IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST,

Appellant ,

v.

SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST AND JOLIN G. ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL AND JULIE MARIE SANDOVAL GEGEN, AS TRUSTEES OF THE RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and DENNIS A. GEGEN AND JULIE S. GEGEN, HUSBAND AND WIFE, AS JOINT TENANTS,

Respondents .

Supreme Court No.: 77007
District Court Case No.: A-17-765372-C

Appeal

From the Eighth Judicial District Court, Clark County
Honorable Mark Bailus

Appellants' Appendix to Opening Brief – Volume 9

(Docket 77007)

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CERTIFICATE OF SERVICE

1. Electronic Service:

I hereby certify that on this date, the 16th day of May 2019, I submitted the foregoing **Appellant's Appendix for Opening Brief – Volume 9 (Docket 77007)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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7. A provision in the declaration creating special declarant's rights that have not expired may not be amended without the consent of the declarant.

8. If any provision of this chapter or of the declaration requires the consent of a holder of a security interest in a unit, or an insurer or guarantor of such interest, as a condition to the effectiveness of an amendment to the declaration, that consent is deemed granted if:

(a) The holder, insurer or guarantor has not requested, in writing, notice of any proposed amendment; or

(b) Notice of any proposed amendment is required or has been requested and a written refusal to consent is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder, insurer or guarantor, by certified mail, return receipt requested, to the address for notice provided by the holder, insurer or guarantor in a prior written request for notice.

Sec. 31. NRS 116.2118 is hereby amended to read as follows:

<< NV ST 116.2118 >>

1. Except in the case of a taking of all the units by eminent domain, ~~(NRS 116.1107) or~~ in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, **or in the circumstances described in section 4 of this act,** a common-interest community may be terminated only by agreement of units' owners to whom at least 80 percent of the votes in the association are allocated, or any larger percentage the declaration specifies. **, and with any other approvals required by the declaration.** The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

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

3. In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, an agreement to terminate may provide that all of the common elements and units of the common-interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common-interest community is to be sold following termination, the agreement must set forth the minimum terms of the sale.

4. In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, an agreement to terminate may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the units' owners consent to the sale.

5. The association, on behalf of the units' owners, may contract for the sale of real estate in a common-interest community, but the contract is not binding on the units' owners until approved pursuant to subsections 1 and 2. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to units' owners and lienholders as their interests may appear, in accordance with NRS 116.21183 and 116.21185. Unless otherwise specified in the agreement to terminate,

as long as the association holds title to the real estate, each unit's owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit's owner and his or her successors in interest remain liable for all assessments and other obligations imposed on units' owners by this chapter or the declaration.

6. In a condominium or planned community, if the real estate constituting the common-interest community is not to be sold following termination, title to the common elements and, in a common-interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common-interest community, vests in the units' owners upon termination as tenants in common in proportion to their respective interests as provided in NRS 116.21185, and liens on the units shift accordingly. While the tenancy in common exists, each unit's owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

7. Following termination of the common-interest community, the proceeds of ~~any~~ a sale of real estate, together with the assets of the association, are held by the association as trustee for units' owners and holders of liens on the units as their interests may appear.

Sec. 32. NRS 116.3101 is hereby amended to read as follows:

<< NV ST 116.3101 >>

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, ~~or~~ 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.

Sec. 33. NRS 116.3102 is hereby amended to read as follows:

<< NV ST 116.3102 >>

1. Except as otherwise provided in this ~~section,~~ **chapter,** and subject to the provisions of the declaration, the association:~~may do any or all of the following:~~

(a) ~~Adopt~~ **Shall adopt** and**, except as otherwise provided in the bylaws, may** amend bylaws**, and may adopt and amend** rules and regulations.

(b) ~~Adopt~~ **Shall adopt** and **may** amend budgets ~~for revenues, expenditures and reserves and~~ **in accordance with the requirements set forth in NRS 116.31151, may** collect assessments for common expenses from the units' owners. **and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395.**

(c) ~~Hire~~ **May hire** and discharge managing agents and other employees, agents and independent contractors.

(d) ~~Institute,~~ **May institute,** defend or intervene in litigation **or in arbitration, mediation** or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

(e) ~~Make~~ **May make** contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.

(f) ~~Regulate~~ **May regulate** the use, maintenance, repair, replacement and modification of common elements.

(g) ~~Cause~~ **May cause** additional improvements to be made as a part of the common elements.

(h) ~~Acquire,~~ **May acquire,** hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) ~~Grant~~ **May grant** easements, leases, licenses and concessions through or over the common elements.

(j) ~~Impose~~ **May impose** and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) ~~Impose~~ **May impose** charges for late payment of assessments pursuant to NRS 116.3115.

(l) ~~Impose~~ **May impose** construction penalties when authorized pursuant to NRS 116.310305.

(m) ~~Impose~~ **May impose** reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) ~~Impose~~ **May impose** reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) ~~Provide~~ **May provide** for the indemnification of its officers and executive board and maintain ~~directors' and officers'~~ **directors and officers** liability insurance.

(p) ~~Assign~~ **May assign** its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) ~~Exercise~~ **May exercise** any other powers conferred by the declaration or bylaws.

(r) ~~Exercise~~ **May exercise** all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) ~~Direct~~ **May direct** the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) ~~Exercise~~ **May exercise** any other powers necessary and proper for the governance and operation of the association.

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

3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

4. The executive board's decision under subsection 3 not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

5. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on the owner of any property in the common-interest community that is exempt from taxation pursuant to NRS 361.125. For the purposes of this subsection, "assessment" does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

Sec. 34. NRS 116.3103 is hereby amended to read as follows:

<< NV ST 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~~ **acts** on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association. ~~The~~ **Officers and** members of the executive board~~are~~ **:**

(a) Are required to exercise the ordinary and reasonable care of **officers and** directors of a **nonprofit** corporation, subject to the business-judgment rule~~.~~ **; and**

(b) Are subject to conflict of interest rules governing the officers and directors of a nonprofit corporation organized under the law of this State.

2. The executive board may not act ~~on behalf of the association~~ to ~~amend~~ **:**

(a) Amend the declaration.~~, to terminate~~

(b) Terminate the common-interest community.~~, or to elect~~

(c) Elect members of the executive board ~~or determine their~~ **, but unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association, the executive board may fill vacancies in its membership for the unexpired portion of any term or until the next regularly scheduled election of executive board members, whichever is earlier. Any executive board member elected to a previously vacant position which was temporarily filled by board appointment may only be elected to fulfill the remainder of the unexpired portion of the term.**

(d) Determine the qualifications, powers,~~and~~ duties or terms of office~~, but the executive board may fill vacancies in its membership for the unexpired portion of any term unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association.~~ **of members of the executive board.**

3. The executive board shall adopt budgets as provided in NRS 116.31151.

Sec. 34.5. NRS 116.310305 is hereby amended to read as follows:

<< NV ST 116.310305 >>

1. A unit's owner shall adhere to a schedule required by the association for:

(a) The completion of the design of a unit or the design of an improvement to a unit;

(b) The commencement of the construction of a unit or the construction of an improvement to a unit;

(c) The completion of the construction of a unit or the construction of an improvement to the unit; or

(d) The issuance of a permit which is necessary for the occupancy of a unit or for the use of an improvement to a unit.

2. The association may impose and enforce a construction penalty against a unit's owner who fails to adhere to a schedule as required pursuant to subsection 1 if:

(a) The ~~maximum amount of the~~ **right to assess and collect a** construction penalty ~~and the schedule are~~ **is** set forth in:

(1) The declaration;

(2) Another document related to the common-interest community that is recorded before the date on which the unit's owner acquired title to the unit; or

(3) A contract between the unit's owner and the association;~~and~~

(b) **The association has included notice of the maximum amount of the construction penalty and schedule as part of any public offering statement or resale package required by this chapter; and**

(c) The unit's owner receives notice of the alleged violation which informs the unit's owner that he or she has a right to a hearing on the alleged violation.

3. For the purposes of this chapter, a construction penalty is not a fine.

Sec. 35. NRS 116.31031 is hereby amended to read as follows:

<< NV ST 116.31031 >>

1. Except as otherwise provided in this section, if a unit's owner or a tenant or an invitee of a unit's owner or a tenant violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or the invitee of the unit's owner or the tenant from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or the invitee of the unit's owner or the tenant from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or the invitee of the unit's owner or the tenant for each violation, except that:

(1) A fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305; and

(2) A fine may not be imposed against a unit's owner or a tenant or invitee of a unit's owner or a tenant for a violation of the governing documents which involves a vehicle and which is committed by a person who is delivering goods to, or performing services for, the unit's owner or tenant or invitee of the unit's owner or the tenant.

If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed $100 for each violation or a total amount of $1,000, whichever is less. The limitations on the amount of the fine do not apply to any charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

2. The executive board may not impose a fine pursuant to subsection 1 against a unit's owner for a violation of any provision of the governing documents of an association committed by an invitee of the unit's owner or the tenant unless the unit's owner:

(a) Participated in or authorized the violation;

(b) Had prior notice of the violation; or

(c) Had an opportunity to stop the violation and failed to do so.

3. **If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.**

4. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the violation, the unit's owner and, if different, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

(b) Within a reasonable time after the discovery of the violation, the unit's owner and, if different, the person against whom the fine will be imposed has been provided with:

(1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and

(2) A reasonable opportunity to contest the violation at the hearing.

For the purposes of this subsection, a unit's owner shall not be deemed to have received written notice unless written notice is mailed to the address of the unit and, if different, to a mailing address specified by the unit's owner.

~~4.~~ **5.** The executive board must schedule the date, time and location for the hearing on the violation so that the unit's owner and, if different, the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

~~5.~~ **6.** The executive board must hold a hearing before it may impose the fine, unless the fine is paid before the hearing or unless the unit's owner and, if different, the person against whom the fine will be imposed:

(a) Executes a written waiver of the right to the hearing; or

(b) Fails to appear at the hearing after being provided with proper notice of the hearing.

~~6.~~ **7.** If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

~~7.~~ **8.** If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

~~8.~~ **9.** A member of the executive board shall not participate in any hearing or cast any vote relating to a fine imposed pursuant to subsection 1 if the member has not paid all assessments which are due to the association by the member. If a member of the executive board:

(a) Participates in a hearing in violation of this subsection, any action taken at the hearing is void.

(b) Casts a vote in violation of this subsection, the vote is void.

~~9.~~ **10.** The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

~~10.~~ **11.** Any past due fine must not bear interest, but may include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

~~11.~~ **12.** If requested by a person upon whom a fine was imposed, not later than 60 days after receiving any payment of a fine, an association shall provide to the person upon whom the fine was imposed a statement of the remaining balance owed.

Sec. 36. NRS 116.31032 is hereby amended to read as follows:

<< NV ST 116.31032 >>

1. Except as otherwise provided in this section, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by a declarant, may appoint and remove the officers of the association and members of the executive board. **A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period and, in that event, the declarant may require, for the duration of the period of declarant's control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.** Regardless of the period provided in the declaration, a period of declarant's control terminates no later than: **the earliest of:**

(a) Sixty days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant or, if the association exercises powers over a common-interest community pursuant to this chapter and a time-share plan pursuant to chapter 119A of NRS, 120 days after conveyance of 80 percent of the units that may be created to units' owners other than a declarant;

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

(c) Five years after any right to add new units was last exercised

~~whichever occurs earlier.~~ **; or**

(d) The day the declarant, after giving notice to units' owners, records an instrument voluntarily surrendering all rights to control activities of the association.

2. ~~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.~~

~~3.~~ 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 # percent~~ **one-third** of the members of the executive board must be elected by units' owners other than the declarant.

Sec. 37. NRS 116.31036 is hereby amended to read as follows:

<< NV ST 116.31036 >>

1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section:

~~(a) The~~ **, the** number of votes cast **in favor of removal** constitutes ~~at~~ **:**

(a) At least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election.~~are cast in favor of removal.~~

2. A removal election may be called by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. To call a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this subsection and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If a removal election is called pursuant to this subsection and:

(a) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to this section:

(1) The secret written ballots for the removal election must be sent in the manner required by this section not less than 15 days or more than 60 days after the date on which the petition is received; and

(2) The executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots and not later than 90 days after the date on which the petition was received.

(b) The voting rights of the owners of time shares will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 90 days after the date on which the petition is received.

The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Except as otherwise provided in NRS 116.31105, the removal of any member of the executive board must be conducted by secret written ballot in the following manner:

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

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

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

~~3. If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his or her role as a member of the board, the association shall indemnify the member for his or her losses or claims, and undertake all costs of defense, unless it is proven that the member acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. 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:~~

~~(a) The association;~~

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

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

~~4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.~~

Sec. 38. NRS 116.3105 is hereby amended to read as follows:

<< NV ST 116.3105 >>

~~If entered into before~~

1. Within 2 years after the executive board elected by the units' owners pursuant to NRS 116.31034 takes office, ~~any~~ **the association may terminate without penalty, upon not less than 90 days' notice to the other party, any of the following if it was entered into before that executive board was elected:**

(a) Any management ~~contract,~~ **, maintenance, operations or** employment contract, or lease of recreational or parking areas or facilities~~, any~~ **; or**

(b) 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~~

2. The association may terminate without penalty~~,by the association~~ at any time after the executive board elected by the units' owners **pursuant to NRS 116.31034** takes office upon not less than 90 days' notice to the other party~~.~~ **, any contract or lease that is not in good faith or was unconscionable to the units' owners at the time entered into.**

3. This section does not apply to~~any~~ **:**

(a) Any lease the termination of which would terminate the common-interest community or reduce its size, unless the real estate subject to that lease was included in the common-interest community for the purpose of avoiding the right of the association to terminate a lease under this section~~, or to a~~ **; or**

(b) A proprietary lease.

Sec. 39. NRS 116.3106 is hereby amended to read as follows:

<< NV ST 116.3106 >>

1. The bylaws of the association must:~~provide:~~

(a) ~~The~~ **Provide the** number of members of the executive board and the titles of the officers of the association;

(b) ~~For~~ **Provide for** election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;

(c) ~~The~~ **Specify the** qualifications, powers and duties, terms of office and manner of electing and removing officers of the association and members of the executive board and filling vacancies;

(d) ~~Which~~ **Specify the** powers~~, if any, that~~ the executive board or the officers of the association may delegate to other persons or to a community manager;

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

(f) ~~Procedural~~ **Provide procedural** rules for conducting meetings of the association;

(g) ~~A~~ **Specify a** method for ~~amending~~ **the units' owners to amend** the bylaws;~~and~~

(h) ~~Procedural~~ **Provide procedural** rules for conducting elections. ~~;~~

(i) Contain any provision necessary to satisfy requirements in this chapter or the declaration concerning meetings, voting, quorums and other activities of the association; and

(j) Provide for any matter required by law of this State other than this chapter to appear in the bylaws of organizations of the same type as the association.

2. Except as otherwise provided in **this chapter or** the declaration, the bylaws may provide for any other **necessary or appropriate** matters ~~the association deems necessary and appropriate.~~ **, including, without limitation, matters that could be adopted as rules.**

3. The bylaws must be written in plain English.

Sec. 40. NRS 116.3108 is hereby amended to read as follows:

<< NV ST 116.3108 >>

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

2. ~~Special meetings~~ **An association shall hold a special meeting** of the units' owners ~~may be called by the~~ **to address any matter affecting the common-interest community or the association if its** president, ~~by~~ a majority of the executive board or ~~by~~ units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of ~~voting members of~~ **votes in** the association. ~~The same number of units' owners may also call a removal election pursuant to NRS 116.31036.~~ **request that the secretary call such a meeting.** To call a special meeting,~~or a removal election,~~ the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this subsection and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. ~~If the petition calls for a removal election and:~~

~~(a) The voting rights of the owners of time shares will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or~~

~~(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.~~

The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be ~~hand-delivered, 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 or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner.~~ **given to the units' owners in the manner set forth in section 2 of this act.** The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

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

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

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

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

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

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

~~5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.~~

~~6.~~ The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

~~7.~~ **6.** Except as otherwise provided in subsection ~~8,~~ **7,** the minutes of each meeting of the units' owners must include:

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

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

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

~~8.~~ **7.** The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

~~9.~~ **8.** The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

~~10.~~ **9.** A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the other units' owners who are in attendance at the meeting.

~~11.~~ **10.** The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

~~12.~~ **11.** As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

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

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

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

Sec. 41. NRS 116.31083 is hereby amended to read as follows:

<< NV ST 116.31083 >>

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

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

(a) ~~Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;~~

~~(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or~~

~~(c)~~ **Given to the units' owners in the manner set forth in section 2 of this act; or**

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

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

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

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

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

5. The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.310 8. A period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for both the beginning and the end of each meeting. During the period devoted to comments by the units' owners and discussion of those comments at the beginning of each meeting, comments by the units' owners and discussion of those comments must be limited to items listed on the agenda. In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

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

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

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

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

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

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

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

7. The secretary or other officer specified in the bylaws shall cause each meeting of the executive board to be audio recorded and the minutes to be recorded or otherwise taken at each meeting of the executive board, but if the executive board is meeting in executive session, the meeting must not be audio recorded. Not more than 30 days after each such

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

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

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

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

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

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

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

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

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

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

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

(a) Could not have been reasonably foreseen;

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

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

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

Sec. 42. NRS 116.3109 is hereby amended to read as follows:

<< NV ST 116.3109 >>

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

(a) Are present in person~~or~~ **;**

(b) Are present by proxy ~~at the beginning of the meeting equals or exceeds 20 percent of the total number of voting members of the association.~~ **;**

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

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

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

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

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

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

3. Unless the governing documents specify a larger ~~percentage,~~ **number,** a quorum **of the executive board** is ~~deemed~~ present ~~throughout any~~ **for purposes of determining the validity of any action taken at a** meeting of the executive board **only** if ~~persons~~ **individuals** entitled to cast ~~50 percent~~ **a majority** of the votes on that board are present at the ~~beginning of the meeting.~~ **time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the members present is the act of the executive board unless a greater vote is required by the declaration or bylaws.**

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

Sec. 43. NRS 116.311 is hereby amended to read as follows:

<< NV ST 116.311 >>

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

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

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

(b) If only one of several owners of a unit is present, ~~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~~ **the** unit without protest **being** made promptly to the person presiding over the meeting by any of the other owners of the unit.

~~2.~~ **(c) Unless a greater number or fraction of the votes in the association is required by this chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.**

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

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

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

~~3.~~ **4.** Before a vote may be cast pursuant to a proxy:

(a) The proxy must be dated.

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

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

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

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

~~4.~~ **5.** A proxy terminates immediately after the conclusion of the meeting**, and any recessed sessions of the meeting,** for which it is executed.

~~5.~~ **6.** Except as otherwise provided in this subsection, a vote may not be cast pursuant to a proxy for the election or removal of a member of the executive board of an association. A vote may be cast pursuant to a proxy for the election or removal of a member of the executive board of a master association which governs a timeshare plan created pursuant to chapter 119A of NRS if the proxy is exercised through a delegate or representative authorized pursuant to NRS 116.31105.

~~6.~~ **7.** The holder of a proxy may not cast a vote on behalf of the unit's owner who executed the proxy in a manner that is contrary to the proxy.

~~7.~~ **8.** A proxy is void if the proxy or the holder of the proxy violates any provision of subsections ~~1~~ **3** to ~~6,~~ **7,** inclusive.

~~8.~~ **9. Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. Except as otherwise provided in NRS 116.31034 and 116.31036, if an association conducts a vote without a meeting, the following requirements apply:**

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

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

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

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

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

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

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

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

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

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

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

(a) ~~The provisions of subsections 1 to 7, inclusive, apply~~ **This section applies** to the lessees as if they were the units' owners;

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

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

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

~~9.~~ **11.** If any votes are allocated to a unit that is owned by the association, those votes may not be cast, by proxy or otherwise, for any purpose.

Sec. 44. NRS 116.3111 is hereby amended to read as follows:

<< NV ST 116.3111 >>

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

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

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

Sec. 45. NRS 116.3113 is hereby amended to read as follows:

<< NV ST 116.3113 >>

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:~~ **and subject to reasonable deductibles:**

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

(b) ~~Liability~~ **Commercial general liability** insurance, including insurance for medical payments, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly

insured against for ~~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~~.~~ **; and**

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

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

3. If the insurance described in subsections 1 and 2 is not reasonably available, the association promptly shall cause notice of that fact to be ~~hand-delivered or sent prepaid by United States mail~~ **given** 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 the unit's owner's own benefit.

Sec. 46. NRS 116.31133 is hereby amended to read as follows:

<< NV ST 116.31133 >>

1. Insurance policies carried pursuant to NRS 116.3113 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 the unit's owner's interest in the common elements or membership in the association;

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

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

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

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

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

Sec. 47. NRS 116.31135 is hereby amended to read as follows:

<< NV ST 116.31135 >>

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

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

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

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

2. The cost of repair or replacement in excess of insurance proceeds**, deductibles** and reserves is a common expense.

~~2.~~ If the entire common-interest community is not repaired or replaced~~,~~**the :**

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

(b) Except to the extent that other persons will be distributees ~~(subparagraph 2 of paragraph (l) of subsection 1 of NRS 116.2105):~~

~~(a)~~ **:**

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

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

~~(1)~~ **(I)** In a condominium, in proportion to the interests of all the units in the common elements; and

~~(2)~~ **(II)** In a cooperative or planned community, in proportion to the liabilities of all the units for common expenses.

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

Sec. 48. NRS 116.3115 is hereby amended to read as follows:

<< NV ST 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 in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

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

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

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

3. Any assessment for common expenses or installment thereof that is 60 days or more past due bears interest at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date the assessment becomes past due, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the balance is satisfied.

4. Except as otherwise provided in the governing documents:

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

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

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

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

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

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

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

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

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

<< NV ST 116.3116 >>

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

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

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

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

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

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This

subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.
3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

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

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

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

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

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

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

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

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

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

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

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

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

<< NV ST 116.3117 >>

1. In a condominium or planned community:

(a) Except as otherwise provided in paragraph (b), a judgment for money against the association, if a copy of the docket or an abstract or copy of the judgment is recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of **the other real property of the association and all of** the units in the common-interest

community at the time the judgment was entered. No other property of a unit's owner is subject to the claims of creditors of the association.

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

(c) Whether perfected before or after the creation of the common-interest community, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the common-interest community, becomes effective against two or more units, the owner of an affected unit may pay to the lienholder the amount of the lien attributable to his or her unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be 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. 51. NRS 116.31175 is hereby amended to read as follows:

<< NV ST 116.31175 >>

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

(a) The financial statement of the association;

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

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

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

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

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

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

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

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

(b) The records of the association relating to another unit's owner, including, without limitation, any architectural plan or specification submitted by a unit's owner to the association during an approval process required by the governing documents, except for those records described in subsection ~~2~~; **5;** and

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

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

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

~~2.~~ **5.** The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:

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

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

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

~~3.~~ **6.** If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman may:

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

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

~~4.~~ **7.** The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

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

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

~~5.~~ **8.** The executive board shall not require a unit's owner to pay an amount in excess of $10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of ~~this section.~~

~~6. If an official publication contains or will contain any mention of a candidate or ballot question, the official publication must, upon request and without charge, provide equal space to the candidate or a representative of an organization which supports the passage or defeat of the ballot question.~~

~~7. If an official publication contains or will contain the views or opinions of the association, the executive board, a community manager or an officer, employee or agent of an association concerning an issue of official interest, the official publication must, upon request and without charge, provide equal space to opposing views and opinions of a unit's owner, tenant or resident of the common-interest community.~~

~~8. The association and its officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to subsection 6 or 7.~~

~~9. As used in this section:~~

~~(a) "Issue of official interest" includes, without limitation:~~

~~(1) Any issue on which the executive board or the units' owners will be voting, including, without limitation, the election of members of the executive board; and~~

~~(2) The enactment or adoption of rules or regulations that will affect a common-interest community.~~

~~(b) "Official publication" means:~~

~~(1) An official website;~~

~~(2) An official newsletter or other similar publication that is circulated to each unit's owner; or~~

~~(3) An official bulletin board that is available to each unit's owner,~~

~~which is published or maintained at the cost of an association and by an association, an executive board, a member of an executive board, a community manager or an officer, employee or agent of an association.~~ **subsection 1.**

Sec. 52. NRS 116.4101 is hereby amended to read as follows:

<< NV ST 116.4101 >>

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

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

(a) Gratuitous disposition of a unit;

(b) Disposition pursuant to court order;

(c) Disposition by a government or governmental agency;

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

(e) Disposition to a dealer;

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

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

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

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

~~3. Except as otherwise provided in subsection 2, the provisions of NRS 116.4101 to 116.412, inclusive, do not apply to a planned community described in NRS 116.1203.~~ **; or**

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

Sec. 53. NRS 116.4103 is hereby amended to read as follows:

<< NV ST 116.4103 >>

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

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

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

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

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

(e) ~~A current year-to-date financial statement, including the most recent audited or reviewed financial statement, and the 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:~~

~~(1) A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to NRS 116.3115; and~~

~~(2) The projected monthly assessment for common expenses for each type of unit, including the amount established as reserves pursuant to NRS 116.3115.~~ **The financial information required by subsection 2.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A statement of any other reserves;

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

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

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

Sec. 54. NRS 116.41035 is hereby amended to read as follows:

<< NV ST 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 paragraphs (h) and (k) of subsection 1 of NRS 116.4103.

Sec. 55. NRS 116.4109 is hereby amended to read as follows:

<< NV ST 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 or his or her authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package containing all of the following:

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

(b) A statement 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The **other documents furnished pursuant to subsection 3 must be provided in electronic format at no charge to the unit's owner or, if the association is unable to provide such documents in electronic format, the** association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page~~,~~ **for the first 10 pages, and 10 cents per page thereafter,** to cover the cost of copying.~~the other documents furnished pursuant to subsection 3.~~

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

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

6. Upon the request of a unit's owner or his or her authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his or her authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available

at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

Sec. 56. (Deleted by amendment.)

Sec. 57. NRS 116.4114 is hereby amended to read as follows:

<< NV ST 116.4114 >>

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 her,~~ **a declarant or dealer,** or made by any person before the creation of the common-interest community, will be:

(a) Free from defective materials; and

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

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

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

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

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

Sec. 58. NRS 116.4116 is hereby amended to read as follows:

<< NV ST 116.4116 >>

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

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

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

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

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

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

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

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

Sec. 59. NRS 116.4117 is hereby amended to read as follows:

<< NV ST 116.4117 >>

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

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

(a) By the association against:

(1) A declarant;

(2) A community manager; or

(3) A unit's owner.

(b) By a unit's owner against:

(1) The association;

(2) A declarant; or

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

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

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

4. Except as otherwise provided in ~~NRS 116.31036,~~ **subsection 5,** punitive damages may be awarded for a willful and material failure to comply with any provision of this chapter if the failure is established by clear and convincing evidence.

~~4.~~ **5. Punitive damages may not be awarded against:**

(a) The association;

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

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

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

~~5.~~ **7.** The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

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

Sec. 59.5. NRS 116A.410 is hereby amended to read as follows:

<< NV ST 116A.410 >>

1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate. The regulations must include, without limitation, provisions that:

(1) Provide for the issuance of a temporary certificate for a 1–year period to a person who:

(I) Holds a professional designation in the field of management of a common-interest community from a nationally recognized organization;

(II) Provides evidence that the person has been engaged in the management of a common-interest community for at least 5 years; and

(III) Has not been the subject of any disciplinary action in another state in connection with the management of a common-interest community.

(2) Except as otherwise provided in subparagraph (3), provide for the issuance of a temporary certificate for a 1–year period to a person who:

(I) Receives an offer of employment as a community manager from an association or its agent; and

(II) Has management experience determined to be sufficient by the executive board of the association or its agent making the offer in sub-subparagraph (I). The executive board or its agent must have sole discretion to make the determination required in this sub-subparagraph.

(3) Require a temporary certificate described in subparagraph (2) to expire before the end of the 1–year period if the certificate holder ceases to be employed by the association, or its agent, which offered the person employment as described in subparagraph (2).

(4) Require a person who is issued a temporary certificate as described in subparagraph (1) or (2) to successfully complete not less than 18 hours of instruction relating to the Uniform Common–Interest Ownership Act within the 1–year period.

(5) Provide for the issuance of a certificate at the conclusion of the 1–year period if the person:

(I) Has successfully completed not less than 18 hours of instruction relating to the Uniform Common–Interest Ownership Act; and

(II) Has not been the subject of any disciplinary action pursuant to this chapter or chapter 116 of NRS or any regulations adopted pursuant thereto.

(6) Provide that a temporary certificate described in subparagraph (1) or (2) and a certificate described in subparagraph (5):

(I) Must authorize the person who is issued a temporary certificate described in subparagraph (1) or (2) or certificate described in subparagraph (5) to act in all respects as a community manager and exercise all powers available to any other community manager without regard to experience; and

(II) Must not be treated as a limited, restricted or provisional form of a certificate.

(b) ~~Must require an applicant or the employer of the applicant to post a bond in a form and in an amount established by regulation. The Commission shall, by regulation, adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control. In adopting the regulations establishing the form and sliding scale for the amount of a bond required to be posted pursuant to this paragraph, the Commission shall consider the availability and cost of such bonds.~~

~~(c)~~ May require applicants to pass an examination in order to obtain a certificate other than a temporary certificate described in paragraph (a). If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.

~~(d)~~ **(c)** Must establish a procedure for a person who was previously issued a certificate and who no longer holds a certificate to reapply for and obtain a new certificate without undergoing any period of supervision under another community manager, regardless of the length of time that has passed since the person last acted as a community manager.

~~(e)~~ **(d)** May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.

~~(f)~~ **(e)** Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.

~~(g)~~ (f) Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.

3. As used in this section, "management experience" means experience in a position in business or government, including, without limitation, in the military:

(a) In which the person holding the position was required, as part of holding the position, to engage in one or more management activities, including, without limitation, supervision of personnel, development of budgets or financial plans, protection of assets, logistics, management of human resources, development or training of personnel, public relations, or protection or maintenance of facilities; and

(b) Without regard to whether the person holding the position has any experience managing or otherwise working for an association.

<< Repealed: NV ST 116.31177 >>

Sec. 60. NRS 116.31177 is hereby repealed.

Sec. 61. This act becomes effective on January 1, 2012.

Approved by the Governor June 15, 2011.

End of Document

EXHIBIT "E"

NV Assem. Comm. Min., 5/10/2011

Nevada Assembly Committee Minutes, May 10, 2011

May 10, 2011
Nevada Assembly Committee on Judiciary
Seventy-Sixth Session, 2011

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 8:15 a.m. on Tuesday, May 10, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:
Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:
None

GUEST LEGISLATORS PRESENT:
Senator Allison Copening, Clark County Senatorial District No. 6
Assemblyman Tick Segerblom, Clark County Assembly District No. 9

STAFF MEMBERS PRESENT:
Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:
Karen D. Dennison, Vice Chair, Real Property Section, State Bar of Nevada
Michael Buckley, Private Citizen, Las Vegas, Nevada
Michael Randolph, Private Citizen, Las Vegas, Nevada
Gary Lein, Private Citizen, Las Vegas, Nevada
Trudi Lytle, Private Citizen, Las Vegas, Nevada
Yvonne Schuman, Private Citizen, Las Vegas, Nevada
John Griffin, Nevada Justice Association
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Bob Robey, Private Citizen, Las Vegas, Nevada

Chairman Ohrenschall:

[The roll was called.] Thank you for being here today. We will open today's hearing with Senate Bill 204 (1st Reprint). Senator Copening, please come forward and present your bill.

Senate Bill 204 (1st Reprint): Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

Senator Allison Copening, Clark County Senatorial District No. 6:

I am here today to introduce Senate Bill 204 (1st Reprint) for consideration. The bill addresses changes to the Uniform Common Interest Ownership Act. I am carrying this at the request of the Uniform Law Commission. The Legislature adopted the 1982 version of the Uniform Common Interest Ownership Act. [Continued reading from prepared testimony (Exhibit C).]

With me today is Karen Dennison. She can elaborate more on the changes being proposed, and why they are being proposed. With the Chair's permission, I will turn it over to Karen.

Chairman Ohrenschall:

Yes, thank you very much. Assemblyman Segerblom, Chairman Horne, and I are all members of the Uniform Law Commission.

Karen D. Dennison, Vice Chair, Real Property Section, State Bar of Nevada:

I would like to correct a statement that was made. I am not a member of the Uniform Law Commission. The State Bar members reviewed the Uniform Act changes made in 1994 and 2008 to the Uniform Common Interest Ownership Act, and we have brought forth certain amendments made in those years. As you may recall, *Nevada Revised Statutes* (NRS) Chapter 116 was patterned after the 1982 version of the Uniform Common Interest Ownership Act. There have been some changes since then refining and adding to the Uniform Act. We have brought those changes forth, both last session and now. Senate Bill No. 261 of the 75th Session addressed commercial common interest communities. It also addressed the definition of common interest community (CIC), along with cost-sharing agreements.

In preparation of this session, the members of the Executive Committee of the Real Property Section went through all changes of the Uniform Act, to decide which ones to bring forth. I would like to point out that the members represent diverse interests ranging from homeowners associations and managers, to builders and developers. We have a mission statement, which is found in our bylaws, which I would like to read (Exhibit D). We are not here to advocate any policy changes but rather to bring forth those changes for your consideration, which were made by the Uniform Law Commission. Our legislative proposal section in our bylaws reads: "This Section may draft legislation for the Nevada State Legislature or support or oppose the adoption of legislation by the Nevada State Legislature, provided that: The Section's proposed legislation or position on legislation (1) relates closely and directly to the administration of justice; (2) involves matters which are not primarily political and as to which evaluation by lawyers would have particular relevance if not related closely and directly to the administration of justice; or (3) come within the Section's special expertise and jurisdiction."

Before I walk you through the bill, you may want to know why a uniform act is a valuable tool for lawyers. For me, it is valuable to be able to look at the Uniform Act comments for interpretation of the law, and to look at case law in other jurisdictions, which may have ruled on a particular section of the Uniform Act. That is the value of the Uniform Act. In Nevada, we have a lot of non-uniform provisions, but these are the ones we feel would be beneficial to the overall act itself. The length of S.B. 204 (R1) may appear to be daunting but many of its provisions are technical. Other provisions are being moved. The reason for moving provisions has to do with the fact that they are currently located in sections where the titles do not relate with the subject matter, making it difficult to find. Please bear with me, during some of these technical changes, and rearrangement of sections.

I will begin with section 2 of the bill. This section adopts new Uniform Act language covering how an association must notify its unit owners. These notice provisions expressly exclude homeowners association (HOA) lien foreclosures. The HOA lien foreclosure notice provisions are still in effect. If there are other specific notice provisions in NRS Chapter 116, this will not override them. Section 2 allows notice to be given to the physical mailing address or the email address of the unit's owner, if designated by the unit owner. If no designation has been made, there is a default provision, which is one of four methods: hand delivery to the owner; hand delivery mailing, or commercially reasonable delivery service to the address of the unit; by email; or by any other method reasonably calculated to provide notice. These four methods are a default notice provision if the owner has not designated an email address or a physical mailing address.

Chairman Ohrenschall:

Pardon me, Ms. Dennison, right now is it all done by U.S. mail?

Karen D. Dennison:

Many provisions do not provide the notice provision, although the first three methods of the default provision are found in NRS 116.3108 regarding notices of unit owner meetings. This is simply a new section providing for notice. It may introduce the concept of email, although I do not know for sure if email is included anywhere in the statutes. I do not want to speculate on that.

Chairman Ohrenschall:

Thank you. To the best of your knowledge, this would be a new frontier, correct?

Karen D. Dennison:

Yes, a new frontier with the first three methods already being in law. "Any other method reasonably calculated to provide notice" is the new Uniform Act change, which we are introducing.

Section 3 overrides conflicting provisions of federal law regarding electronic signatures. The same language is found in NRS Chapter 107A, which is the Uniform Act dealing with the assignment of rents. It simply overrides any conflicting provisions that we may have in this bill to the extent that they may conflict with federal law.

Section 4 is a new section and has to do with destruction of substantially all of the CIC. It allows a court action to be brought. This is intended to cover catastrophic events because there are two things that must happen. The first is that substantially all units must be destroyed or become uninhabitable. The second is the unit owners are not likely to receive notice under available methods for giving notice. If the unit owners cannot receive notice, one would have to believe that it would be catastrophic, and that they have been dispossessed from their homes and possibly from the area. Section 4 allows either the executive board or any interested person to bring a court action to terminate the CIC or reduce the size of the CIC. It gives the court the power to appoint a receiver and issue any other order it considers to be in the best interest of the CIC.

Section 5 is not a change in the law. It moves existing law found in NRS Chapter 116.3103 . . .

Chairman Ohrenschall:

Pardon me, Ms. Dennison, Assemblyman McArthur has a question.

Assemblyman McArthur:

Section 4 says "substantially all." I wonder if it was left broad intentionally. Should it say "all?" Or should it actually be "substantially all?" What does substantially mean?

Karen D. Dennison:

"Substantially all" is a term which will have to be determined by the court in its action. Current law allows for termination by 80 percent, without all the other requirements attached. "Substantially all" was not defined in the Uniform Act, and I think it may have been left purposely broad to give the court the discretion to determine if there was such an event that meets the full criteria previously described.

Assemblyman McArthur:

The section also references "any other interested person." That term also seems broad. They do not have to have any connection to the HOA at all?

Karen D. Dennison:

I am assuming that it means an interest in the property in the CIC. That is not spelled out and we would certainly welcome that clarification.

Assemblyman McArthur:

I would assume that was the intent, but the wording is not apparent.

Chairman Ohrenschall:

Are there any other questions? Please continue with your testimony.

Karen D. Dennison:

We are now on section 5. This is not a change, but it moves existing law found in NRS 116.31036 subsection 3. It relates to indemnification of executive board members. Section 6 is not a new section either, although there have been some amendments which were not proposed by the Real Property Section members. It deals with equal space in an official publication where there may be candidates running for office or ballot questions. Equal space must be provided to the candidates or opposing sides of a ballot question. There are some amendments that were proposed relating to when a CIC has a closed-circuit television station, which is found in subsection 3. It provides that the equal time must be given to a candidate or a ballot question under the same terms and conditions as the first candidate. The other changes delete the provisions without charge, which were in the existing law for the official publication. It will provide that the candidates or ballot questions all be given the same terms and conditions for utilizing their material in the publication.

Section 7 is important because it recognizes that terms used in the statute cannot be modified by the declaration. For example, if the law says one thing, a defined term saying differently in the declaration cannot make the law different. Sections 8 and 9 are grammatical changes.

Section 10 is important because it expands the definition of "common elements." Common elements may include easements and other real property interests which are outside the platted subdivision of the CIC, provided that those real property interests both benefit the owners and are subject to the declaration. Section 11 is a grammatical correction recognizing that the "declarant" can be a group of persons, which is in the lead-in language to that section.

Section 12 recognizes that the executive board may be, and in many cases is, designated in the bylaws. Sections 13 through 16 are all grammatical or stylistic changes. Section 17 was a Legislative Counsel Bureau (LCB) change to conform to existing law found in NRS 116.12075, which deals with proxies in favor of the declarant.

Regarding section 18, existing law in NRS 116.1108 recognizes that NRS Chapter 116 is not an island but is to be interpreted with respect to other bodies of law which are enumerated in that section. This change simply adds to laws governing organizations other than corporations, such as limited liability companies.

Chairman Ohrenschall:

Is section 18 part of the Uniform Act, or is that something that the State Bar Committee determined?

Karen D. Dennison:

This is part of the Uniform Act. It simply modernizes the fact that there is more than just corporate law out there. There is LLC law, limited partnership law, et cetera. Section 19 is not a substantive change. The language being removed is already found in NRS 116.4117, subsection 1. It is merely removing a redundancy in the law. Section 20 clarifies the provisions regarding public offering statements, which must be delivered to a purchaser. It clarifies the provisions which apply to out-of-state subdivisions. Sections 21 through 27 are either technical changes in the Uniform Act or LCB conforming changes.

We are now on page 16, section 28. This section deals with the further subdivision of existing units in a CIC. It provides for the reallocation of allocated interests after the further subdivision takes place. It adds that there can be any basis for allocation, which is provided in the declaration. This is consistent with NRS 116.3115, subsection 2, which refers to allocations set forth in the declaration. Section 29 recognizes that the right to use the common area should not be limited to planned communities but also applies to all forms of common interest communities, such as condominiums and co-ops, as Senator Copening described. This act covers all types of common interest communities, and extends the easement rights. It does regulate the use of the limited common elements, which are limited to the use of a particular owner.

Assemblyman McArthur:

I am a little bit confused on the last section. Were there no rules and regulations for any other type of community besides the homeowner associations? We did not have anything of the sort for condominiums before? Is that why subsection 3 was included?

Karen D. Dennison:

Pardon me, Mr. McArthur, your question was on subsection 3. Can you repeat the question?

Assemblyman McArthur:

I guess my question is why do we need this part included? Is there already a section for HOA common interest? Is this section including condominium common interest? I did not quite understand why we need it.

Karen D. Dennison:

The inclusion of condominiums and co-ops is in subsection 2. It once read, "In a planned community, subject to the provisions of." The units' owners have easements in the common elements for purposes of access to their units. Planned community has been crossed out so that now it applies to all unit owners. They all have easements in the common elements for the purpose of access to their units.

Assemblyman McArthur:

Can you also explain subsection 3?

Karen D. Dennison:

Subsection 3 simply states more broadly that the unit owners have the rights to use the common elements, subject to any rules or restrictions in the declaration on the use of the common elements that are not limited common elements. It is broader than simple access to their units, which is addressed in subsection 2.

Assemblyman McArthur:

Okay, that answers my questions. When I initially looked at this section, I wondered why it was needed. It just broadens the scope.

Karen D. Dennison:

Yes, that is correct.

Chairman Ohrenschall:

Thank you, please proceed with your testimony.

Karen D. Dennison:

We are now on section 30, which begins on page 17 of the bill. This section amends NRS 116.2117, which deals with amendments to declarations. This section includes some, but not all, of the Uniform Act revisions. Our Committee omitted those which we considered to be controversial. One of the sections we brought forth was subsection 1, which states that the Conditions, Covenants, and Restrictions (CC&R) may be amended by another percentage, other than majority vote, if provided by the declaration. It makes clear that if there is a class of persons, or another person who must approve an amendment, the amendment is not valid without that class or person. An example would be a certain class of lenders, first deed of trust holders, or a specific class with a specific interest in the subject matter.

Chairman Ohrenschall:

Was this part of the code promulgated by the Commission, or is this something that has been added by the State Bar Committee?

Karen D. Dennison:

These are all Uniform Act changes in section 30, although all of the changes have not been included.

Chairman Ohrenschall:

Is section 30, subsection 1, part of the Uniform Act?

Karen D. Dennison:

Yes.

Chairman Ohrenschall:

I want to make sure I understand it. When a development is created, the declaration can provide that a certain group, such as a minority, may make these decisions in lieu of a majority vote. Is this right?

Karen D. Dennison:

I think it specifies that a different percentage, other than a majority of votes, is required. In addition to that majority or other percentage of votes required for the amendment, the other person or class of persons would have to approve the amendment. This would make it a two-track approval of the amendment.

Chairman Ohrenschall:

The first track may not necessarily require a majority, correct?

Karen D. Dennison:

That is correct. The way I read this, a different percentage, other than a majority, may be specified.

Chairman Ohrenschall:

Perhaps, the second track would be approved by the homebuilder, or the homebuilder's designee?

Karen D. Dennison:

It simply says, "requires approval of another person." I would like to point out, with respect to the declarant, there is another provision in NRS Chapter 116 which states that you cannot have a provision that specifically favors the declarant. There may be a provision related to a certain group of homes. In order to change provisions relating to that amenity, that class of person would have to vote for the amendment.

Chairman Ohrenschall:

Would you happen to know that other section number?

Karen D. Dennison:

I can find it for you.

Assemblyman McArthur:

Line 30 refers to "person." I assume that is not a natural person, and would include builders, limited liability companies, et cetera.

Karen D. Dennison:

As I understand it, "another person" includes both entities and natural persons. The change to subsection 4 is simply grammatical. The next substantive revision is found in section 30, subsection 6, which deals with amendments that restrict permitted uses, or behavior in a unit, or other qualifications of persons who may occupy the unit. This particular revision protects unit owners who purchase prior to the effective date of the amendment. For example, if you had an age-restricted community by amendment, those not falling within the age of the restriction would not be subject to the amendment until they sell their units. You cannot have a retroactive effect with respect to those types of restrictions. Section 30, subsection 7 provides that if there is a provision in a declaration, providing for special declarant rights, the special declarant rights may not be amended without the declarant's consent. Section 30, subsection 8, paragraph (a) is consistent with the concept of eligible mortgage holder, which was a concept instituted by Fannie Mae. This subsection indicates that in order to be eligible to vote on an amendment, the lender, guarantor, or insurer of a loan must give notice to the association that it desires to receive notice of any proposed amendment. Section 30, subsection 8, paragraph (b) recognizes that an amendment should not be delayed if the lender fails to respond. It provides that the lender's consent is not required if the refusal to consent is not received within 60 days after delivery of the notice to the lender. I believe that this provision is mirrored in many declarations that I have seen, because it tightens the concept of the eligible mortgage holder.

Chairman Ohrenschall:

Excuse me, Ms. Dennison, I have a question on subsection 7. Is this part of the Uniform Act, or has this come from the State Bar Committee?

Karen D. Dennison:

Yes, this provision came from the Uniform Act.

Chairman Ohrenschall:

How does it work currently in existing law, with regard to the declarant's rights?

Karen D. Dennison:

Currently, I believe the statute is silent with respect to amending a provision that includes special declarant's rights. Most CC&R documents will provide specific provisions for the fact that you cannot amend declarant's rights away without the declarant's consent.

To continue with section 31 on page 18, this section simply incorporates the new termination provisions, whether it be catastrophic termination or downsizing provisions found in section 4 of S.B. 204 (R1). Section 32 represents Uniform Act clarification changes.

Section 33 has to do with the powers of the association. It distinguishes between mandatory powers and permissive powers, which may be exercised by the association. The two mandatory powers are the adoption of the bylaws and the adoption of budgets. All other powers are considered to be permissive. Regarding the amendment to the bylaws, our committee added language, "except as otherwise provided in the bylaws," with respect to amending the bylaws. We have recognized that not all associations allow the board to amend the bylaws. Some association governing documents require that the owners amend the bylaws.

Assemblyman McArthur:

Regarding Section 32, subsection 3, we are adding the language, "The association must have an executive board." Why was that added? Some HOAs consist of only a few people, and in that case, an executive board seems unnecessary.

Karen D. Dennison:

This is a Uniform Act change. Your point is well-taken. I believe there are exemptions in the law for very small associations. They would not be required to comply with this section. I would have to do some research to determine which specific sections the smaller associations are exempt from. In my opinion, a corporation acts through its board, and if there is an incorporated association, there must be a board to act on behalf of that entity.

Assemblyman McArthur:

In the case of small associations, I believe there are a minimum number of units required before the rules of HOA even apply. If there is an exception to it, perhaps you can provide that for us.

Karen D. Dennison:

Yes, I will check for the numerical cut-off for being required to comply with this section.

I believe we were discussing section 33 regarding the powers of the association. Subsection 3 contains an important clarification. It clarifies when the board must take action to enforce the governing documents. Many CC&Rs provide that the association board has discretion whether or not to take action. This simply codifies that particular provision and provides some guidelines as to when the association is required to enforce CC&Rs. In other words, what triggers that duty of enforcement? Page 23, lines 4 through 15 basically lay that out in clear language. [Read passage from section 33, subsection 3 of S.B. 204 (1st Reprint).] I believe paragraph (c) is the key to many of these situations. There may be a violation, which is not harming the entire community. The association may not have the money to pursue an enforcement action, which may be quite costly. This section gives the board some guidelines on when and when not to pursue. It also provides that if the board does not pursue a particular violation, the failure to enforce is not a waiver, and enforcement

action may be taken under the same provision in the future, provided the board is not acting in an arbitrary or capricious manner.

Section 34 extends the provisions already in existing law for performance of duties, which is currently only applicable to directors. It extends that provision now to officers. It adds a provision from the Uniform Act that states that both officers and directors are subject to the conflict of interest rules which govern Nevada nonprofit corporations. Subsection 2 provides for limitations on the powers of the executive board. These limitations follow the Uniform Act. The powers which a board may not exercise are clarified in this section. [Read passage from section 34, subsection 2.] The language in paragraph (b), to elect members of the executive board, has always been in there but the new part will indicate that the exception is to fill a vacancy. It clarifies that the board may fill a vacancy. Subsection 3 is consistent with NRS 116.3102, subsection 1, paragraph (b) which requires the board to adopt budgets.

Section 35 is not new language. It was moved from NRS116.3108, subsection 5. Section 36 is not a new concept either. It has to do with the voluntary surrender of declarant control. A declarant can surrender control before certain criteria are met. The most notable occurrence of this situation is due to a sale of at least 75 percent of the units. This simply moves the sections relating to relinquishment of voluntary declarant control.

Chairman Ohrenschall:

I have a question regarding section 35, subsection 3. Does that conflict with section 2 providing for electronic mail? It says, "shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address . . . ." Is that a desired exception to the electronic mail method?

Karen D. Dennison:

After a quick read and my recall of our notification provision, I would say that if any other provision of NRS Chapter 116 requires a specific way of providing notice, the "new notice" provision in section 2 does not apply. This would override any conflicting section.

Section 37 is not a new section. It was moved from NRS 116.3108, but there were some changes made in the amendment to the initial bill passed by the Senate, which were not proposed by our group of committee members. The changes have to do with removal of board members, and the time period involved. There is also a time extension from 60 to 90 days for a removal election. In the case where a timeshare association is part of a master umbrella association and is voting through delegates, the date for that removal election has been extended to 90 days.

Section 38 is an important change, which was taken from the 2008 amendments to the Uniform Act. Under current law, there is no time limit for termination of a contract after the turnover of the board to the owners from the declarant. Under current law, the association can terminate any management or employment contract, or any lease of a recreational or parking facility, or any contractor lease entered into with a declarant or an affiliate of the declarant. This can be done at any time; there is no limit. Subsection 1 establishes a two-year time limit for termination of such contracts or leases upon not less than 90 days notice. This is a Uniform Act change. A board that takes over for a declarant has two years to discover any problems, and should bring an action within that period of time. Also in this section, management contracts have been expanded to include maintenance and operations contracts. Those are not necessarily provided by a management company. There may be separate maintenance contracts, which would fall into the category of contracts which may be terminated within the two-year time limit. The time limit does not apply to termination of contracts or leases that were not entered into in good faith or are unconscionable. If there is a bad-faith argument, the time limit does not apply.

Section 39 deals with requirements for association bylaws. Subsection 1 adds cleanup language consistent with the Uniform Act. These new subsections provide that the bylaws must contain provisions concerning meetings, voting, quorums, and other activities of the association, which are necessary to satisfy NRS Chapter 116. Subsection 2 provides that the bylaws may contain any other necessary or appropriate matters, including matters that could be adopted as

rules, unless NRS Chapter 116 or the declaration does not allow these provisions to be in the bylaws. The declaration may have certain provisions that only can be implemented by rules and regulations.

Section 40 simply states the annual meeting of owners is to be held at a time and place stated or fixed in accordance with the bylaws. Regarding subsection 2, the substantive provisions which have been crossed out have been moved to NRS 116.31036.

Chairman Ohrenschall:

Did you just say that section 40 was not a change?

Karen D. Dennison:

Section 40, subsection 2 has been moved to NRS 116.31036. I will have to get back to you on that, because I do not have NRS 116.31036 here to verify that.

Chairman Ohrenschall:

Our legal counsel just stated that section 37 amends NRS 116.31036.

Karen D. Dennison:

Referring to section 40, subsection 3, the notice provisions for noticing owners meetings are replaced by the new notice provisions found in section 2 of S.B. 204 (1st Reprint), which we discussed earlier. Those sections now apply to the noticing of owners meetings. Subsection 4 makes clear that owners' comments are limited to matters concerning the CIC or the association. Subsection 5 language was moved to NRS 116.31031. Section 41 governs meetings of the executive board. It provides the new notice section also applies to executive board meeting notices.

Section 42 deals with quorums, and it expands the concept. Currently, a quorum is members present in person or by proxy. It expands to those who have cast absentee ballots. This is a new concept in the Uniform Act, which provides that voting may be by absentee ballot. Subsection 3 provides that a quorum is counted at the time a vote is taken and not at the beginning of the meeting. Subsection 4 incorporates *Robert's Rules of Order Newly Revised* for the conduct of meetings of the association. There were some issues with associations, when this was first presented, therefore, we have added language which indicates this is applicable unless *Robert's Rules of Order Newly Revised* conflict with a resolution adopted by the executive board, or the bylaws." The bylaws or resolution from the board may override *Robert's Rules of Order Newly Revised.*

Section 43 adds the provision that voting may be by absentee ballot. It also provides that a majority of the votes cast determines the outcome of the vote, unless a greater number is required by statute or the declaration. Subsection 9 deals with the requirements for conducting a vote through the ballot process.

Section 44 provides that unit owners are not personally liable for tort claims arising out of condition or use of the common elements simply because they own the unit. Obviously if they were involved with the commission of the tort, it would be different. Subsection 2 provides that such an action arising out of the condition or use of the common elements may only be maintained against the association. Subsection 3 provides that the statute of limitations relating to the claims of an association against a declarant are tolled until the period of the declarant's control terminates. It makes sense that the declarant is not going to bring an action against himself if he is controlling the board. This section also allows the association to authorize an independent committee of the board to enforce and compromise warranty claims involving the common elements. Subsection 3 provides that a judgment lien against the association is governed by NRS 116.3117, which states that a judgment lien is not a lien on the common elements but is a lien on all other property of the association and units. Current law says a judgment lien is a lien on units. The change is that it is also a lien on any other property the association may own.

Section 45 modifies NRS 116.113, which provides for insurance an association must maintain. The addition here is to include crime insurance, which I believe is consistent with S.B. 174.

Assemblyman McArthur:

I am not sure that I completely understand section 45, subsection 1, paragraph (c). Line 10 says, "Such insurance may not contain a conviction requirement." What does that mean?

Karen D. Dennison:

This addition was as an amendment to the bill. It was not our subcommittee's amendment. I believe this language was added to be consistent with Senate Bill 174. I apologize because I am not an insurance expert, and I do not know why such insurance may not contain a conviction requirement. I suppose an example would be if someone were charged with a crime, there would be coverage, even if the person was not convicted. That is my understanding, but I am not sure why that was included. I believe that Senator Copening can address that issue.

Senator Copening:

I am not certain about that particular aspect. What I can tell you is that we had conversations with insurance brokers that are recommending that associations carry crime insurance, rather than the manager or management company carrying their own forms of liability insurance. If there was an alleged crime that took place, such as embezzlement, the association may not be protected. The recommendation is that the associations should carry crime insurance, which would further protect them from crimes by their employees. Based on testimony that I have heard, it is no more expensive than the regular liability. It can be carried as an additional rider. That is the reason why we included it in S.B. 174. It would protect the association should a crime be committed by a community association manager, or some other employee. I am not certain about the conviction requirement included.

Assemblyman McArthur:

I am not sure if my question was completely answered, but we will check further on it. Thank you.

Karen D. Dennison:

I believe we were just completing the coverage of section 45. Subsection 2 clarifies that in the case of a building that must maintain insurance, the building may be divided by horizontal boundaries as well as vertical boundaries. Sections 46 and 47 are simply stylistic changes.

Section 48 deals with a situation where an association provides services that benefit fewer than all of the owners. One example would be an assisted living community, where the common interest community may provide janitorial service, meal service, nursing, or other services. It clarifies that the cost of those services may be assessed only to the units benefitted by the services. Many CC&Rs already include this provision but this codifies it as a permissible manner of assessment. Subsection 6 clarifies that if there is damage to the unit caused by willful misconduct or gross negligence of any owner, tenant, or invitee, the association may assess that unit owner, even if the association maintains insurance to cover the incident. This allows the association not to have to make a claim against its insurance. There is an exception, which has been known in past sessions as the "pizza delivery person exception." If someone is delivering goods or services to a unit, and commits some sort of damage, the owner of the unit is not liable for the actions of the delivery person Section 49 adds the provision that the costs and fees of the association in the collection of assessments are part of an HOA lien. This should not be confused with the section dealing with whether costs and fees are part of the super-priority liens. Our section believes that is a policy decision, and it is debated on both sides. We have expressed no opinion on the super-priority aspect. This simply says that the costs and fees are part of the lien.

Chairman Ohrenschall:

Currently, are the attorney's fees part of the lien on a construction penalty?

Karen D. Dennison:

This is new language, which indicates that right now reasonable attorney's fees and costs are not currently included in the construction penalty lien.

Chairman Ohrenschall:

Currently, the association does not recover the attorney's fees and costs, and they only acquire the penalties for failing to build. Is that correct?

Karen D. Dennison:

The fees may be recoverable as a personal action against the violator, but not recoverable as a lien against the unit. This section makes the construction penalty enforcement costs and fees part of the actual lien. Subsections 2, 3, and 7 are clarification revisions. Subsection 11 is a new concept, which allows an association to seek a court appointed receiver to collect rents or other income from the unit, and to apply those rents and other income to past due regular assessments which are overdue. This comes from the Uniform Act.

Chairman Ohrenschall:

Does this come from the Uniform Law Commission or is it from the State Bar Committee?

Karen D. Dennison:

This is language from the Uniform Common Interest Ownership Act.

Chairman Ohrenschall:

Can you provide the Committee with an example of this?

Karen D. Dennison:

Frankly, I believe it would have to be a situation where there was a substantial amount of money owed to justify appointing a receiver to collect rents. The period of foreclosure is not that long. We are bringing this forth as a Uniform Act change. It is up to the Committee and the Subcommittee to decide whether it is a wise addition to our law.

Section 50 is parallel to section 44, which is a conforming change. It states that a judgment against the association is a lien on other real property of the association, as well as the units. Most of section 51 has been moved from NRS 116.31177, which has been repealed, and is found in the repeal text on the back of the bill. This is simply moving these requirements, with respect to the financial information of the association, into this section. The new part, which was added as part of the amendment, has to do with the costs that the association may charge a unit owner. Basically, the fee may not exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter. The crossed-out sections in section 51 have been moved to section 6. This has to do with the official publications, as discussed earlier.

Chairman Ohrenschall:

I would just like to clarify that you are talking about section 51, beginning at subsection 6.

Karen D. Dennison:

Yes, it includes subsections 6, 7, 8, and 9 which have all moved into section 6, with the exception of lines 5 through 8, which was totally removed. That was not an amendment which we proposed but was an amendment that was adopted

by the Senate. I am not sure what the rationale for removing that language was. Everything before line 5 on page 53 has been moved to section 6.

Section 52, subsection 3 is crossed out because it is covered in the applicability section of NRS 116.1203. Paragraph (h) has been added to provide that public offering statements are not required. The purpose of public offering statements is primarily for residential unit disclosure. This basically states that in the disposition of a unit restricted to nonresidential purposes, a public offering statement is not required.

Regarding section 53, financial information section, which is crossed out, is moved to section 6.

Chairman Ohrenschall:

Backing up to section 52, how will that change the way business is done?

Karen D. Dennison:

Are you talking about the change referenced in subsection 3, paragraph (h)?

Chairman Ohrenschall:

Yes, there is the new language in subsection 3, paragraph (h), and you are deleting language in subsection 3, paragraph (g).

Karen D. Dennison:

Right, the deletion is actually of subsection 3. Subsection 3 has been deleted, and is covered in the applicability section of NRS 116.1203. I can get back to you on exactly where that is covered in this bill.

Chairman Ohrenschall:

Yes, thank you.

Karen D. Dennison:

I will go back to section 53 regarding the financial information required in a public offering statement. This language has been moved to subsection 2 of section 53. It is very confusing with all these sections being moved. Subsection 1, paragraph (f) expands the concept of disclosure of declarant subsidies, which may become a common expense, by requiring disclosure of the projected amount of the assessment. In other words, once the declarant stops subsidizing an association, what is the increase going to be in the assessment? That must be disclosed. Subsection 1, paragraph (g) says that any special fees, including transfer fees, must be disclosed. Paragraph (m) requires disclosure in the public offering statement of restraints on alienation, any restrictions on leasing, any restrictions on the amount in which a unit may be sold, and any limitation on the amount an owner may receive from either a condemnation casualty loss or termination of the CIC. These simply add disclosure requirements to the public offering statement. Subsection 1, paragraph (n) requires a description of any cost sharing agreement, which binds the association. For example, there could be a cost sharing agreement with a neighboring property for a common road, or any other shared arrangement. Subsection 2 covers financial disclosures relating to the association, which must be in the public offering statement. This language was moved from subsection 1. Section 54 is only a stylistic change.

Section 55 is important, as it corrects a long-standing error in the law. The protection against delinquent assessments was intended to apply to purchasers and not to sellers. Page 58, line 5, should have initially read "purchaser" and not "seller". It is the purchaser that is not liable for the delinquent assessment if the association fails to properly disclose the assessment on a sale. This will protect the purchaser who will have no way of knowing what the delinquent assessments are.

In section 56, the change from "any seller" to "a declarant" is a Uniform Act change, however I believe the trial lawyers will ask that the change not be made to the bill. Our committee would have no problem in leaving the law as it states currently, which is "any seller."

Chairman Ohrenschall:

Okay, I understand you are saying that the State Bar Committee has no problem with leaving it as seller rather than changing it to declarant. If it were changed to read declarant, what would the change be?

Karen D. Dennison:

It would only apply to the initial sale, and the declarant is not always the seller. You can be a declarant and have merchant builders on all of your projects, so you would never be considered the seller to any consumer. I am not sure why the Uniform Act changed the language to read declarant, but I believe that express warranties made by any seller, if relied upon by the purchaser, are created. That would apply to all sales, including resales, if existing law were to stay as it is. Section 57 is a stylistic change. Section 58 is only a conforming change. Section 58, subsection 4 is new. This has to do with the independent committee during a period of the declarant's control. The association may authorize an independent committee of the executive board bringing actions to evaluate and enforce any warranty claims which involve the common elements. Only members of the executive board elected by the units' owners, other than declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any action of the declarant. The idea is that this committee must be completely independent of the declarant in evaluating and bringing an action on these warranty claims.

Section 59 consists of portions that have been relocated. I believe this language may also be included in Senate Bill 174. There is a new section, which was added in the amendments that we did not bring forward. It is an amendment to the chapter dealing with community managers, which is NRS 116A.410. This removes the requirement for a bond for community managers. I do not know why this section was amended, but that part was added on the Senate side. Finally, section 60 is a repeal of NRS 116.31177, which is now in NRS 116.31175. That concludes my testimony. I would be happy to answer any other questions.

Chairman Ohrenschall:

Thank you very much, Ms. Dennison, for presenting this for the Committee.

Assemblyman McArthur:

Regarding section 59, subsection 3, was that the part that you said was changed on the Senate side?

Karen D. Dennison:

Section 59.5 was added on the Senate side.

Assemblyman McArthur:

I do not see any changes on section 59.5. There are some deletions. Is that what you are referring to?

Karen D. Dennison:

Yes, that is what I am talking about. It is the deletion of the bond requirement for a community manager's certificate.

Assemblyman McArthur:

I have a question about section 59, subsection 3. Has this been a problem, and have the boards been covered previously? Why is this new language included?

Karen D. Dennison:

I cannot answer why it is there. I do not know if it has been a problem, but I believe it is just to further the policy that is elsewhere in the law to insulate members of an executive board from personal liability. It is difficult enough to get people to serve on an association board. They should not be personally liable for a crime that they were not involved in.

Assemblyman McArthur:

I understand that. I assumed that some of these issues were already addressed in language in the statute.

Karen D. Dennison:

My notes show that this language was relocated from section 37, which is NRS 116.31036. Is that correct, Senator?

Senator Copening:

I do not know if you have it in front of you, but there has been an analysis submitted of S.B. 204 (R1) (Exhibit E). It should have been provided to assist you walk through each section of the bill. On the very last page, under section 59, it says it relocates the existing language from NRS 116.31036. [Senator Copening continued reading from the referenced section.] I did not write this up, but Michael Buckley is present in Las Vegas, and he can interpret this better for you.

Michael Buckley, Private Citizen, Las Vegas, Nevada:

I was a member of the Real Property Subcommittee. If you look on page 30 of the bill, lines 2 through 14, the language in section 59 has simply been moved from there. You are correct, and it is already an existing law.

[Assemblyman Carrillo assumed the Chair.]

Acting Chairman Carrillo:

Is there anyone else present who would like to speak in support of the bill?

Michael Randolph, Private Citizen, Las Vegas, Nevada:

I am here in favor of the bill. I would like to answer Chairman Ohrenschall's question regarding section 49, subsection 11.

Acting Chairman Carrillo:

The Chairman has temporarily stepped out of the room. Meanwhile, is there anything else you would like to bring to the Committee's attention? I do not want to have you repeat yourself when he returns.

Michael Randolph:

That was the only area of discussion I had. I just wanted to answer the Chairman's question on why this section was needed. Perhaps you can excuse me, and I can come back up when he returns.

Acting Chairman Carrillo:

Okay, that will be great. Please do not go too far. Is there anyone else wishing to testify in support of S.B. 204?

Gary Lein, Private Citizen, Las Vegas, Nevada:

I would like to address section 45, related to the crime policy. I am a member of the Commission for Common-Interest Communities and Condominium Hotels. The question is related to the conviction requirement as referenced on line 10. As part of the Commission process in dealing with the bond requirement for community managers, we met as a group to address the issue of fraud and embezzlement relating to community associations. We developed the language which was inserted into S.B. 174 (R1), Senator Copening's bill. One of the things we found through our research was that the average policy covering crime contains a conviction requirement. Generally, the Las Vegas Metropolitan Police Department (Metro) will not investigate these types of crimes. If Metro will not investigate, and there is no conviction, the average insurance policy will not pay claims, making the community association whole. It is an important requirement that any crime policy may not contain that conviction requirement. We need to make sure the insurance company meets up to its responsibilities and pays claims on embezzlement or fraud. Subsection 1, paragraph (c) is also important because there are also required endorsements covering the community manager and the management company. There have been cases of fraud, and although there may have been a crime policy, there was not the appropriate coverage to include the community manager and company employees. The central issue is to make sure there is no conviction requirement, and the insurance policy would be paid.

Acting Chairman Carrillo:

Thank you, Mr. Lein. Is there anyone else wishing to testify?

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:

I have a constituent and friend named Trudi Lytle, who is present in Las Vegas. We have worked together to create an amendment which we would like to propose.

Acting Chairman Carrillo:

Yes, we have received your proposed amendment (Exhibit F). Do you have any questions on the amendment, Mr. McArthur?

Assemblyman McArthur:

I have not had a chance to review it.

Assemblyman Segerblom:

Ms. Lytle has some testimony on the amendment.

Trudi Lytle, Private Citizen, Las Vegas, Nevada:

I am here today to testify regarding S.B. 204 (R1). There are many parts which effect small planned communities. [Continued reading from prepared testimony (Exhibit G).] Thank you for the opportunity to speak. If you have any questions, I will be happy to answer them. I am simply a homeowner speaking to keep my rights.

Vice Chairman Carrillo:

Maybe we can have the bill's sponsor discuss the amendment. Is that something you would like to follow up on?

Senator Copening:

I have to confess that I am very lost in all of the testimony but, if it is in writing, I would like to review it. I am not certain that everything that Ms. Lytle testified to is in this amendment. I could be wrong. If it is not, her written testimony will assist me in going through the bill. I am not an expert, which is why the Uniform Law Commission exists. What I will

do is to defer the bill to the committee of the Uniform Law Commission. They can review all of the various requests, and come back to the Subcommittee with an explanation and suggestions.

Vice Chairman Carrillo:

I am not trying to put you on the spot. I know that sometimes as amendments are proposed, the sponsor may want to address them.

Assemblyman McArthur:

I feel the same way. We ran through a lot of numbers and changes quickly. It was difficult to keep up with it. I believe I understand the intent. There were two different numbers referenced. Can we have Legal review the part about 6 units and 12 units? Perhaps they can provide the Committee with a brief explanation regarding the two? Afterward, we can always reexamine it at a work session.

Vice Chairman Carrillo:

Are you talking about the amount of units?

Assemblyman McArthur:

Yes, it is the number of units. The laws apply differently for each. I believe we can get a basic explanation from Legal.

Nick Anthony, Committee Counsel:

I believe Mr. McArthur is talking about NRS 116.1203, which is generally the exception for a small homeowners association. If we look at NRS 116.1203, subsection 1 exempts HOAs that have less than 12 units from the provisions of NRS Chapter 116, unless their declaration specifically provides that the entire chapter is applicable. Subsection 2 states that certain HOAs between 6 units and 12 units are subject to the provisions of NRS 116.3101 through NRS 116.350. That is the difference. Small HOAs below 6 are not subject to any parts of NRS Chapter 116 unless provided for in their declaration. HOAs between 6 and 12 are subject to certain provisions of NRS Chapter 116.

Vice Chairman Carrillo:

Ms. Lytle, I want to let you know that we will work with the bill's sponsor to review your amendments and move forward. Is there anyone else who would like to testify?

Yvonne Schuman, Private Citizen, Las Vegas, Nevada:

I would like to thank you for this opportunity to testify. We feel that with some amendments, we can support the bill. Before highlighting the most troublesome of those proposed changes, we would like to acknowledge there are several provisions in this bill that are unequivocally good for homeowners, and we are pleased to support them. [Continued reading from prepared testimony (Exhibit H).]

Regarding section 33, subsection 4, if a board chooses not to take enforcement action for a particular type of issue, they should not take enforcement action whenever that issue arises with other homeowners. They should not be able to selective choose which homeowners to enforce action on. Section 35, subsection 3 was discussed earlier. We feel this should be modified to allow for electronic notice and delivery consistent with the changes in section 2 of the bill.

Section 45, subsection 1, paragraph (b) is a provision which removes the requirement for the HOA to have insurance coverage for a death in connection with the common elements. We believe this is unwise and creates undue financial risk and potential hardships for unit owners who will have to pay in the event a court finds liability. So if a death occurs in or on the common elements, and there is no coverage, and the court finds that the HOA is liable, the individual unit owners would have to come up with the money. Therefore, we do not want to see "death" excluded from the insurance coverage.

Section 49 consists of the most areas of concern. As you know, the declarant's write the CC&Rs to be Fannie Mae compliant so that banks will lend, allowing them to sell the properties. The changes proposed in this bill, are going to create conflicts with that. Specifically, the addition of reasonable attorney's fees and costs, and other fees, to this section, is unacceptable because it is inconsistent with the Fannie Mae guidelines and imposes significant financial burdens on homeowners. [Continued reading from prepared testimony (Exhibit H).]

We offer our assistance in making the necessary amendments. Thank you again for the opportunity to present these comments. I am happy to answer any questions you may have.

Acting Chairman Carrillo:

Are there any questions from the Committee?

Senator Copening:

Thank you, Mr. Carrillo. I appreciate your allowing me to provide a little bit of context to this. To put Ms. Schuman at ease, one of the sections she just discussed, which is on page 61, was simply moved. It is existing language. Sometimes seeing language marked in blue may lead people to believe it is new language. This specific language was simply moved from one section to another section in order to fit accordingly with the subject matter. Section 37, on page 30, lines 2 through 5, which is discussing punitive damages, has been stricken and moved. Additionally, we did state that this does not have to do with super-priority, as addressed in section 49, which talks about attorney's fees and costs. This is not part of super-priority, and we can possibly have someone further clarify the issue, if you would like. I will review Ms. Schuman's written testimony and provide a written response, because many of the issues she talked about have simply been moved. I just want to make sure that her testimony is not confused by a lack of understanding of where certain provisions are found in the bill. Karen Dennison or Michael Buckley can talk further regarding section 49 regarding attorney's fees and costs.

John Griffin, representing Nevada Justice Association:

Ms. Dennison already spoke regarding our issue, but I would like to make a statement for the record. We have a problem with the change in section 56. It previously read, "any seller" but was changed to "any declarant." I believe it was changed because "seller" seems to have been changed to "declarant" through most of the Uniform Act. If you read section 56 regarding the warranties and what they relate to, it applies to a seller and not a declarant. We agree with Ms. Dennison, and appreciate her willingness to make the change to return the language to read "seller," if the Committee agrees.

Acting Chairman Carrillo:

Mr. Randolph, would you like to come back to address your issue, since the Chairman has returned?

[Chairman Ohrenschall reassumed the Chair.]

Michael Randolph, Private Citizen, Las Vegas, Nevada:

I am speaking in favor of section 9, subsection 11 on page 49. Chairman Ohrenschall asked a question earlier which I would like to address. The reason this section is so important is because of a homeowners association here in southern Nevada called Paradise Spa. A single group of investors has purchased 260 of the 388 units. There have been many problems and the Attorney General is involved. We have a situation where there are several hundred units under one single mortgage of $5 million. The association has no money because of the poor actions of the previous board, which includes the investor who is president of the board. This law will allow the association to request the court to provide a receiver. The receiver will assist in collecting rents on those units which are being paid to the investor, which will help to keep the association going when foreclosure is not an option. Thank you.

Chairman Ohrenschall:

Thank you very much, Mr. Randolph. I appreciate your input about what is happening at Paradise Spa. This would affect that sort of situation, correct?

Michael Randolph:

Exactly. An investor buys up property, collects rents, but does not pay the association fees. Many times, with condominium developments, the association is paying water, sewage, trash removal, et cetera. The investor collects rent but does not pay his share of the amenities. This situation is exactly what this provision is for.

Yvonne Schuman:

I would like to add a clarifying comment. I thank Senator Copening for her remarks. I want to make clear that our comments regarding punitive damages are to the substantive change and not the change of moving the language from one section to another. We do know it was there already, but we object to it on a substantive level. Thank you.

Chairman Ohrenschall:

Ms. Schuman, can you direct me to that specific section of the bill?

Yvonne Schuman:

It is section 59, subsection 5. As Senator Copening pointed out, it is already law but at this time we object to it on a substantive basis.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

There are approximately 9 items that I wish to discuss. There are many items that I support, but there are some that I find troubling. The first item is in section 19, on page 8, line number 25. I feel that this needs to be reinstated. The removal of this section denies a unit owner due process through the judicial system and injunctive relief. [Continued reading from his proposed amendments (Exhibit I).]

Section 49 talks about a receiver. I have been told by retired Chief Compliance Officer Bruce Alit, from the Nevada Real Estate Division (NRED), that a receiver can charge huge amounts of money. I am suggesting either a percentage or an actual fee be added for his or her services. This way it cannot run wild and end up costing the HOA more than what they actually collect.

I agree with the change in section 51, on page 51, lines 1 through 7. There have been many cases that have come to my attention where homeowners have requested to see the books and records, but they are not delivered by the board or the management company. There is a typo in my amendment, however. There should be a dollar sign in place of the number four, making it $25 per day. I am suggesting that if the books and records are not delivered within the 14-day statutory requirement, there be a penalty of $25 per day imposed.

[Assemblyman Carrillo assumed the Chair.]

Acting Chairman Carrillo:

I am sorry, but I was distracted for a moment. Are you talking about section 49?

Jonathan Friedrich:

I am talking about section 51, which is item number 7 on my proposed amendments. The typo is on my document. It is not in the bill.

On page 60, section 58 talks about compromise. I would like to see that word removed from the language. If there is an issue, why should the board or homeowners have to compromise? If there is a defect, it needs to be remedied.

[Continued reading from proposed amendments (Exhibit I).] That concludes my testimony.

Acting Chairman Carrillo:

Are there any questions from the Committee?

Jonathan Friedrich:

Last Friday, we testified on Senate Bill 254 (1st Reprint). There was some discussion regarding the arbitration statute not allowing for liens or foreclosures. I sent an email to you explaining that it could because the two statutes are intertwined. Although I am not an attorney, the way I read it, liens leading to foreclosure could be assessed based upon the nonpayment of an arbitrator's fee. I want to make sure the Committee received the email.

Acting Chairman Carrillo:

Yes, I believe that I did. Thank you, very much.

Robert Robey, Private Citizen, Las Vegas, Nevada:

I came here today specifically to applaud, clap, cheer, and shout for the section on page 23, lines 4 through 15, which allows the board of directors to use common sense to decide whether or not to spend money on a small, insignificant issue. I would like to ask a question. On line 42, of page 23 it says that executive officers "Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule." I have read most of the Uniform Code, and what I got out of it is the Code was trying to allow the boards to have a different way of making a judgment. They would not be required to use business-judgment rule. I do not feel that these two sections are compatible. I do not think that one section can require boards to use the business-judgment rule, while the other section says they can use other means of making a decision. Can anyone answer that question? Perhaps I can work with Mr. Buckley and he can explain it to me. However, I am very excited about the boards being able to use other rules rather than the business-judgment rule.

I have presented you with a proposed amendment (Exhibit J). I hope that you consider it a friendly amendment. Amazingly, when Mr. Lien testified, he said that they did not want the conviction requirement in the criminal policy because Metro will not investigate and will not get a conviction.

Acting Chairman Carrillo:

Are you referring to your amendment, or are we discussing something else?

Robert Robey:

What happens here is NRS Chapter 116 has stated that it all goes through NRED. Mr. Buckley is here and perhaps he can help. I was present at the Commission hearing, and heard about someone who stole $76,000. All he received was a fine, and there was no conviction. Metro is not going to investigate this? This guy became the president of the association and in two months, he robbed them, and left the state.

Acting Chairman Carrillo:

Mr. Robey, I want to make sure we get the rest of your testimony before we get into any lengthy discussion, because we are on a time constraint.

Robert Robey:

In my amendment, I would like to allow people who have their cars towed by an HOA be allowed to go to court. They should not have to go to NRED. Mr. Buckley is here, and I would like to turn it over to him. I will send you a letter further explaining my issues.

Michael Buckley, Private Citizen, Las Vegas, Nevada:

I can respond to a question that Mr. Robey raised. I am the Chair on the Commission on Common-Interest Communities and Condominium Hotels. I would like to respond to the one issue regarding conviction. Actually, Gail Anderson would be the best person to address this. The Real Estate Division is not a law enforcement agency. If it uncovers evidence of criminal activity, the matter is turned over to Metro. They cannot convict people and, therefore, must turn it over to Metro.

Robert Robey:

I have just one more comment before you move on. I just heard that they refer matters to Metro, yet we heard from Mr. Lien that Metro does not do anything. This is scary. It seems that there must be a penalty for people stealing from HOAs. My amendment is asking the right of a unit owner to go to justice court, like everyone else in the state, to seek justice if cars are being illegally towed. The point I am trying to reach is that if someone cheats an association, there is no penalty. They are not fined, and they are not thrown in jail. Something is wrong here. I hope I have made my point.

Acting Chairman Carrillo:

Thank you for your testimony. Is there anyone wishing to testify in opposition of S.B. 204 (R1)? We will close the hearing on S.B. 204 (R1), and will bring it back to Committee. Will now open the hearing on Senate Bill 222 (1st Reprint).

Senate Bill 222 (1st Reprint): Revises provisions concerning the lease or rental of a unit in a common-interest community. (BDR 10-294)

Senator Allison Copening, Clark County Senatorial District No. 6:

I am here to introduce Senate Bill 222 (1st Reprint) for your consideration. This legislation addresses fees charged by a community association management company to a homeowner who rents his home. [Continued reading from prepared testimony (Exhibit K).]

You have before you an example of a brochure (Exhibit L) and an addendum to a contract from a management company that has a "Lease Registration Program" in place (Exhibit M). [Continued reading from prepared testimony (Exhibit K).

It is ironic that in some of the previous testimony, I have been accused of discrimination because I worked for a management company. The irony is that this bill is actually anti-management company, which further drives home the fact that the working group and I have been pure in our intentions with the bill brought forward. This was just another one in which all have agreed that it is not fair for the management companies to charge this fee. Thank you and I will be happy to answer any questions.

Acting Chair Carrillo:

I do not see any questions. Is there anyone wishing to testify in support of S.B. 222 (R1)?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

I would like to shock everyone by telling them that I wholly support this bill. I did not support it when it was introduced originally in the Senate. At that point, there were fees involved. The Senate Judiciary Committee objected, and the decision was that no fees should be charged. Additionally, there should be no regulations by the Common-Interest Community and Condominium Hotels Commission (CICC). I applaud this bill the way it has been rewritten.

Yvonne Schuman, Private Citizen, Las Vegas, Nevada:

We support S.B. 222 (R1).

Robert Robey, Private Citizen, Las Vegas, Nevada:

I also support the bill. I think it is a wonderful bill. Last night, I watched my board decide to charge $100 for every new renter.

Acting Chairman Carrillo:

Let us move to the neutral position. Is there anyone wishing to testify? Is there anyone opposing the bill? We will close the hearing on S.B. 222 (R1) and will bring it back to the Committee. Is there any public comment?

Jonathan Friedrich:

Has a date been set for the work session for Senate Bill 254?

Acting Chairman Carrillo:

We have not been provided with a date yet. Keep watching for the agenda.

Yvonne Schuman:

I would like to add a few additional remarks about the bill.

Acting Chairman Carrillo:

We have already closed the hearing on the bills. We are accepting public comment only now. We are now adjourned [at 10:31 a.m.]. [Introduction of S.B. 204, dated March 16, 2011 and presented by Michael Buckley, has been submitted for the record (Exhibit N), but was not discussed during the hearing.]

RESPECTFULLY SUBMITTED:

_____

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

_____

Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 10, 2011 Time of Meeting: 8:15 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 204 (R1)	C	Senator Allison Copening	Prepared Testimony
S.B. 204 (R1)	D	Karen D. Dennison/ State Bar Real Property Section	Legislative Proposal
S.B. 204 (R1)	E	Michael Buckley/Private Citizen	Analysis of S.B. 204 (1st Reprint)
S.B. 204 (R1)	F	Assemblyman Tick Segerblom	Mock-Up, Proposed Amendment 6818
S.B. 204 (R1)	G	Trudi Lytle/Private Citizen	Prepared Testimony
S.B. 204 (R1)	H	Yvonne Schuman/ Private Citizen	Prepared Testimony
S.B. 204 (R1)	I	Jonathan Friedrich/ Private Citizen	Prepared Testimony
S.B. 204 (R1)	J	Robert Robey/Private Citizen	Suggested Amendment
S.B. 222 (R1)	K	Senator Allison Copening	Prepared Testimony
S.B. 222 (R1)	L	Senator Allison Copening	Lease Registration Program Brochure
S.B. 222 (R1)	M	Senator Allison Copening	Northshores Owners Association Resolution for Lease Registration Program
S.B. 222 (R1)	N	Michael Buckley/Private Citizen	Introduction of S.B. 204

NV Assem. Comm. Min., 5/10/2011

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN TRUST, Plaintiff(s), vs. TRUDI LYTLE, Defendant(s).	Case No. A-16-747800-C / Case No. A-17-765372-C DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS,
DISTRICT COURT JUDGE

WEDNESDAY, MARCH 21, 2018

TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING MOTIONS

APPEARANCES (on page 2).

RECORDED BY: ROBIN PAGE, COURT RECORDER

APPEARANCES:

For the Plaintiff(s), September Trust Dated March 23, 1972; Gerry R. Zobrist and Jolin G. Zobrist Family Trust; Raynaldo G and Evelyn A Sandoval Joint Living and Devolution Trust; Julie S. Gegen, and Dennis A. Gegen: WESLEY J. SMITH, ESQ.

For the Plaintiff(s), Linda Lamothe, Jacques Lamothe, Marjorie B. Boulden, and Jacques & Linda Lamothe Living Trust: DANIEL THOMAS FOLEY, ESQ.

For the Counter Defendant(s), Yvonne A. Disman and Robert Z. Disman: CHRISTINA H. WANG, ESQ.

For the Defendant(s), Lytle Trust: RICHARD EDWARD HASKIN, ESQ.

LAS VEGAS NEVADA, WEDNESDAY, MARCH 21, 2018

[Proceedings commenced at 9:05 a.m.]

THE COURT: On page 8, *Marjorie B. Boulden Trust vs. Trudi Lytle*, Case No. A-16-747800.

MR. HASKIN: Good morning, Your Honor. Richard Haskin on behalf of the Lytle Trust.

MR. SMITH: Good morning, Your Honor. Wesley Smith on behalf of the plaintiffs, that's the September Trust, the Zobrist Trust, the Sandoval Trust, and Dennis and Julie Gegen.

MR. FOLEY: Dan Foley on behalf of Boulden and Lamothe, Your Honor.

MS. WANG: Christina Wang on behalf of the Dismans, Your Honor.

THE COURT: And is this all counsel necessary for the go-forward with this hearing this morning?

MR. HASKIN: Yes, Your Honor.

THE COURT: Counsel, I've had an opportunity to read the briefing and does any -- does either counsel have a hard copy of the exhibits that were filed? There was over 200 exhibits.

MR. SMITH: I have some of them, but not all of them.

THE COURT: Well, I -- I pulled up the exhibits, and Exhibit -- Exhibit 5 was -- appears to be the original CC&Rs. And it references the amended ones as being Exhibit 6, but Exhibit 6 appears to be the same CC&Rs. Does anybody have a hard copy of the amended CC&Rs?

MR. SMITH: I do not have those with me.

MR. HASKIN: I may have one, Your Honor. Permission to take a look real quick.

THE COURT: Sure. Or am I just misreading Exhibit 6?

MR. HASKIN: Your Honor, my -- my exhibits, I believe, were letters. So I think you're referring to --

MR. SMITH: Yeah, that's -- it is my exhibit. I'm sorry, I do not have it with me today.

THE COURT: Okay. Well --

MR. HASKIN: I do have a copy, Your Honor, within my pleading, the opposition and counter motion.

THE COURT: Well, I was going to review them before court today. I haven't had a chance. If they're part of your exhibits, I'll look -- I'll look through your exhibits.

In any event, this is on for Plaintiff's Motion for Summary Judgment, or in the alternative, Motion for Judgment on the Pleadings. Defendant Trudi Lytle, John Allen Lytle, the Lytle Trust opposition to Motion for Summary Judgment or in the alternative, Motion for Judgment on the Pleadings and Counter Motion for Summary Judgment.

I have read all the briefing. Did a little bit of independent research. I noticed the -- I believed then the opposition was -- the parties cited *Boulder Oaks Community Association vs. B&J Andrews Enterprises,* I actually litigated that case and prevailed on Summary Judgment, even though the supreme court said I didn't have a likelihood of success on the merits in dissolving the preliminary injunction. So

sometimes the supreme court gets it wrong.

In any event, I do have a little bit of a working knowledge of NRS 116. Does counsel want to be heard on oral argument in this matter?

MR. SMITH: Sure, Your Honor, if you want to entertain it.

MR. HASKIN: Yes, Your Honor. And permission to approach, Your Honor, I --

THE COURT: Sure. And thank you.

MR. HASKIN: Your Honor, for the record, I handed you Exhibit C from our opposition and counter motion, which is the amended CC&Rs.

THE COURT: Thank you, counsel.

MR. HASKIN: You're welcome, Your Honor.

THE COURT: Counsel, Plaintiff?

MR. SMITH: Thank you, Your Honor.

I think that probably the best place to start is to kind of summarize why we're here today. My clients are property owners within the Rosemere subdivision, four different lots that they own. And the Lytles have recorded a -- an abstractive judgment or multiple abstracts of judgment on their properties.

Now, the facts are undisputed today. We don't have any material facts that are in dispute. It's undisputed that my clients were not defendants in the underlying litigation, they were not parties to the underlying litigation, and they are not judgment debtors. So the Lytles have taken those judgments and recorded them against properties that

are -- do not belong to the judgment debtor.

And so really, this comes back to the underlying litigation. Because there are important findings of fact and conclusions of law from that case that arise from the judgment they recorded that preclude them from doing what they've done. Specifically, Judge Leavitt in that prior case found that those amended CC&Rs were void *ab initio*. Not rescinded, not voidable, not divisible, but void *ab initio*, meaning from the very beginning, meaning they can never be enforced, they never came into existence.

So the other thing that she found is that this particular association, this judgment debtor, was not an NRS 116 association as it's defined under that statute. Instead, it's a very particular type of association called a limited purpose association, which is governed exclusively by NRS 116.1201. Now, they are relying upon a particular section of 116 called 3117 to say that they can record these judgments against the individual units within the association.

Now, 3117 on its very face says that it can record a judgment against an association. Now, association is a defined term under NRS 116, and Judge Leavitt specifically found that this association did not qualify under that definition. So on its face, 3117 can't be applied.

Further, NRS 1201 -- or 116.1201 says that Chapter 116 is only applicable to a limited purpose association for the specifically enumerated subsections; there's 28 of them. NRS 311 -- 116.3117 is not one of those sections.

And so we have right on its face, clear and unambiguous in

two different places, that they don't have authority to do what they've done. Yet that's what they're asking you to do. They say that there's equity that should be applied here. But they haven't given you a single rule of equity that's applicable here to do what they want you to do.

We're simply asking to be put on the same position as the other plaintiffs in this case. We are recently consolidated. Judge Williams has already considered this issue.

THE COURT: Just out of curiosity, Judge Williams recused himself?

MR. SMITH: He did, Your Honor.

THE COURT: After issuing the order?

MR. SMITH: Yes, Your Honor.

THE COURT: Okay. So that's how it ended up in my department?

MR. SMITH: That's how it ended up with you, Your Honor.

MR. FOLEY: My daughter took a job as his law clerk, unfortunately. So.

THE COURT: Oh. Okay.

MR. SMITH: He screwed it up for us.

MR. HASKIN: Your Honor, just to add to that real quick, they filed a separate action before Judge Israel. We had an action already pending before Judge Williams. The actions -- they filed a Motion to Consolidate almost identical time as Judge Williams recused himself. So we -- the Judge Williams case was transferred to your court, the Motion for -- for Consolidation was granted, and the Judge Israel case,

which is this case, was then moved over to this court as well.

MR. SMITH: That's all correct, Your Honor.

THE COURT: I just was curious, because I saw my name mentioned in the pleadings. And I -- and I'm just wondering how I ended up with the -- with the case.

MR. SMITH: That's right.

THE COURT: So that --

MR. HASKIN: You're lucky.

MR. SMITH: So that's where we are. And Judge Williams, he already considered these exact same issues. It's the exact same legal question. We have a single legal question before you today. Was it appropriate under NRS 116 or under the original CC&Rs, which are the only ones that are applicable today, was it appropriate to record these judgments against the individual units.

And judge Williams found that it was not, that 116 didn't apply, that this was a limited purposes association, and that 3117, specifically that section, was not applicable.

And so he ordered that those judgment liens be expunged. We're just asking this court to put us in the same position as the other property owners in this case. Now, that order is on appeal. And so the Lytles are going to have their day to be able to explain that the supreme court, why they think that was wrong.

THE COURT: What is the status of the appeal?

MR. SMITH: It's currently under briefing, as far as I know.

THE COURT: I saw that you'd attached the opening brief.

Has an answering brief been filed?

MR. SMITH: Yes, Your Honor. Mr. Foley filed an answering brief. I believe that the other counsel in the case filed an answering brief. We filed an Amicus brief earlier this week. We expect that no matter what happens here today, there's going to be an appeal, and that those appeals will be consolidated and that the supreme court's going to hear all of the issues at the same time.

So, you know, that's really the -- the gist of it. It seems pretty straightforward to me. You know, normally on a summary judgment you've got a lot of argument about facts are in dispute, those kinds of things. This is really straightforward and it's really an easy case. You know, law of the case is applicable. We've got res judicata issues that are applicable from the prior -- the underlying case that arise from this judgment. And so we submit that to you and -- and ask that you grant our Motion for Summary Judgment today.

THE COURT: Thank you, counsel.

Counsel, you just handed me the amended and restated Ceclaration of Covenants, Conditions, and Restrictions for Rosemere Estates. I had an opportunity to glance through it. I was looking at the *Boulder Oaks* decision. And the preface to it regarding NRS Chapter 116 states:

> While NRS Chapter 116 generally applies to all Nevada common interest communities, it only applies to communities containing lots reserved exclusively for nonresidential use, if the declaration so provides.

And the Rosemere Estates is exclusively residential?

MR. HASKIN: Yes, Your Honor.

THE COURT: Okay. Six --

MR. HASKIN: Nine residential homes.

THE COURT: Nine residential homes; is that correct?

MR. HASKIN: There's actually eight homes within the community. And there's an empty lot, which is the Lytles' lot within the community all -- as well. But the -- even the original CC&Rs, Your Honor, designated each of those nine lots to be for residential purposes.

THE COURT: But it's strictly a residential --

MR. HASKIN: Correct.

THE COURT: There's no nonresidential units in it?

MR. HASKIN: Correct.

THE COURT: Thank you.

MR. HASKIN: Your Honor, and -- and just to give you a picture of the community, Your Honor, it's essentially a single-street cul-de-sac, where you enter kind of through the middle of the cul-de-sac and you have homes on the left and homes on the right. But it's -- it's nine units, it's very small.

Your Honor, I think that both parties have extensively and well briefed this matter, and I think that the law is well referred to therein. So I'll only draw your attention, Your Honor, really, the overlying themes of the Lytles' position. I think we have two essential questions in this case. And the first being does Nevada law provide creditors with the right to lien units within an association? I think -- I think that's the broad-based

question. And we've heard a lot of reference from the plaintiffs to the fact that they weren't judgment debtors. That they -- they weren't parties to the underlying case, they weren't judgment debtors to the underlying case. And somehow that's supposed to absolve them from any potential liability.

Well, that's true personally, meaning that there is no possible way under Nevada law that I as a creditor could seek to enforce a judgment against all of their assets, it's not true with respect to the units that are contained within the association.

In fact, regardless of whether NRS 116.3117 applies, and we believe it does, but let's just take it in the abstract for a second. 3117 undoubtedly provides a right for a judgment creditor to obtain a judgment against a unit within an association. And, Your Honor, in our reply brief we cited the Uniform Common Interest Ownership Act, and it provides reasoning as to why that law exists. In fact, the UCIOA has provided that relief for years now prior to when Nevada adopted its own version of the UCIOA some time ago.

But there is a right under Nevada law unquestionably that provides a creditor with a right to place a lien against a unit within an association. And the reasoning again is within the UCIOA it states that a -- a creditor should be able to reach the equity of the judgment debtor. Unquestionably, units in common interest developments. And that's what we're talking about here, whether it's a limited purpose association, a condominium complex, an RV park, whatever you have, it's a common interest development.

In this case, we have a limited purpose association. Since July 29, 2013, we have a limited purpose association. But since that time it's an LPA. And a judgment creditor has the right, whether it's an LPA or otherwise, to collect against a unit within the association. Why? Because a unit is part of the association. In fact, it's included within the definitions under Chapter 116. Just look to the definitions, don't even get past those.

NRS 116.021 defines a common interest community as including all of the real estate within the community, common elements, limited common elements, it also includes the units.

THE COURT: I will tell you, counsel, their -- their main argument is that -- I was curious why -- how -- why Judge Williams no longer had the case, because wouldn't this case -- wouldn't this motion be before Judge Williams if he hadn't recused himself?

MR. HASKIN: Your Honor, I believe so.

THE COURT: Opposing counsel's nodding up and down as if to indicate yes.

MR. HASKIN: Well, Your Honor, it's --

THE COURT: And here's my concern, counsel. Just Judge Williams' order is not binding on me.

MR. HASKIN: No.

THE COURT: Obviously, another district court's ruling is not binding. There was a lot of briefing on the issue of preclusion, res judicata, law of the case. I don't think it's law of the case, it hasn't gone up to the Supreme Court and then been decided. I don't believe it's res

judicata. Your issue preclusion argument was sound, however, I'm not sure I would even decide on issue preclusion.

You invited me to review the underlying briefing as to Judge Williams' order, which I do intend to do. But my -- my question to you, counsel, is there any reason for you to believe that if this -- if this motion has been in front of Judge Williams, would he have decided any differently than he decided the -- the other order, the other matter that's in this order? And, you know, candor to the court is always good when you're making an argument. But is there any reason to believe that this matter had been in front of Judge Williams, you would have been able to persuade him differently than this previous order that is now up on appeal?

MR. HASKIN: Your Honor, I believe so. And there is a distinction. When Judge Williams heard this case, he heard the case only with the -- and I'll refer to it as *NRED 1*, I think that's how we referred to it in our briefings.

THE COURT: It took me a while to get the fact pattern down on what occurred in each -- in each proceeding.

MR. HASKIN: Yeah, I forget that I've --

THE COURT: But I think I have it down now.

MR. HASKIN: -- lived it my whole -- you know, basically, my whole adult career it seems like. But the -- *NRED 1* essentially was the litigation to seek the -- the voiding of the amended CC&Rs. *NRED 2* was a different litigation entirely. That was not subject o Judge Williams' order, and there are distinctions to be made. And I think important ones.

The *NRED 2* case, the parties, all the parties involved, including the association, stipulated to the fact that the amended CC&Rs were the governing document and were the law of the land.

THE COURT: But wasn't that only -- wasn't that stipulation only applicable to *NRED 2*? I mean, wasn't it limited to just application to *NRED 2*?

MR. HASKIN: Correct. It was -- it was limited in application to *NRED 2*. It was, Your Honor. But --

THE COURT: So it' s not binding in any other form? That's -- the stipulation is not binding in any other form?

MR. HASKIN: No, but I -- Your Honor, I think the distinction's important. Because one of our key arguments, and perhaps our key argument in this case, is that you can't ignore the legal -- the legal realities of the fact that until July 29th, 2013, and really with respect to *NRED 2*, until well after that, till 2016, the amended CC&Rs were the governing documents. They -- they were the governing documents.

THE COURT: But their argument is they were not a party to *NRED 2*, that the stipulation was between the association and the Lytles, and it was only limited to *NRED 2*.

MR. HASKIN: Sure, Your Honor. But the association -- this is -- this is not an ordinary corporation, right. This is not a corporation that had shareholders. An association is not an entrepreneurial ventureship. An association -- a homeowners association, is an organizational structure that consists of all the homeowners who've worked -- who vote to have a board to run the governance of their

community. This association is the homeowners. That's what it is.

When we join associations, we join voluntarily knowing that the board controls us. In one way or another, the board controls us. And when the board enters that stipulation for *NRED 2*, that's the decision that binds the association. Whether we as an association like it or not, and whether they liked it or not as debtors, and let's not forget that some of the board members are plaintiffs in this case. They decided this. This was their issue. They fought this case. They're not bystanders to this.

And even if they were bystanders, it wouldn't matter. The homeowners association is not a corporation in its ordinary terms. It is an organizational structure to which we as homeowners are all subject to what the board of directors decides. And in this case, what they decided to do was they decided to try to foreclose against the Lytles' home by enforcing Chapter 116's foreclosure provision and the amended CC&Rs' foreclosure provisions; that was their decision. They tried to enforce it, and the Lytles defended themselves against a foreclosure in *NRED 2*. And in order to do that, they were forced to stipulate that the amended CC&Rs were the governing documents, because their defenses in that case against the foreclosure wasn't that the amended CC&Rs were void *ab initio*. That was never an issue in *NRED 2*.

What they said was, You didn't even follow your own amended CC&Rs or Chapter 116. And we're going to agree that's the law of the land. So what ended up happening was the Lytles prevailed in that case.

And what the plaintiffs are seeking here really produces an absurd result, which is that had the prevailing party been the plaintiffs in this case, they would have foreclosed on the Lytles' house or lot. They wouldn't have anything. But because the Lytles prevailed, they have no remedy to obtain their attorneys' fees. Because now, they're arguing, well, sorry, the amended CC&Rs are void *ab initio*.

The -- the key to this case, really, is just that, is if a document is declared void *ab initio*, should it penalize the party that had it declared void *ab initio*? And the *Mackintosh* case, Your Honor, which we cite, and other cases that are similar, state the otherwise. It states that just because you have a document declared void *ab initio*, you shouldn't be punished as a result of that.

And -- and this is not the *Bergstrom* case, where a party obtained damages and also rescission. This is -- this is different. This is the *Mackintosh* case, where the court said, your document is -- the document's void *ab initio*. We're going to grant you that relief. And we know you've incurred attorneys' fees as a result of that, and the contract provided an award of attorneys' fees. And so we're going to allow you to enforce that contractual provision.

In this case, the amended CC&Rs, Section 10.2, provides the exact same relief as NRS 116.3117. It states that if a judgment is obtained against the association, it is a judgment against each and every one of the units in this association pro rata. That's what we're seeking to enforce. Because the contrary is -- it's -- not only is it not equitable, but it's absurd. Because only the association could have prevailed in those

cases under their theory of the case. And their theory of the case is that we're judgment debtors, we -- we're not judgment debtors, because we weren't parties to that case.

Well, the wealth of common interest development law says otherwise. Says if you join a common interest development, this is not you becoming a shareholder of a corporation. This is you joining an organizational structure and you have knowledge of these amended CC&Rs, why? They're recorded against your property and we provided you copies of them. You have knowledge of 116, you're assumed to have knowledge of 116, because you lived within the common interest development.

And that's the thrust of our argument, Your Honor.

THE COURT: Okay. Counsel, you invited me to review the underlying briefing in Judge Williams' order. I am going to take you up on your invitation. I haven't had a chance to do that yet. I have pulled the order and some of the briefing. Is there anything in rebuttal that you want to argue to the court? I am going to take this case under submission. I want to -- took me a while to get the fact pattern down, quite frankly. I had to review it over a couple of times. There's multiple litigations that underline this. I was going to put it on for two weeks for my decision.

But I don't want -- I want you to make whatever argument you want to make in response to counsel's argument.

MR. SMITH: Thank you, Your Honor. I appreciate that.

I think that I'll start with the distinction that's being made

between the *NRED 1* and the *NRED 2* litigation. Yes, there was a stipulation that was entered at one time in that case. But I'll actually refer to Exhibit L from the defendant's exhibits.

This is an order that they obtained in summary judgment. It was entered on November 15th, 2016, in case A-10-631355-C. It's called The Order Granting plaintiff John Alvin Lytle and Trudi Lee Lytles as Trustees of Lytle Trust, Motion for Summary Judgment.

THE COURT: Is this the order that mentions that it was void *ab initio* six times?

MR. SMITH: Yeah.

THE COURT: Okay.

MR. SMITH: Exactly.

THE COURT: I've reviewed it.

MR. SMITH: It seems kind of disingenuous to say that we stipulated to this issue and this was the main issue and that void *ab initio* never came up.

THE COURT: And your argument also was this was prepared by the Lytles' counsel --

MR. SMITH: Absolutely.

THE COURT: -- as with many of the other orders that basically the association did not put up a fight and it was akin to a default judgment.

MR. SMITH: Yeah. And, you know, whether or not it's a default judgment, you know, really aside from that, the whole point is that the Lytles, throughout all of the litigation that they've gone through,

they have argued that this is void *ab initio*. Now, void *ab initio* is a legal term with --

THE COURT: Means it never existed.

MR. SMITH: -- specific meaning. And to argue for that and successfully win at every turn they've won, and the final judgment, that's what they've gotten. And to turn around and now say that they can use that against nonparties is just -- it -- it doesn't make any sense. It's not legally possible. And so we -- we would say that's just not okay.

But as far as the -- you know, you asked whether or not Judge Williams would make the same decision today, I wasn't there. But I did read the transcript yesterday of the hearing. And it was pretty one-sided. And I would say that he would not have changed his mind. He was decidedly against the defendant's position on this issue.

And so we can submit that for -- for your review, as well, as part of that.

THE COURT: I'm going to go back and read the Mackintosh case, also, while I take this under submission. Probably do some independent research. And I am going to review the underlying basis of Judge Williams' order. If you want to submit transcripts, that's fine.

MR. SMITH: Okay. And one -- one other thing. If you're going to review *Mackintosh*, I would just say you should also read the Ninth Circuit's opinion in *Golden Pisces* --

THE COURT: I'll probably --

MR. SMITH: -- which we cited in our briefs.

THE COURT: -- do more than that, counsel. I'll probably