IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY, A Nevada Corporation; HAROLD WYATT; AND MARY WYATT,

Appellants,

vs.

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Respondent,

_____/

No. 75323

APPELLANTS' OPENING BRIEF

Appeal from Fourth Judicial District Court, Division 2
Case No. CV-C-12-175

APPELLANTS' OPENING BRIEF

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NRAP 26.1
DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. There is no such corporation.

DATED this 7th day of August, 2018.

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I.

JURISDICTIONAL STATEMENT

This Court has appellate jurisdiction over this case pursuant to NRAP 3A(b)(1) because "it is an appeal from a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." The action was commenced in the Fourth Judicial District Court for the County of Elko, State of Nevada, and that Court entered Final Judgment on February 26, 2018, from which this appeal is taken.

The appeal is timely because the Final Judgment was entered on February 26, 2018, a Notice of Entry of Judgment was filed and served on March 1, 2018, and the Notice of Appeal was filed on March 6, 2018.

II.

ROUTING STATEMENT

This is a matter that is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(11) because it is a "[m]atter raising as a principal issue a question of statewide public importance . . . ." The Supreme Court's decision will determine whether a subdivision with no common elements is a common-interest community merely because it has a recorded declaration, and whether a unit-owner's association "must be organized no later than the date the first unit in the common-interest community is conveyed." NRS 116.3101(1).

III.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Whether the District Court erred by holding that Ruby Lake Estates is a "common-interest community" under the definition of NRS 116.021 when the Declaration of Ruby Lake Estates does not contain any covenant or provision to obligate lot owners "to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration." NRS 116.021.

B. Whether the District Court erred by holding that Ruby Lake Estates Homeowner's Association is a valid homeowners' association and is not bound by NRS 116.3101(1) when the association was organized 17 years after the first units in the subdivision were conveyed without notice of an association or dues.

C. Whether the District Court erred by failing to apply NRS 116.021, as amended, to this case when the 2009 legislative amendment to NRS 116.021 was expressly enacted to clarify, not change, the statute, and when the District Court disregarded the legislative history showing that the amendment was enacted to reject the over-broad definition of "common-interest community" that the District Court adopted.

III.

STATEMENT OF THE CASE

This case includes a single cause of action for declaratory judgment to determine whether Ruby Lake Estates subdivision is a common-interest community pursuant to NRS 116.021, whether Ruby Lake Estates Homeowner's Association ("RLEHOA") is a valid unit-owners' association pursuant to NRS 116.3101(1), and whether RLEHOA has authority to require lot owners to pay mandatory dues.

Appellants, Artemis Exploration Company ("Artemis") and Harold and Mary Wyatt ("Wyatts"), are lot owners in Ruby Lake Estates, a rural subdivision of 51 lots that was subdivided in 1989. The recorded Declaration, Restrictions and Covenants of Ruby Lake Estates subdivision does not contain any covenant or provision for the organization of a homeowner's association or for the payment of dues or any common expenses. In 2006, 17 years after the conveyance of the first lots, RLEHOA was organized by a group of lot owners in Ruby Lake Estates. RLEHOA began assessing mandatory dues and compelling payment under threat of lien and foreclosure.

The matter was submitted for non-binding arbitration through the Nevada Real Estate Division. A non-binding Arbitration Award was granted in RLEHOA's favor on February 7, 2012. Artemis filed the instant case for judicial review on March 2, 2012. The District Court ordered the joinder of all property owners within

Ruby Lake Estates. All property owners were joined and defaulted except for Artemis and the Wyatts, and the parties later stipulated to dismiss RLEHOA's counterclaims and cross claim, leaving Artemis's single cause of action for declaratory relief.

Artemis and RLEHOA submitted Motions for Summary Judgment in the District Court action. The District Court denied Artemis's Motion and entered its Order Granting Defendant's Motion for Summary Judgment on February 14, 2013. In its Order Granting Defendant's Motion for Summary Judgment, the District Court concluded that Ruby Lake Estates is a common-interest community because "1) the CC&R's are 'real estate' within the meaning of NRS 116.081; and 2) the CC&Rs constitute contractual interests for which Ruby Lake Estates lot owners were obligated to pay at the time of the HOA's incorporation." The District Court also concluded that RLEHOA is a valid homeowners' association because it was not bound by NRS 116.3101(1), which requires that "[a] unit-owner's association must be organized no later than the date the first unit in the common-interest community is conveyed." On February 26, 2018, the District Court entered its Final Judgment, from which this appeal is taken.

IV.

STATEMENT OF FACTS

1. Ruby Lake Estates is a rural subdivision of 51 lots. The Plat Map for Ruby Lake Estates was recorded on September 15, 1989, as file No. 281674, and all roads within the subdivision were dedicated to the County of Elko, as stated on the Plat Map. (Vol. 5, Appellants' Appendix ("AA"), Pgs. 152-154.) The Plat Map does not provide for the organization of a unit-owner's association or describe any obligation to pay for any common elements, other units, or other real estate. (*Id.*)

2. The Declaration of Restrictions and Covenants of Ruby Lake Estates subdivision ("Declaration") was recorded on October 25, 1989. (5 AA 155-160.) The Declaration does not describe the formation of a unit-owner's association or any obligation to pay for any common elements, other units, or other real estate. (*Id.*)

3. On December 15, 1989, the first lots in Ruby Lake Estates were conveyed, when forty-nine (49) of the fifty-one (51) lots were conveyed by deed from the Declarants, Stephen G. Wright and Mavis S. Wright, to Cattlemen's Title Guarantee Company. (5 AA 161.) On February 12 and 15, 1990, Declarants conveyed the remaining two (2) lots to property owners. (5 AA 162-164.) Thus, all fifty-one (51) lots in Ruby Lake Estates were deeded and conveyed by February 15, 1990.

4. NRS 116 was codified in 1991 and became effective law in 1992.

5. In 1992, NRS 116.110323 defined a common-interest community as follows: "'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."

6. Artemis purchased Lot 6 of Block G of Ruby Lake Estates on June 16, 1994. (5 AA 165-166.)

7. In 1999, the Legislature amended NRS 116.1201 to apply NRS Chapter 116 to all common-interest communities.

8. On December 12, 2001, Harold and Mary Wyatt purchased Lot 5 of Block F in Ruby Lake Estates. (5 AA 167.)

9. In 2003, NRS 116.110323, was substituted, with identical wording, and became NRS 116.021.

10. In 2006, the Legislative Counsel Bureau issued a legal opinion interpreting NRS 116.021 to mean that a subdivision with a Declaration, alone, does not constitute a "common-interest community." (5 AA 168-172.)

11. In 2006, Ruby Lake Estates Homeowner's Association ("RLEHOA") was organized by a group of lot owners, 17 years after Ruby Lake Estates subdivision was created and all lots were conveyed. (5 AA 173-174.) RLEHOA began assessing mandatory dues against lot owners under threat of lien and foreclosure.

12. There is no evidence that the Wyatts ever participated in or approved the organization of RLEHOA.

13. In 2007, RLEHOA acquired a lot within Ruby Lake Estates. (5 AA 175-177.)

14. In 2008, an unofficial Nevada Attorney General Opinion was issued interpreting NRS 116.021 to mean that a subdivision with CC&Rs, alone, may constitute a "common-interest community" because "CC&Rs" may be considered "real estate." (5 AA 178-190.)

15. In 2009, the Legislature disagreed with the unofficial Nevada Attorney General's opinion and expressly clarified NRS 116.021(1) as follows:

> 'Common-interest community' means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate **described in that declaration**.

NRS 116.021(1) (emphasis added). The amendment clarified that any common expenses must be "described in that declaration" to put unit owners on notice of any obligation to pay common expenses.

16. Senate Bill 261, which enacted the 2009 NRS 116.021 amendment, expressly states that the amendment was a clarifying amendment:

> Sections 4 and 7 of this bill clarify the applicability of the Uniform Act by revising the definition of 'common-interest community' to: (1) reflect the revisions promulgated by the Uniform Law Commission; and (2) clarify that certain agreements to share expenses do not create a common-interest community. (NRS 116.021).

(5 AA 195.)

17. Senator Schneider, in the legislative history of 2009 Amendments to NRS Chapter 116, referred to the clarified sections of SB 261 by stating:

> There is one other important issue I need to touch on so there is no further misunderstanding about the reach and scope of Nevada Revised Statutes chapters 116 and 116A. Section 6 of the Senate Bill 182 as originally introduced was designed to clarify, and I emphasize the term "clarify," existing law. Section 6 does not and was not intended to effect any change in existing law. It is clarifying language only. The distinguishing factor in a common-interest community (CIC) is ownership of common areas, not the existence of covenants, conditions and restriction (CC&Rs). This is the essential difference between a CIC and a homeowners' association, a name often used interchangeably with CIC but a legally distinct type of entity. Section 6 was necessary because the Real Estate Division has taken the position that a homeowners' association with only CC&Rs, as distinct from a CIC, is subject to Nevada Revised Statutes (NRS) Chapter 116 and 116A when in actuality it is not by virtue of the fact that a homeowners association does not own common property.

(5 AA 194.)

18. Initially, the Nevada Real Estate Division adopted the Attorney General's unofficial opinion, but then "agreed to drop its assertions" when the legislature, which disagreed with the Attorney General opinion, clarified the statute. (*Id.*)

19. On March 9, 2010, Artemis acquired Lot 2 of Block H of Ruby Lake Estates from a previous lot owner. (5 AA 216-217.)

20. On February 7, 2012, a non-binding Arbitration Award was entered in favor of RLEHOA, which failed to apply NRS 116.3101(1) to RLEHOA. (5 AA 219-222.)

21. On February 14, 2013, the District Court entered summary judgment in favor of RLEHOA by erroneously adopting the reasoning in the 2008 rejected, unofficial Attorney General Opinion and refusing to apply NRS 116.3101 to RLEHOA. (4 AA 50-71.)

V.

SUMMARY OF THE ARGUMENT

First, Ruby Lake Estates is not a common-interest community as defined by NRS 116.021 because the Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions ("Declaration") and Plat Map do not describe any "common elements, other units or other real estate" for which lot owners are obligated to pay.

Second, Ruby Lake Estates Homeowner's Association ("RLEHOA") is not a valid homeowners' association pursuant to NRS 116.3101(1) because it was not organized until 17 years after the first lot was conveyed.

Third, the District Court's refusal to apply NRS 116.021 as clarified by the Nevada legislature in 2009 and the District Court's refusal to review the legislative history regarding the statute was in error. Senate Bill 261 was enacted in 2009 and expressly clarified NRS 116.021 to confirm that a declaration is not "real property" and does not, by itself, create a common-interest community. Pursuant to case law from this Court, clarifying amendments are applied retroactively, and therefore the

2009 legislative amendment clarified that Ruby Lake Estates was never a common-interest community when its Declaration did not describe any "common elements, other units or other real estate" for which lot owners are obligated to pay.

VI.

STANDARD OF REVIEW ON APPEAL

This appeal is from the District Court's entry of summary judgment, which judgment construed statutory language and interpreted a contract; therefore, this Court's review is "de novo." *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 665–66 (2004); *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 641 (Nev. 2003); *Tore, Ltd. v. Church,* 105 Nev. 183 (1989).

VII.

ARGUMENT

A. The District Court erred by holding that Ruby Lake Estates is a "common-interest community" under the definition of NRS 116.021.

Ruby Lake Estates subdivision is not a common-interest community as defined in NRS 116.021 because the Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions ("Declaration") and Plat Map do not describe any common elements, other units, or other real estate for which lot owners are obligated to pay.

Ruby Lake Estates was created in 1989. NRS Chapter 116 was codified in 1992 and was applied to pre-1992 communities pursuant to NRS 116.1201 in 1999. Therefore, Nevada Revised Statutes Chapter 116 applies to this case.

NRS 116.021 defines a "common-interest community" as follows:

> "Common-interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.

Thus, in order for a subdivision to qualify as a common-interest community, the Declaration must describe common elements, other units or other real estate for which lot owners are obligated to pay. Therefore, the Declaration must be reviewed, de novo, to determine whether the documents "describe" a restrictive covenant that required unit owners to pay for "common elements, other units or other real estate." (5 AA 155-160.) The Declaration does not describe any common elements, other units or other real estate for which lot owners are obligated to pay, so Ruby Lake Estates subdivision is not a common-interest community pursuant to NRS 116.021. (*Id.*)

When reviewing the Declaration, "[t]he rules of construction governing the interpretation of contracts apply" because such a review is an "interpretation of restrictive covenants for real property." *Diaz*, 120 Nev. at 73. The first determination is "whether the 'language of the contract is clear and unambiguous; if it is, the

contract will be enforced as written.' An ambiguous contract is susceptible to more than one reasonable interpretation, and '[a]ny ambiguity, moreover, should be construed against the drafter.'" *Am. First Fed. Credit Union v. Soro*, 131 Nev. Adv. Op. 73, 359 P.3d 105, 106 (2015) (quoting *Davis v. Beling*, 278 P.3d 501, 515 (2012); *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215–16, 163 P.3d 405, 407 (2007)). "When construing real property covenants of doubtful import, they should be construed against the person seeking enforcement." *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 268 (1993) (*citing Harborview Imp. Ass'n v. Downey, 270 Md.* 365, 311 A.2d 422, 425 (1973)).

Furthermore, case law in Nevada rejects any covenants not expressly written in the declaration or otherwise recorded at the time of the deed acquisition. *E.g.*, *Caughlin Club*, 109 Nev. 264 ("There were simply no provisions in the CC & R's that would have alerted [the property owner] to the possibility that new property classifications would be created pursuant to which his property would be subject to assessment by the Association.") [1]; *Diaz*, 120 Nev. at 75 (a community could not

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[1] The District Court erroneously disregarded the importance of the Supreme Court's findings in *Caughlin Club*. (4 AA 66:13-16.) *Caughlin Club*'s holding that homeowners cannot be bound by covenants not contained in the declaration is central to the issue at hand, and therefore applicable.

The District Court further erred by asserting that *Caughlin Club* is inapplicable to this case by finding that NRS Chapter 116 did not apply to the pre-1992 HOA in the case. (*Id.*) However, in the 2004 case *Diaz v. Ferne*, 120 Nev. 70 (2004) that involved an HOA that was clearly subject to NRS Chapter 116, this Court

prohibit a lot owner from installing a manufactured home because the community's CC&Rs were "silent" regarding manufactured homes); *accord Lakeland Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805, 77 Ill.Dec. 68, 459 N.E.2d 1164 (1984) ("a grantee can only be bound by what he had notice of, not the secret intentions of the grantor"). Thus, Ruby Lake Estate's lot owners can only be bound by what they had notice of, and the District Court cannot impose new obligations and dues by implication.

Therefore, this Court should find that Ruby Lake Estates subdivision is not a common-interest community pursuant to NRS 116.021 because the declaration does not described any "common elements, other units or other real estate" for which unit owners are obligated to pay.

1. The Declaration of Ruby Lake Estate does not describe any "common elements, other units or other real estate" for which unit owners are obligated to pay.

Ruby Lake Estates' Declaration was recorded on October 25, 1989, and has never been amended. (5 AA 155-160.) No provision of the Declaration describes any common elements or any obligation for lot owners to pay for common elements, other units or other real estate described in the declaration. (*Id.*) Thus, the "language

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again ruled that homeowners cannot be bound by covenants not contained in the declaration.

of the [Declaration] is clear and unambiguous," and therefore it should "be enforced as written." *Soro*, 359 P.3d at 106.

Although, the District Court found for RLEHOA, it did not cite any language in the Declaration that described any obligation for lot owners to pay for common elements, other units or other real estate, nor did the District Court find that the Declaration described any common elements. (4 AA 68:18-69:9.) Instead, the Court erroneously found that the Declaration—itself—constituted "real property" for which owners were required to pay and that the Declaration "added value for all units in Ruby Lakes[sic] Estates, including the establishment of an enforcement body, the operations for which lot owners were obligated to pay at least by implication." (4 AA 69:14-16.) The District Court erroneously cited the 2008 rejected, unofficial Nevada Attorney General's Opinion and failed to apply NRS 116.021 as clarified by the Nevada legislature in 2009. (*Id.*) Therefore, this ruling should be overturned on appeal.

First, NRS 116.021 requires that the "common elements, other units or other real estate" for which unit owners are obligated to pay must be "**described in that declaration**." NRS 116.021 (emphasis added). In this case, the Declaration does not describe any obligation to pay for common elements other units or other real estate, and therefore the Declaration, as in *Diaz*, is "silent" regarding any such obligation. *Diaz*, 120 Nev. at 75; (5 AA 155-160). Given that the "language of the [Declaration]

is clear and unambiguous" regarding any obligation to pay dues, the Declaration must be "enforced as written." *Soro*, 359 P.3d at 106. Thus, Ruby Lake Estates is not a common-interest community pursuant to NRS 116.021 because the Declaration does not describe common elements, other units or other real estate for which unit owners are obligated pay.

Second, it was error for the District Court to go beyond "the four corners of the written instrument" and find an obligation to pay dues "by implication." *Caldwell v. Consol. Realty & Mgmt. Co.*, 99 Nev. 635, 638, 668 P.2d 284, 286 (1983); (4 AA 69:14-16). The District Court outright acknowledged that there is an "absence of [an] express covenant" in the Declaration, but instead invented an obligation "by implication." (4 AA 69:17). This finding, alone, proves that Ruby Lake Estates is not a common-interest community pursuant to NRS 116.021 because it is an admission that the Declaration does not describe real estate for which unit owners are obligated to pay. Given that the District Court found no express covenant, the District Court looked beyond the language of the Declaration in order to make a finding by "implication." Looking beyond the express, "clear and unambiguous" terms of the Declaration was a violation of the rules of contractual interpretation. *Soro*, 359 P.3d at 106. "If the drafters of the CC & Rs had intended to" describe an obligation to pay for real estate, "they would have explicitly done so." *Diaz*, 120 Nev. at 75.

Third, in interpreting the Declaration and its restrictive covenants, the District Court was required to construe the Declaration against RLEHOA, who is "the person seeking enforcement"; however, this was not done. *Caughlin Club*, 109 Nev. at 268. Even though the Declaration does not describe any obligation to pay, the District Court construed the Declaration in favor of RLEHOA—the purported enforcer—and wrote in by "implication" one of the most restrictive covenants that could possibly exist in a Declaration: a mandatory obligation to pay dues when none exists.

Ruby Lake Estate's lot owners "can only be bound by what [they] had notice of" and the District Court cannot impose new dues by "implication." *Id.* (quoting *Lakeland*, 121 Ill. App. 3d at 812.) Therefore, the District Court's decision should be reversed in order to find that Ruby Lake Estates is not a common-interest community because the Declaration does not describe "common elements, other units or other real estate" for which lot owners were obligated to pay. NRS 116.021.

2. The Plat Map of Ruby Lake Estates does not describe any "common elements, other units or other real estate" for which unit owners are obligated to pay.

The Plat Map was recorded on September 15, 1989. (5 AA 152-154.) Consistent with the Declaration, there is no language in the Plat Map that describes common elements, other units or other real estate for which lot owners are obligated to pay. (4 AA 63:17-24.) The Plat Map shows "residential lots within the community, as well as roadways, easements, building set-back lines and street

monuments"; and the District Court, quoting the Plat Map's first page, correctly found that the roadways and easements were dedicated to the County of Elko and are owned by the County, not the subdivision:

> At a regularly held meeting of the Board of Commissioners of Elko County, State of Nevada, held on the 5th day of July, 1989, this Plat was approved as a Final Plat pursuant to NRS 278.328. The Board does hereby reject on behalf of the public all streets or roadways for maintenance purposes and does hereby accept all streets and easements therein offered for utility, drainage and access purposes only as dedicated for public use.

(4 AA 63:22-24; 5 AA 152.)

This demonstrates that the Declarant expressly dedicated the roads and easements to the County, that the roads and easements were not retained as common elements, and that the Plat Map describes no common elements, other units or other real estate.[3]

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[3] The District Court stated in its Order that "Elko County requires the roadways and adjoining ditches and culverts to be maintained for health and safety reasons." (4 AA 63:26-27.) This statement is unsupported dicta because the summary judgment Order does not rely on the statement; furthermore, the District Court does not cite to any authority that provides for any such requirement. (*Id.*) In fact, Elko County's literature is directly at odds with the District Court's finding because many rural subdivisions in Elko County and throughout the state have unmaintained roads, such as Osino, Ryndon, Last Chance Ranchos, and others. In those subdivisions, efforts have been made to form voluntary associations, and the associations are strictly voluntary because they are not common-interest communities and they lack the authority to compel the payment of dues, even if there is a cost sharing agreement in effect. *See* NRS 116.021(2); (1 AA 169; 5 AA 170-172.) Contrary to the dicta of the District Court, Elko County actually publishes and disseminates a notice to property owners titled "Rural Living in Elko County—Things You Need to Know About Rural Living," which states:

3. The Plat Map Does Not Contain "Common Elements."

"Summary judgment is only appropriate . . . after a review of the record **in a light most favorable to the non-moving party**. . ." *Butler v. Bogdanovich,* 101 Nev. 449, 451 (1985) [emphasis added]. The District Court failed to review the record in a light most favorable to Appellants and erred by making a finding that is not supported by the record. The District Court found, "The plat contains 'common elements' as that term is currently defined in NRS 116.017, including fixtures such as gates." (4 AA 70, Ft. 4.)

The District Court erred because the Plat Map does not reference or show any fixtures or gates. (5 AA 152-154.) The District Court does not provide any citation or description of where it found any reference to any fixture or "gate" on the Plat Map. This finding is not included in the District Court's own findings of "Undisputed Material Facts." (4 AA 63.) In the "Undisputed Material Facts" section the District Court found that the Plat Map contains "residential lots within the community, as well as roadways, easements, buildings set-back lines and street monuments." (4 AA 63:18-20.) However, the District Court did not include any

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> There are many roads that are not maintained by the county – no grading or snow plowing. There are even some public roads that are not maintained by anyone! Make sure you know what type of maintenance to expect and who will provide that maintenance.

(5 AA 218.)

reference to "gates" in its description of the Plat Map. The only citation for "gates" that the District Court makes is in reference to a "Reserve Study" that was created by RLEHOA on or about July 14, 2009, 20 years after the Declaration was recorded. (*Id.* 65:19.) The Reserve Study could not have put lot owners on notice of any common elements "such as gates" because it was created nearly two decades after the Declaration was recorded and after all lots were conveyed. (*Id.* 65:16.) Therefore, it was error for the District Court to cite to the Reserve Study.

Consequently, lot owners are not obligated to pay for common elements or expenses because none are described in the Plat Map or the Declaration.

B. Ruby Lake Estates Homeowner's Association is not a valid homeowners' association because it was not organized prior to the conveyance of the first unit as required by NRS 116.3101(1).

Ruby Lake Estates Homeowner's Association is not a valid homeowners' association as defined in NRS 116.3101(1) because RLEHOA was not organized in a common-interest community prior to the conveyance of the first unit in Ruby Lake Estates. The first unit was conveyed in 1989, and RLEHOA was organized seventeen years later in 2006. (5 AA 161; 173-174.)

The District Court refused to apply NRS 116.3101(1) in it summary judgment order, which was error. (4 AA 66:10-13, ft. 1.)

1. Ruby Lake Estates Homeowner's Association is not a valid homeowners' association pursuant to NRS 116.3101(1).

RLEHOA is not a valid homeowner's association because it was not organized in a common-interest community prior to the conveyance of the first unit in Ruby Lake Estates subdivision pursuant to NRS 116.3101(1).

NRS 116.3101(1) unequivocally states: "A unit-owners' association must be organized **no later than the date the first unit in the common-interest community is conveyed**." (Emphasis added.) Moreover, NRS 116.3101(4) states the requirements that must be completed to organize an association before "the date the first unit in the common-interest community is conveyed."

> When presented with a question of statutory interpretation, the intent of the legislature is the controlling factor and, if the statute under consideration is clear on its face, a court can not go beyond the statute in determining legislative intent. If, however, the statute is ambiguous it can be construed "in line with what reason and public policy would indicate the legislature intended."

Robert E. v. Justice Court of Reno Twp., Washoe Cty., 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (internal citations omitted).

NRS 116.3101(1) is "clear on its face"; therefore, the plain language of NRS 116.3101(1) must be applied to RLEHOA. *Robert E.*, 99 Nev. at 445.

First, Ruby Lake Estates is not a common-interest community, as explained above in *Supra VII(A)*, and therefore RLEHOA is not a valid homeowners' association because it was not organized within a common-interest community.

Second, the organization of RLEHOA was a clear violation of NRS 116.3101(1) because RLEHOA was organized long after the first lot was conveyed.

The first lots within Ruby Lake Estates were conveyed on December 15, 1989, and all lots were conveyed by February 15, 1990. (5 AA 161-164.) RLEHOA was not organized prior to December 15, 1989, the date of the conveyance of the first unit. On January 18, 2006—17 years after the first lot was conveyed—the RLEHOA Articles of Incorporation were filed with the Secretary of State to organize RLEHOA. (5 AA 173-174.) There is no mention of the organization of a homeowners' association in the Declaration. This filing and organization of RLEHOA in 2006 violated NRS 116. 3101(1) because it was organized after the first unit within Ruby Lake Estates was conveyed. Therefore, RLEHOA violates NRS 116.3101(1) and should be declared invalid.

2. The legislature intended NRS 116.3101(1) to be applied to Ruby Lake Estates.

It was the legislature's specific intent to apply NRS 116.3101(1) to pre-1992 communities, such as Ruby Lake Estates, and therefore the District Court's refusal to apply NRS 116.3101(1) to Ruby Lake Estates was error.

Ruby Lake Estates was created in 1989 and is therefore a pre-1992 subdivision. (5 AA 155-160.) NRS Chapter 116 was codified in 1992 and was later applied to pre-1992 communities pursuant to NRS 116.1201 in 1999. (4 AA 67:5-6.) In enacting NRS 116.1201, the legislature created specific exemptions for pre-1992 communities (NRS 116.1201(3)(a)-(d)); however, all communities, including pre-1992 communities, were required to comply with NRS 116.3101(1). Therefore,

the legislature considered the application of NRS Chapter 116 to pre-1992 communities, exempted pre-1992 communities from certain NRS Chapter 116 requirements, and applied NRS 116.3101(1) to all communities, including RLEHOA.

The purpose of NRS Chapter 116 is to make uniform the laws regarding unit-owner associations and to protect Nevada residents in their homes. *See Boulder Oaks Cmty. Ass'n v. B & J Andrews Enterprises, LLC*, 125 Nev. 397, 406, 215 P.3d 27, 33 (2009); NRS 116.1109(2) ("[T]he express purpose of NRS Chapter 116, [ ] is to 'make uniform the law with respect to the subject of this chapter among states enacting it'"); *See also* (5 AA 194) ("one of the most important aspects of a person's life, his residence . . . homeowners have the right to reside in a community without fear of illegal, unfair, unnecessary, unduly burdensome or costly interference with their property rights . . . . If any court has occasion to interpret the provisions of this bill or indeed of any provision in Chapter 116 or 116A of the Nevada Revised Statutes, let the court be guided by these principles I have just reviewed with you.").

Case law requires that NRS 116.3101(1) be enforced as written. *Robert E.*, 99 Nev. at 445. Under Nevada law, mandatory membership in an association and mandatory assessments are affirmative covenants that must be "described" in the Declaration. NRS 116.021.

> Affirmative covenants impose affirmative duties on landowners, such as an obligation to pay annual or special assessments for the upkeep of

> common areas and amenities in a common interest community. Because covenants originate in contract, the primary purpose of a court when interpreting a covenant is to give effect to the original intent of the parties; however, covenants are strictly construed in favor of the free use of land whenever strict construction does not contradict the plain and obvious purpose of the contracting parties.

Armstrong v. Ledges Homeowners Ass'n, Inc., 360 N.C. 547, 557 (2006) (*citing Long v. Branham*, 271 N.C. 264, 268 (1967)).

In order for an affirmative covenant to bind the purchaser of a lot, the purchaser must have had notice, in writing, of the affirmative covenant at the time of sale. *Caughlin Club*, 109 Nev. at 268; *Diaz*, 120 Nev. 70; *Thirteen S. v. Summit Village*, 109 Nev. 1218 (Nev. 1993); *accord Dreamland Villa Cmty. Club, Inc. v. Raimey*, 224 Ariz. 42 (Ct. App. 2010) (adopting Nevada's reasoning); *Lakeland*, 121 Ill. App. 3d 805 (the Supreme Court of Nevada in *Caughlin Club*, 109 Nev. at 268, adopted Illinois' reasoning). NRS 111.315 requires that any instrument that affects real property must be recorded in order to provide notice to third parties. Accordingly, NRS 116.021 requires that common expenses be described in the Declaration to give written, recorded notice to buyers; and NRS 116.3101(1) requires that a homeowners' association be organize prior to conveyance of the first unit.

According to *Powell on Real Property*, notice before lots are conveyed of a future association is a common requirement among states. Fifteen community law states, including Nevada, require homeowners' associations to be organized no later

than the date of the first conveyance. 7-54 Powell on Real Property § 54.06 Ft. 2.; *See also* 8-54A Powell on Real Property § 54A.01 Ft. 25 ("As a practical matter, the association is usually formed long before the first sale").

Given Nevada's statutes, the legislative history, and Nevada case law, which all support the application of NRS 116.3101(1) to Ruby Lake Estates, it was error for the District Court to find that the application of NRS 116.3101(1) to RLEHOA is a "nonsensical substantive argument[ ]" and that if the application of NRS 116.3101(1) to RLEHOA "held water a valid homeowners association for a common interest community that existed before 1992 could never be formed." (4 AA 66:10-13, Ft. 1.) The District Court did not explain its reasoning with any statute, case law, legislative history, or **any** authority. Furthermore, the District Court assumed a flawed point of reasoning because valid homeowners' associations were organized in pre-1992 common-interest communities, they simply had to comply with NRS 116.3101(1) and be organized prior to the conveyance of the first unit. *See Caughlin Club*, 109 Nev. at 265; *Thirteen S. Ltd.*, 109 Nev. at 1219.

The formation of RLEHOA in 2006 with no notice to lot owners 17 years after the lots were conveyed is a violation of NRS 116.3101(1), and thus RLEHOA is not a valid homeowners' association because it was organized after the conveyance of the first unit and does not conform to NRS 116.3101(1).

3. Payment of assessments or participation in RLEHOA does not validate RLEHOA.

RLEHOA argued extensively before the District Court that because Mel Essington, husband of Beth Essington, the sole shareholder and officer of Artemis, allegedly participated as a resident of RLEHOA and that Artemis initially paid dues to RLEHOA, that RLEHOA is a valid homeowners' association and that its dues are mandatory to all lot owners. (2 AA 7-11.) A resident's participation in an association or the payment of dues does not make a homeowners' association valid or stop a unit owner from challenging the homeowners' association's validity.

Participation does not validate unlawful restrictive covenants. *See Caughlin Club*, 109 Nev. at 267 (initial payment of fees did not validate the fees); *Armstrong*, 360 N.C. at 557 ("Although individual lot owners may voluntarily undertake additional responsibilities that are not set forth in the declaration, or undertake additional responsibilities by mistake, lot owners are not contractually bound to perform or continue to perform such tasks.")

The issues before this Court are purely legal issues of interpretation of the Declaration of Ruby Lake Estates. RLEHOA was not organized prior to the first lot's conveyance, and therefore RLEHOA is not a valid unit-owners' association pursuant to NRS 116.3101.

C. The 2009 NRS 116.021 amendment clarified existing law and confirms that Ruby Lake Estates is not a common-interest community.

Senate Bill 261 expressly states that the amendment was meant to "clarify" the statute. Senate Bill 261 states:

> Sections 4 and 7 of this bill ***clarify*** the applicability of the Uniform Act by revising the definition of "common-interest community" to: (1) reflect the revisions promulgated by the Uniform Law Commission; and (2) ***clarify*** that certain agreements to share expenses do not create a common-interest community. (NRS 116.021).

(5 AA 195) (emphasis added).

When the legislature enacts legislative amendments that are "solely clarifications of existing law," the clarifications "reaffirm" existing law and apply "retroactively." *Howell v. Ricci*, 124 Nev. 1222, 1231, 197 P.3d 1044, 1050 (2008); *State Drywall, Inc. v. Rhodes Design & Dev.*, 122 Nev. 111, 115, 127 P.3d 1082, 1085 (2006).

Sutherland Statutory Construction states:

> Where an amendment clarifies existing law but does not contravene previous constructions of the law, the amendment may be deemed curative, remedial and retroactive, especially where the amendment is enacted during a controversy over the meaning of the law.

Norman J. Singer and J.D. Shambie Singer, 1A *Sutherland Statutory Construction* § 22.34 (7th ed. 2009) (*cited by Fernandez v. Fernandez*, 126 Nev. 28, 35, 222 P.3d 1031, 1036 (2010)).

Sutherland notes that at least eight states—California, Connecticut, Missouri, Nevada, Oklahoma, Pennsylvania, Texas, Washington—and federal courts apply this same rule. *Id.* at Ft. 6 (*citing Fernandez*, 126 Nev. at 35)).

Nevada's legislative history explains why the 2009 amendment was enacted to clarify NRS 116.021:

> There is one other important issue I need to touch on so there is no further misunderstanding about the reach and scope of Nevada Revised Statutes chapters 116 and 116A. Section 6 of the Senate Bill 182 as originally introduced ***was designed to clarify, and I emphasize the term "clarify," existing law***. Section 6 does not and was not intended to effect any change in existing law. ***It is clarifying language only. The distinguishing factor in a common-interest community (CIC) is ownership of common areas, not the existence of covenants, conditions and restriction (CC&Rs).*** This is the essential difference between a CIC and a homeowners' association, a name often used interchangeably with CIC but a legally distinct type of entity. Section 6 was necessary because the Real Estate Division has taken the position that a homeowners' association with only CC&Rs, as distinct from a CIC, is subject to Nevada Revised Statutes (NRS) Chapter 116 and 116A when in actuality it is not by virtue of the fact that a homeowners association does not own common property.

(5 AA 194) (emphasis added).

This clarification is considered remedial because "it clarifies or technically corrects an ambiguous statute." *Castillo v. State*, 110 Nev. 535, 541, 874 P.2d 1252, 1256–57 (1994), disapproved of on other grounds by *Wood v. State*, 111 Nev. 428, 892 P.2d 944 (1995). Furthermore, the 2009 amendment was "enacted during a controversy over the meaning of the law." *Sutherland* § 22:34 (7th ed.). In 2006, a Legislative Counsel Bureau legal opinion concluded that a lot owner must be obligated to pay for real estate other than the owner's lot—such as a community pool, walking trail, or other common element—in order for a common-interest

community to exist.[4] (5 AA 168-172.) However, in 2008, an unofficial Attorney General Opinion reached a radically different result and concluded that a common-interest community could be formed simply by recording a declaration and that the Declaration—itself—was "real estate" for which dues could be compelled. (5 AA 178-190.) The Nevada Real Estate Division, a division of the Department of Business and Industry, adopted the Attorney General's unofficial opinion, but then "agreed to drop its assertions but only if NRS 116.021 [was] clarified." (5 AA 194.) In 2009, the legislature clarified the statute. (5 AA 195.)

Therefore, the express words of the bill, the legislative history, and the history concerning the controversy of the act, make it very clear that the Legislature plainly "intended to clarify rather than change" NRS 116.021. *Pyramid Lake Paiute Tribe of Indians v. State Eng'r*, 127 Nev. 1168, 373 P.3d 952 (2011). Given the clear intent to clarify NRS 116.021, the 2009 amendment should be applied retroactively. *Fernandez*, 126 Nev. at 35; *Sutherland Statutory Construction* § 22.34 (7th ed. 2009).

Furthermore, prior to the 2009 amendment, NRS 116.021 ("pre-2009 NRS 116.021") was ambiguous because it was "capable of being understood in two or

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[4] During that time, Hidden Valley Homeowners Association, near Reno, Nevada, was faced with a similar situation as Ruby Lake Estates, and is not considered a common-interest community and runs its association, Hidden Valley Homeowners' Association, as a voluntary association. (5 AA 168-172.)

more senses by reasonably informed persons . . . ." *McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 649 (1986) (citing *Robert E.*, 99 Nev. at 445). The ambiguity is clear because the 2006 Legislative Counsel Bureau legal opinion diverged with the 2008 unofficial opinion written by a member of the Attorney General's office, which was initially adopted and then rejected by the Nevada Real Estate Division. (5 AA 168-172, 178-190, 194.)

Under the rules of statutory construction, the ambiguities in a statute are resolved by ascertaining the legislative intent in enacting the statute.[5] *See Harris Associates v. Clark Cnty. Sch. Dist.*, 119 Nev. 638, 642 (2003) (quoting *Harvey v. Dist. Ct.*, 117 Nev. 754, 770, 32 P.3d 1263, 1274 (2001)) (internal quotations omitted). In 2009, the Nevada Legislature clarified its intent and declared that it was never its intent for common-interest communities to be created by a recorded

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[5] Shockingly, the District Court refused to apply the rules of statutory construction or consider the 2009 clarifying amendment or the express legislative intent in construing NRS 116.021. *See McKay*, 102 Nev. at 650-51. Instead, it erroneously based its ruling on the 2008 unofficial Attorney General's Opinion, which had already been rejected by the Nevada Legislature: "Artemis has harshly criticized the 2008 AGO, which the Court believes is a faithful interpretation of the text of the statutes at issue. In an era when many are rightfully questioning the use of legislative history to interpret statutes, Artemis invites the Court to rely on a legislator's 2009 interpretation of NRS 116.021 as support for the proposition that the 2008 AGO is wrong. Respectfully, the Court declines the invitation. See Antonin Scalia and Bryan A. Garner, Reading Law: The Interpretation of Legal Texts, 391-96 (2012)." (4 AA 67, Ft. 3.) The District Court's ruling is a blatant rejection of legislative intent and statutory contruction, and must be reversed. *See Harris Associates*, 119 Nev. at 642.

declaration alone, and that any obligation to pay for common expenses must be "described" in the Declaration. (5 AA 194-195) (the 2009 clarification "does not and was not intended to effect any change in existing law. It is clarifying language only.") Thus, the 2009 clarifying amendment resolved the ambiguity, and confirmed that a common-interest community is not formed by a recorded declaration alone, but requires that any obligation to pay for common elements must be "described" in the Declaration. NRS 116.021.

Lastly, a statute's language "should not be read to produce absurd or unreasonable results," and it can be construed "in line with what reason and public policy would indicate the legislature intended." *Harris Associates*, 119 Nev. at 642; *McKay*, 102 Nev. at 649 (1986) (quoting *Robert E.*, 99 Nev. at 445). "[T]he express purpose of NRS Chapter 116, [ ] is to 'make uniform the law with respect to the subject of this chapter among states enacting it.'" *Boulder Oaks Cmty. Ass'n*, 125 Nev. at 406; NRS 116.1109(2). The District Court ruled that the Declaration, itself, is considered "real estate" pursuant to NRS Chapter 116. (4 AA 67:1-2.) This is an absurd result because, under the District Court's interpretation, a single homeowner in a subdivision with a recorded declaration could have unilaterally organized a homeowners' association at any time prior to the 2009 clarifying amendment because, according to the District Court's reasoning, the subdivision would have allegedly been considered a common-interest community prior to 2009, but after

2009 the same homeowner could not create a homeowners' association because the declaration, alone, would no longer be sufficient to form a common-interest community. This would create an "absurd result[ ]" that conflicts directly with the definition of NRS 116.021, case law, the legislature's 2009 clarifying amendment, and the statute's intent of uniformity. Therefore, this Court should reverse the District Court's summary judgment orders, and find that Ruby Lake Estates is not a common-interest community pursuant to NRS 116.021.

VIII.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Honorable Court reverse the District Court's findings in the District Court's Order Granting Defendant's Motion for Summary Judgment and the District Court's Order Denying Plaintiff's Motion for Summary Judgment, and specifically find that:

1. The NRS 116.021's 2009 clarifying amendment applies retroactively to Ruby Lake Estates subdivision;

2. Ruby Lake Estates is not a common-interest community under NRS 116.021;

3. RLEHOA is not a valid Nevada homeowners' association because it violated NRS 116.3101(1);

4. RLEHOA cannot compel the payment of dues or assessments; and

5. For such other relief as the Court deems just and proper.

DATED this 7th day of August, 2018.

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CERTIFICATE OF COMPLIANCE (BASED UPON NRAP FORM 9)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 360 in 14 point Times New Roman type style.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7), excluding the parts of the brief exempted by NRAP 32(a)(7)(C), because it does not exceed 30 pages.

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

DATED this 7th day of August, 2018.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on this date, I caused the foregoing document to be served on all parties to the action by:

- ✓ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
- ✓ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Elko, Nevada.

fully addressed as follows:

Gayle A. Kern
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DATED this 7th day of August, 2018.

EMPLOYEE OF GERBER LAW OFFICES, LLP

ADDENDUM (NRAP 28(f))

NRS 111.315 Recording of conveyances and instruments: Notice to third persons

Every conveyance of real property, and every instrument of writing setting forth an agreement to convey any real property, or whereby any real property may be affected, proved, acknowledged and certified in the manner prescribed in this chapter, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which the real property is situated or to the extent permitted by NRS 105.010 to 105.080, inclusive, in the Office of the Secretary of State, but shall be valid and binding between the parties thereto without such record.

NRS 116.017 "Common elements" defined:

"Common elements" means:

1. In the case of:

(a) A condominium or cooperative, all portions of the common-interest community other than the units, including easements in favor of units or the common elements over other units.

(b) A planned community, any real estate within a planned community which is owned or leased by the association, other than a unit.

2. In all common-interest communities, any other interests in real estate for the benefit of units' owners which are subject to the declaration.

NRS 116.021 "Common-interest community" defined:

1. "Common-interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.

2. The term does not include an agreement described in NRS 116.1209.

3. For purposes of this section, "ownership of a unit" does not include holding a leasehold interest of less than 20 years in a unit, including options to renew.

NRS 116.081 "Real estate" defined:

"Real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests that by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

NRS 116.110323 (NRS 116.021 substituted in revision for NRS 116.110323) "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.

NRS 116.1109 Construction against implicit repeal; uniformity of application and construction:

1. This chapter being a general act intended as a unified coverage of its subject matter, no part of it may be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.
2. This chapter must be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

NRS 116.1201 Applicability; regulations:

1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.
2. This chapter does not apply to:

(a) A limited-purpose association, except that a limited-purpose association:

(1) Shall pay the fees required pursuant to NRS 116.31155, except that if the limited-purpose association is created for a rural agricultural residential common-interest community, the limited-purpose association is not required to pay the fee unless the association intends to use the services of the Ombudsman;

(2) Shall register with the Ombudsman pursuant to NRS 116.31158;

(3) Shall comply with the provisions of:

(I) NRS 116.31038;

(II) NRS 116.31083 and 116.31152, unless the limited-purpose association is created for a rural agricultural residential common-interest community;

(III) NRS 116.31073, if the limited-purpose association is created for maintaining the landscape of the common elements of the common-interest community; and

(IV) NRS 116.31075, if the limited-purpose association is created for a rural agricultural residential common-interest community;

(4) Shall comply with the provisions of NRS 116.4101 to 116.412, inclusive, as required by the regulations adopted by the Commission pursuant to paragraph (b) of subsection 5; and

(5) Shall not enforce any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter or a part of this

chapter does apply to that planned community pursuant to NRS 116.12075. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or if the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this State, but NRS 116.4102 and 116.4103, and, to the extent applicable, NRS 116.41035 to 116.4107, inclusive, apply to a contract for the disposition of a unit in that common-interest community signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

(d) A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 55,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992;

(d) Except as otherwise provided in subsection 8 of NRS 116.31105, prohibit a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government, except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives;

(e) Prohibit a master association which governs a time-share plan created pursuant to chapter 119A of NRS from providing for a representative form of government for the time-share plan; or

(f) Prohibit a master association which governs a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted and which is exempt from the provisions of this chapter pursuant to paragraph (b) of subsection 2 from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. The Commission shall establish, by regulation:
(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and
(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.
6. As used in this section, "limited-purpose association" means an association that:
(a) Is created for the limited purpose of maintaining:
(1) The landscape of the common elements of a common-interest community;
(2) Facilities for flood control; or
(3) A rural agricultural residential common-interest community; and
(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

NRS 116.3101 Organization of unit-owners' association:
1. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed.
2. The membership of the association at all times consists exclusively of all units' owners or, following termination of the common-interest community, of all owners of former units entitled to distributions of proceeds under NRS 116.2118, 116.21183 and 116.21185, or their heirs, successors or assigns.
3. Except for a residential planned community containing not more than 12 units, the association must have an executive board.
4. The association must:
(a) Be organized as a profit or nonprofit corporation, association, limited-liability company, trust, partnership or any other form of organization authorized by the law of this State;
(b) Include in its articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents of organization, or any amendment thereof, that the purpose of the corporation, association, limited-liability company, trust or partnership is to operate as an association pursuant to this chapter;
(c) Contain in its name the words "common-interest community," "community association," "master association," "homeowners' association" or "unit-owners' association"; and
(d) Comply with the applicable provisions of chapters 78, 81, 82, 86, 87, 87A, 88 and 88A of NRS when filing with the Secretary of State its articles of incorporation, articles of association, articles of organization, certificate of registration, certificate

of limited partnership, certificate of trust or other documents of organization, or any amendment thereof.