order of priority of any subordinate claim of record; and
 - (e) Remittance of any excess to the unit's owner.
- (Added to NRS by 1991, 569; A 1993, 2372)

116.31166 Recitals in deed; title of purchaser.

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 60 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 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)

116.31168 Requests for notice of default and sale.

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)

116.3117 Other liens.

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 lien holder against 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 lien holder the amount of the lien attributable to his unit, and the lien holder, 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 or not 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)

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Condominium ⇐ 1.

WESTLAW Topic No. 89A.

C.J.S. Estates §§ 145, 146.

116.3118 Association's records. The association shall keep financial records sufficiently detailed to enable the association to comply with NRS 116.4109. All financial and other records must be made reasonably available for examination by any unit's owner and his authorized agents.

(Added to NRS by 1991, 571)

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

TAB 7

NEVADA REVISED STATUTES

Containing All Statute Laws of Nevada of a
General, Public and Permanent Nature

VOLUME 9

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BY THE
LEGISLATIVE COUNSEL
STATE OF NEVADA



LEGISLATIVE COUNSEL BUREAU
CARSON CITY, NEVADA

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CITE NEVADA REVISED STATUTES

NRS

Thus: NRS 19.010

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10. As used in this section, "title insurer" has the meaning ascribed to it in NRS 692A.070.

(Added to NRS by 1991, 1103; A 1993, 2336)

107.080 Trustee's power of sale: Power conferred; required notices; effect of sale.

1. Where any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

2. The power of sale must not be exercised, however, until:

(a) In the case of any trust agreement coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment;

(b) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of his election to sell or cause to be sold the property to satisfy the obligation; and

(c) Not less than 3 months have elapsed after the recording of the notice.

3. The 15- or 35-day period provided in paragraph (a) of subsection 2 commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor, and to the person who holds the title of record on the date the notice of default and election to sell is recorded, at their respective addresses, if known, otherwise to the address of the trust property. The notice of default and election to sell must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2.

4. The trustee, or other person authorized to make the sale under the terms of the trust deed or transfer in trust, shall, after expiration of the 3-month period following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof in the manner and for a time not less than that required by law for the sale or sales of real property upon execution. The sale itself may be made at the office of the trustee, if the notice so provides, whether the property so conveyed in trust is located within the same county as the office of the trustee or not.

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and his successors in interest without equity or right of redemption. The sale of a lease of a dwelling unit of a cooperative housing corporation vests in the purchaser title to the shares in the corporation which accompany the lease.

[Part 1:173:1927; A 1949, 70; 1943 NCL § 7710]—(NRS A 1957, 631; 1959, 10; 1961, 23; 1965, 611, 1242; 1967, 198; 1979, 708; 1987, 1644; 1989, 1770)

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Mortgages ⇌ 333.

WESTLAW Topic No. 266.

C.J.S. Mortgages §§ 484, 546.

NEVADA CASES.

Recovery of property sold pursuant to section denied where plaintiff was financially unable to redeem property. In divorce action, where plaintiff wife sought to regain real property formerly belonging to her but sold to defendant husband at execution sale, and then sold to defendant's friend by trustee under power of sale pursuant to NRS 107.080, on theory that defendant and his friend had conspired to procure sale by trustee to cut off plaintiff's equity of redemption under NRS 21.200 and 12.210, evidence that plaintiff was financially unable to redeem precluded contention that she was led not to redeem by representations of defendant, and justified denial of relief sought. *Kraemer v. Kraemer*, 79 Nev. 287, 382 P.2d 394 (1963)

Ratio of price to value. In action to set aside sale of land by trustee on foreclosure of second deed of trust (see NRS 107.080), fact that land had been sold at 28.5 percent of its value did not justify setting aside sale, because inadequacy of price, no matter how gross, is not sufficient ground for setting aside sale legally made by trustee. There must also be some element of fraud, unfairness or oppression which accounts for inadequacy in price. *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963), cited, *Brunzell v. Woodbury*, 85 Nev. 29, at 31, 449 P.2d 158 (1969), *Turner v. Dewco Serv., Inc.*, 87 Nev. 14, at 18, 479 P.2d 462 (1971), *Swartz v. Adams*, 93 Nev. 240, at 244, 563 P.2d 74 (1977), dissenting opinion, *Long v. Towne*, 98 Nev. 11, at 13, 639 P.2d 528 (1982)

Legislature has provided lengthy periods for notice and redemption. Under NRS 21.210 and 107.080, legislature has provided lengthy notice or redemption periods for most security devices. *Moore v. Prindle*, 80 Nev. 369, 394 P.2d 352 (1964)

Use of foreclosure procedure provided by chapter does not preclude action for deficiency. Upon theory of election of remedies,

"one-action rule" of NRS 40.430 for recovery of debt or enforcement of right secured by mortgage did not limit recovery to judicial foreclosure and deny right of action for deficiency where beneficiary of deed of trust proceeded to foreclose by trustee sale under NRS ch. 107 (see NRS 107.080), because doctrine of election of remedies applied only to inconsistent remedies and judicial foreclosure pursuant to NRS 40.430 and foreclosure procedure under NRS ch. 107 were not inconsistent remedies. *Nevada Land & Mortgage Co. v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 435 P.2d 198 (1967), cited, *Second Baptist Church v. First Nat'l Bank*, 89 Nev. 217, at 220, 510 P.2d 630 (1973), *Key Bank of Alaska v. Donnels*, 106 Nev. 49, at 52, 787 P.2d 382 (1990), distinguished, *Coombs v. Heers*, 366 F. Supp. 851 (1973), *First Nat'l Bank v. Barengo*, 91 Nev. 396, at 397, 536 P.2d 487 (1975)

Trustor's failure to receive notice of default immaterial where notice mailed as provided in section. Where copy of notice of default and election to sell under trust deed was mailed to trustor as required by NRS 107.080, fact trustor did not receive notice was immaterial, because statute does not require proof that notice be received, and trustor had independent knowledge of proceedings. *Turner v. Dewco Servs., Inc.*, 87 Nev. 14, 479 P.2d 462 (1971), cited, *Hankins v. Administrator of Veterans Affairs*, 92 Nev. 578, at 580, 555 P.2d 483 (1976), *In re Madrid*, 10 B.R. 795, at 799 (D. Nev. 1981)

Purchaser from trustor under long-term contract for sale entitled to notice of default. Where grantor of deed of trust afterward executed long-term installment contract for sale of same property and contract was recorded, purchaser was entitled under NRS 107.080 to notice of default and trustee's election to sell, as grantor's "successor in interest," because purchaser was equitable owner and entitled to succeed to legal title. *Title Ins. & Trust Co. v. Chicago Title Ins. Co.*, 97 Nev. 523, 634 P.2d 1216 (1981)

No forfeiture where property foreclosed and sold as provided in section. In action to set aside lien foreclosure sale, where plaintiffs

had purchased lot in mobile home park and repeatedly refused to pay monthly assessments and homeowners' association filed lien and later sold lot at foreclosure sale as authorized by NRS 278A.150 and 278A.160, plaintiffs could not successfully contend that sale of their lot was forfeiture where sale was conducted under authority of covenants, conditions and restrictions and in compliance with provisions of NRS 107.080 and plaintiffs received actual notice of sale and received excess of sale price over amount of lien and costs. *Long v. Towne*, 98 Nev. 11, 639 P.2d 528 (1982)

Notice of time and place of trustee's sale must be served on grantor or his successor in interest. Shortly before his death, grantor of deed of trust which secured loan on condominium failed to make payment due on loan. Grantor was survived by appellant. Respondent sold condominium at trustee's sale without giving notice of sale to appellant, who brought suit alleging failure to comply with statutory notice requirements. Granting of summary judgment by district court in favor of respondent was reversed on appeal because although subsection 4 of NRS 107.080 requires that notice of trustee's sale be given in manner required by law for sale of real property upon execution and NRS 21.130 provides that notice of sale upon execution must be given to judgment debtor, in context of trustee's sales, there is no judgment debtor. Therefore, court looked to apparent intent of legislature as evidenced by former provisions of subsection 3 of NRS 107.080 that grantor's successor in interest should receive any notice that grantor had right to receive, and held that notice of time and place of trustee's

sale as required by subsection 4 of NRS 107.080 must be served on grantor or his successor in interest in accordance with other requirements of that subsection and NRS 21.130. (N.B., case decided before amendment of subsection 3 of NRS 107.080 in 1989.) *Rose v. First Fed. Sav. and Loan Ass'n*, 105 Nev. 454, 777 P.2d 1318 (1989)

FEDERAL AND OTHER CASES.

Nonjudicial foreclosure not "state action." Statutory source of trustee's power of sale under deed of trust does not transform private nonjudicial foreclosure provided for in NRS 107.080 into state action for purposes of establishing claim in federal court based on denial of due process. Therefore, complaint alleging that nonjudicial foreclosure statute offended due process by failing to provide hearing before exercise of trustee's power of sale was properly dismissed. *Charmicor, Inc. v. Deaner*, 572 F.2d 694 (1978)

Sale not set aside where debtor had actual notice and caused failure to receive mailed notice. Where debtor sought to set aside transfer of property by nonjudicial foreclosure sale upon ground that she did not receive notices of default and sale pursuant to NRS 107.080 and 21.130, bankruptcy court found that (1) it was responsibility of debtor who opened second post office box to request that post office transfer her mail from first box to second and she failed to do so; (2) trustee on deed of trust was under no duty to search for debtor when notices were returned from first box unclaimed; and (3) issue was moot because evidence established that debtor had actual notice of foreclosure sale. *In re Madrid*, 10 B.R. 795 (D. Nev. 1981)

107.090 Request for notice of default and sale: Filing and contents; mailing of notice; effect of request.

1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument filed or recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time after recordation of the deed of trust file in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default or of sale. The request must state the name and address of the person requesting copies of the notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation and the book and page where it is recorded.

TAB 8

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statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section or by NRS 116.31162 to 116.31168, inclusive.

10. In a cooperative where the owner's interest in a unit is personal property (NRS 116.1105), the association's lien may be foreclosed in like manner as a security interest under NRS 104.9101 to 104.9507, inclusive.

(Added to NRS by 1991, 567)

NRS 116.3116 Lien for assessments. [Effective July 1, 2001.]

1. The association has a lien on a unit for any assessment levied against that unit or fines imposed against the unit's owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j), (k) and (l) 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 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 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

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

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

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

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

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

8. The association upon written request shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest

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

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section or by NRS 116.31162 to 116.31168, inclusive.

10. In a cooperative where the owner's interest in a unit is personal property (NRS 116.1105), the association's lien may be foreclosed in like manner as a security interest under NRS 104.9101 to 104.9708, inclusive.

(Added to NRS by 1991, 567; A 1999, 390, effective July 1, 2001)

NRS 116.31162 Foreclosure of lien in condominium, cooperative in which unit is real estate, or planned community.

1. Except as otherwise provided in subsection 4, in a condominium, a cooperative where the owner's interest in a unit is real estate as determined pursuant to NRS 116.1105, or a planned community, the association may foreclose its lien by sale after:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest, at his 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) 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 contains the same information as the notice of delinquent assessment, but must also describe the deficiency in payment and the name and address of the person authorized by the association to enforce the lien by sale; and

(c) The unit's owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 60 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 60 days begins on the first day following the later of:

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

(b) The day 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 successor in interest at his address if known, and at the address of the unit.

4. The association may not foreclose a lien by sale for the assessment of a fine for a violation of the declaration, bylaws, rules or regulations of the association, unless the violation is of a type that threatens the health, safety or welfare of the residents of the common-interest community.

(Added to NRS by 1991, 569; A 1993, 2371; 1997, 3121; 1999, 3011)

NRS 116.31163 Mailing of notice of default and election to sell. 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:

TAB 9

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Notice of time and place of trustee's sale must be served on grantor or his successor in interest. Shortly before his death, grantor of a deed of trust which secured a loan on a condominium failed to make the payment due on the loan. Grantor was survived by appellant. Respondent sold condominium at trustee's sale without giving a notice of sale to appellant, who brought suit alleging failure to comply with statutory notice requirements. Granting of summary judgment by district court in favor of respondent was reversed on appeal because although NRS 107.080(4) requires that a notice of trustee's sale be given in the manner required by law for the sale of real property upon execution and NRS 21.130 provides that a notice of sale upon execution must be given to judgment debtor, in context of trustee's sales, there is no judgment debtor. Therefore, court looked to the apparent intent of the legislature as evidenced by the former provisions of NRS 107.080(3) that grantor's successor in interest should receive any notice that grantor had the right to receive, and held that a notice of the time and place of trustee's sale as required by NRS 107.080(4) must be served on grantor or his successor in interest in accordance with other requirements of that subsection and NRS 21.130. (N.B., case decided before amendment of NRS 107.080(3) in 1989.) *Rose v. First Fed. Sav. and Loan Ass'n*, 105 Nev. 454, 777 P.2d 1318 (1989), cited, AGO 95-11 (6-27-1995)

NRS 107.090 Request for notice of default and sale: Recording and contents; mailing of notice; effect of request.

1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time after recordation of the deed of trust record in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default or of sale. The request must state the name and address of the person requesting copies of the notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation, and the book and page where it is recorded.

3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:

- (a) Each person who has recorded a request for a copy of the notice; and
- (b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing

FEDERAL AND OTHER CASES.

Nonjudicial foreclosure not "state action."
Statutory source of trustee's power of sale under a deed of trust does not transform private nonjudicial foreclosure provided for in NRS 107.080 into state action for purposes of establishing a claim in federal court based on the denial of due process. Therefore, the complaint alleging that nonjudicial foreclosure statute offended due process by failing to provide a hearing before the exercise of trustee's power of sale was properly dismissed. *Charmicor, Inc. v. Deaner*, 572 F.2d 694 (1978)

Sale not set aside where debtor had actual notice and caused failure to receive mailed notice. Where debtor sought to set aside the transfer of property by a nonjudicial foreclosure sale upon the ground that she did not receive notices of default and sale pursuant to NRS 21.130 and 107.080, bankruptcy court found that (1) it was the responsibility of debtor who opened the second post office box to request that the post office transfer her mail from the first box to the second and she failed to do so; (2) trustee on deed of trust was under no duty to search for debtor when notices were returned from the first box unclaimed; and (3) issue was moot because evidence established that debtor had actual notice of the foreclosure sale. *In re Madrid*, 10 B.R. 795 (D. Nev. 1981)

a copy of the notice of time and place of sale, addressed to each person described in subsection 3.

5. No request recorded pursuant to the provisions of subsection 2 affects the title to real property.

(Added to NRS by 1961, 74; A 1969, 42, 95; 1989, 644, 1772; 2001, 1751)

WEST PUBLISHING CO.
Mortgages ⇐ 354.

WESTLAW Topic No. 266.
C.J.S. Mortgages §§ 565, 567.

NRS 107.095 Notice of default: Mailing to guarantor or surety of debt; effect of failure to give.

1. The notice of default required by NRS 107.080 must also be sent by registered or certified mail, return receipt requested and with postage prepaid, to each guarantor or surety of the debt. If the address of the guarantor or surety is unknown, the notice must be sent to the address of the trust property. Failure to give the notice, except as otherwise provided in subsection 3, releases the guarantor or surety from his obligation to the beneficiary, but does not affect the validity of a sale conducted pursuant to NRS 107.080 nor the obligation of any guarantor or surety to whom the notice was properly given.

2. Failure to give the notice of default required by NRS 107.090, except as otherwise provided in subsection 3, releases the obligation to the beneficiary of any person who has complied with NRS 107.090 and who is or may otherwise be held liable for the debt or other obligation secured by the deed of trust, but such a failure does not affect the validity of a sale conducted pursuant to NRS 107.080 nor the obligation of any person to whom the notice was properly given pursuant to this section or to NRS 107.080 or 107.090.

3. A guarantor, surety or other obligor is not released pursuant to this section if:

- (a) The required notice is given at least 15 days before the later of:
 - (1) The expiration of the 15- or 35-day period described in NRS 107.080; or
 - (2) Any extension of that period by the beneficiary; or
 - (b) The notice is rescinded before the sale is advertised.
- (Added to NRS by 1989, 1770)

NRS 107.100 Receiver: Appointment after filing notice of breach and election to sell.

1. At any time after the filing of a notice of breach and election to sell real property under a power of sale contained in a deed of trust, the trustee or beneficiary of the deed of trust may apply to the district court for the county in which the property or any part of the property is located for the appointment of a receiver of such property.

2. A receiver shall be appointed where it appears that personal property subject to the deed of trust is in danger of being lost, removed, materially injured or destroyed, that real property subject to the deed of trust is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures.

(Added to NRS by 1965, 252)

WEST PUBLISHING CO.
Receivers ⇐ 16.

WESTLAW Topic No. 323.
C.J.S. Receivers §§ 19 et seq.

TAB 10

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(1) the association is not a master association; and
 (2) the association levies an annual assessment of \$500 or more against each unit in the common-interest community. Thus, a master association that levies an annual assessment of \$500 against

each unit in the common-interest community is not required to pay the fees imposed by NRS 116.31155. (N.B., opinion issued before amendment of NRS 116.31155 in 1999.) AGO 99-03 (1-27-1999)

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)

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 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 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

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

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

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

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

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

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

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

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

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

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

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

(Added to NRS by 1991, 567; A 1999, 390; 2003, 2243, 2272)

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 4, 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:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest, at his 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 contains the same information as the notice of delinquent assessment, but must also describe the deficiency in payment and the name and address of the person authorized by the association to enforce the lien by sale; and

(c) The unit's owner or his 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 the later of:

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

(b) The day 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 successor in interest at his address, if known, and at the address of the unit.

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

(a) The violation threatens the health, safety or welfare of the 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.

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

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 subsection 2 of NRS 116.4109.

(Added to NRS by 1993, 2355)

NRS 116.311635 Foreclosure of liens: Providing notice of time and place of sale. The association or other person conducting the sale shall also, after the expiration of the 90 days and before selling the unit:

1. 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 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 successor in interest at his address, if known, and to the address of the unit.

2. Mail, on or before the date of first publication or posting, a copy of the notice by first-class mail to:

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

(b) 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

(c) The Ombudsman.

(Added to NRS by 1993, 2355; A 2003, 2245)

TAB 11

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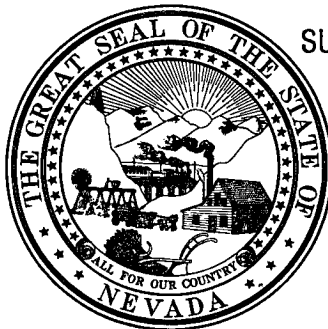
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(c) The unit's owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

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 successor in interest at his address, if known, and at the address of the unit,
 ↳ whichever date occurs later.

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

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

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

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

WEST PUBLISHING CO.

Associations ⇔ 12.

Condominium ⇔ 12.

Landlord and Tenant ⇔ 356.

WESTLAW Topic Nos. 41, 89A, 233.

C.J.S. Associations §§ 38, 62 to 65.

C.J.S. Estates §§ 198, 218, 221.

C.J.S. Landlord and Tenant § 1437.

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 successor in interest at his 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 first-class mail 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 State 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)

WEST PUBLISHING CO.

Associations ⇌ 12.
 Condominium ⇌ 12.
 Landlord and Tenant ⇌ 356.
 WESTLAW Topic Nos. 41, 89A, 233.
 C.J.S. Associations §§ 38, 62 to 65.
 C.J.S. Estates §§ 198, 218, 221.
 C.J.S. Landlord and Tenant § 1437.

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 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 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)

TAB 12

NEVADA REVISED STATUTES

Containing All Statute Laws of Nevada of a
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VOLUME 6

Classified, Arranged, Revised, Indexed and Published
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BY THE
LEGISLATIVE COUNSEL
STATE OF NEVADA

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AA_0203

Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:

- (1) Delivering a copy to you personally in the presence of a witness;
- (2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business; or
- (3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property, delivering a copy to a person residing there, if a person can be found, and mailing a copy to you at the place where the leased property is.

If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.

Under the Justice Court Rules of Civil Procedure:

- (1) You will be given at least 10 days to answer a summons and complaint;
- (2) If you do not file an answer, an order evicting you by default may be obtained against you;
- (3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and
- (4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.

4. As used in this section, "residential foreclosure" has the meaning ascribed to it in NRS 107.080.

(Added to NRS by 2009, 2788)

NRS 107.090 Request for notice of default and sale; Recording and contents; mailing of notice; request by homeowners' association; effect of request.

1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time after recordation of the deed of trust record in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default or of sale. The request must state the name and address of the person requesting copies of the notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation, and the book and page where it is recorded.

3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:

(a) Each person who has recorded a request for a copy of the notice; and

(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person described in subsection 3.

5. An association may record in the office of the county recorder of the county in which a unit governed by the association is situated an acknowledged request for a copy of the deed upon sale of the unit pursuant to a deed of trust. A request recorded by an association must include, without limitation:

(a) A legal description of the unit or the assessor's parcel number of the unit;

(b) The name and address of the association; and

(c) A statement that the request is made by an association.

6. A request recorded by an association pursuant to subsection 5 regarding a unit supersedes all previous requests recorded by the association pursuant to subsection 5 regarding the unit.

7. If a trustee or person authorized to record a notice of default records the notice of default for a unit regarding which an association has recorded a request pursuant to subsection 5, the trustee or authorized person shall mail to the association a copy of the deed upon the sale of the unit pursuant to a deed of trust within 15 days after the trustee records the deed upon the sale of the unit.

8. No request recorded pursuant to the provisions of subsection 2 or 5 affects the title to real property, and failure to mail a copy of the deed upon the sale of the unit after a request is made by an association pursuant to subsection 5 does not affect the title to real property.

9. As used in this section:

(a) "Association" has the meaning ascribed to it in NRS 116.011.

(b) "Unit" has the meaning ascribed to it in NRS 116.093.

(Added to NRS by 1961, 74; A 1969, 42, 95; 1989, 644, 1772; 2001, 1751; 2009, 1012)

WEST PUBLISHING CO.

Mortgages ¶ 354.

WESTLAW Topic No. 266.

C.J.S. Mortgages §§ 565, 567.

NRS 107.095 Notice of default: Mailing to guarantor or surety of debt; effect of failure to give.

1. The notice of default required by NRS 107.080 must also be sent by registered or certified mail, return receipt requested and with postage prepaid, to each guarantor or surety of the debt. If the address of the guarantor or surety is unknown, the notice must be sent to the address of the trust property. Failure to give the notice, except as otherwise provided in subsection 3, releases the guarantor or surety from his or her obligation to the beneficiary, but does not affect the validity of a sale conducted pursuant to NRS 107.080 or the obligation of any guarantor or surety to whom the notice was properly given.

TAB 13

NEVADA REVISED STATUTES

Containing All Statute Laws of Nevada of a
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VOLUME 7

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(Pursuant to chapter 220 of NRS)



BY THE
LEGISLATIVE COUNSEL
STATE OF NEVADA

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AA_0208

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

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

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

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

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

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

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

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

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

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

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

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

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 4, 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:

TAB 14

NEVADA REVISED STATUTES

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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)

ADMINISTRATIVE REGULATIONS.

Annual fee for certain associations, NAC 116.445

ATTORNEY GENERAL'S OPINIONS.

Duty of association to pay fees imposed by section. The fees imposed by NRS 116.31155 are only required to be paid by an association for which both of the following statements are true: (1) the association is not a master association; and (2) the association levies an annual assessment of \$500 or more against each unit in the common-interest community. Thus, a master association that levies an annual assessment of \$500 against each unit in the common-interest community is not required to pay the fees imposed by NRS 116.31155. (N.B., opinion issued before amendment of NRS 116.31155 in 1999.) AGO 99-03 (1-27-1999)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 4, 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:

TAB 15

NEVADA REVISED STATUTES

Containing All Statute Laws of Nevada of a
General, Public and Permanent Nature

VOLUME 7

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(Pursuant to chapter 220 of NRS)



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NEVADA REVISED STATUTES

Should be cited as:

NRS

Thus: NRS 19.010

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ADMINISTRATIVE REGULATIONS.

Annual fee for certain associations, NAC 116.445

ATTORNEY GENERAL'S OPINIONS.

Duty of association to pay fees imposed by section. The fees imposed by NRS 116.31155 are only required to be paid by an association for which both of the following statements are true: (1) the association is not a master association; and (2) the association levies an annual assessment of \$500 or more against each unit in the common-interest community. Thus, a master association that levies an annual assessment of \$500 against each unit in the common-interest community is not required to pay the fees imposed by NRS 116.31155. (N.B., opinion issued before amendment of NRS 116.31155 in 1999.) AGO 99-03 (1-27-1999)

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; 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

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