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 8

(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 8 (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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hardships to the relative parties and others, and the public interest." *Univ. and Comm. College Systems of Nevada*, 120 Nev. at 721, 100 P.3d at 187, *see also S.O.C.*, 117 Nev. at 407, 23 P.3d at 246 (2001); *Dangberg Holdings*, 115 Nev. at 142–43, 978 P.2d at 319.

In the present case, the issue before the district court, and indeed this Supreme Court, is the Plaintiffs'/Respondents' likelihood of success on the merits. Respondents, ultimately, cannot make such a showing because NRS 116.3117, and other provisions of the Common-Interest Ownership Act authorize Appellants to lien Respondents' properties, as set forth below.

1. The District Court Erred In Finding That NS 116.3117 Does Not Apply To The Association Because The Association Is A Limited Purpose Association

The district court found that: (1) "The Association is a 'limited purpose association' as referenced in NRS 116.1201(2); and (2) "As a limited purposes association, NRS 116.3117 is not applicable to the Association." Amended Order, FOF No. 9, COL No. 2, AA000552, 000553. The second of these conclusions is erroneous.

Appellants are within their rights, as judgment creditors of the Association, to record a lien against each unit within the Association because (1) NRS 116.3117 provides this specific right to judgment creditors of a unit owners' association, (2) Appellants may invoke all of the rights set forth in the entirety of Chapter 116

because the Association invoked such rights during the underlying litigation (and prior thereto), and (3) Chapter 116's statutory mechanism provides such rights to Appellants.

a. NRS 116.3117 Permits A Judgment Creditor To Record A Lien Against All Units Within An Association

When a statute is facially clear, the Court should give effect the statute's plain meaning. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court (First Light I)*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). "[W]hen a term is defined in NRS Chapter 116, the statutory definition controls and any definition that conflicts will not be enforced." *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 406, 215 P.3d 27, 32 (2009). Further, NRS 116.003 states that "the words and terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those sections." *Id.*

NRS 116.3117 provides, in pertinent part:

> 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.

[Emphasis added.] Quite succinctly, Nevada's Common-Interest Ownership Act, set forth in Chapter 116, provides a judgment creditor has a lien "against all of the units in the common-interest community at the time the judgment was entered." NRS 116.3117(1)(a).

Moreover, to the extent there can be any doubt as to the operation of NRS 116.3117, the comments to Section 3-117 of the Uniform Common Interest Ownership Act (1982) — the uniform act upon which NRS Chapter 116 is based – – reinforce that which is already clear from the plain language of the statute: "the Act makes the judgment lien a direct lien against each individual unit . . ." *See* UCIOA § 3-117, cmt. 2, *see also, e.g., Ensberg v. Nelson*, 320 P.3d 97, 102 (Wash. Ct. App. 2013) ("[B]y statute, a condominium association is a lien in favor of the judgment lienholder against all of the units in the condominium."); *Summit House Condominium v. Com.*, 523 A.2d 333, 336 (Pa. 1987) ("[A] judgment against the Council would have constituted a lien against each individual condominium unit owner."); *Interlaken Service Corp. v. Interlaken Condominium Ass'n, Inc.*, 588 N.W.2d 262, 266 (Wisc. 1998) ("[A]ny money judgment obtained by [the plaintiff

as against the association] would result in a lien against each of the condominium units.").

The purpose of the statute, however, is not to provide a remedy to creditors. Rather, it protects unit owners within an association and limits the extent to which a creditor can collect on a judgment against an association as to each unit owner. NRS 116.3117 provides that a creditor must first collect against any security interest the creditor may have in common elements before pursuing units. NRS 116.3117(1)(b).

2. In The Present Case, The Association Is Afforded All Rights And Remedies Of NRS, Chapter 116 Because Prior To Final Determination In The Underlying Litigation, The Association Enjoyed Such Benefits To The Detriment Of Appellants

With due respect to the district court, its most egregious and fundamental error was in declaring that because the Association is a *limited purpose association*, Appellants are not entitled to the protections, rights and remedies set forth in Chapter 116, including NRS 116.3117 (cited above). Amended Order, FOF No. 9, COL No. 2, AA000552, 000553. For a myriad of reasons set forth herein, NRS 116.3117 applies in this case and affords Appellants the right to lien Respondents properties.

a. The Different Types Of *Common Interest Communities*

The term "homeowners' association" is often misused and, indeed, in the State of Nevada has no true statutory definition. Rather, a "homeowners' association" is more of an informal, catch-all term for all types of common interest communities.

Chapter 116 applies to all types of governing bodies of residential common interest communities created in Nevada. NRS 116.1201. A "common-interest community" is defined as "real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration." NRS 116.021. The types of common interest communities include: (1) unit owners' association, (2) limited purpose associations (NRS 116.1201(2)(a)), (3) small planned communities (NRS 116.1203), (4) nonresidential planned communities (NRS 116.1201(2)(b)), (5) time shares (NRS 116.1201(2)(e)), and condominiums (NRS 116.027).

Chapter 116 applies to "all common interest communities" created within Nevada, with defined limitations for limited purpose associations, small planned communities, and nonresidential planned communities. NRS 116.1201.

b. As The District Court Found In The Underlying Litigation, From July 3, 2007 Through July 29, 2013, The Association Was A Unit Owners' Association, For Which The Entirety Of NRS, Chapter 116 Applied

While the district court in the Underlying Litigation held that the Association was a limited purpose association (RJN for Opp., Order Granting Summary Judgment, AA000155 – 000156, AA000172 - 000173), the district court in that case found that the Amended CC&Rs were recorded on July 3, 2007, in the office of the Recorder for Clark County, Nevada (*Id.* at FOF 35, AA000171) and from July 3, 2007, through July 29, 2013, when the district court granted Appellants' summary judgment in that case, the Association was a full-blown unit owners' association, subject to and taking advantages of all rights, privileges and remedies afforded by the entirety of Chapter 116, including the right to assess and initiate Chapter 116 foreclosure proceedings for failure to pay assessments, which is exactly what the Association did to Appellants. *See generally* RJN for Opp., Order Granting Summary Judgment, AA000155 – 000156, AA000167 - 000177.[3] The Amended CC&Rs adopt Chapter 116 of the Nevada Revised Statutes. RJN for Opp., Amended CC&Rs, at Article I, AA000155 – 000156, AA000226. The

[3] The Association, in adopting the Amended CC&Rs, stated that one of the basis for such adoption was to "conform to NRS Chapter 116." Order Granting Summary Judgment, AA _____.

Amended CC&Rs define the Association pursuant to the Uniform Common-Interest Ownership Act. *Id.* at 1.1, AA000226. The Amended CC&Rs routinely reference Chapter 116 of the Nevada Revised Statutes. *See, e.g., id.* at 1.13, 1.14, 1.30, 8.1, 10.3 (referring to the lien statutes codified in Chapter 116), AA000226 – 000230, 000241, 000242.

In granting Appellants' Motion for Attorneys' Fees, the district court in the Underlying Litigation cited *Mackintosh,* 113 Nev. at 405-406, 935 P.2d at 1162, and held that Appellants could recover attorneys' fees under the Amended CC&Rs because that document, while declared *void ab initio* by the district court, was in effect and enforced by the Association against the Appellants at all times during the underlying litigation. *See generally*, RJN for Opp., Order Granting Attorneys' Fees, AA000155 – 000156, 000186 - 000189.

In *Mackintosh*, *supra*, the purchasers of real property sued a savings and loan association for rescission of a residential property purchase agreement. *Mackintosh*, 113 Nev. at 396-397, 935 P.2d at 1157. The Supreme Court upheld a district court's granting of summary judgment and determination that the purchasers had rescinded the purchase agreement. *Id.* 113 Nev. at 405-406, 935 P.2d at 1162. However, the Supreme Court held the district court improperly denied the purchasers' request for attorneys' fees, which request was based on the attorney fee provision in the rescinded agreement. *Id.* The district court, in denying attorneys' fees stated that the rescinded agreement was "void from its date

of inception, just as if the contract had never existed." *Id.* The Supreme Court disagreed and cited a Florida Supreme Court case, *Katz v. Van Der Noord*, 546 So.2d 1047 (Fla. 1989), which held:

> We hold that when parties enter into a contract and litigation later ensues over that contract, attorney's fees may be recovered under a prevailing-party attorney's fee provision contained therein even though the contract is rescinded or held to be unenforceable. The legal fictions which accompany a judgment of rescission do not change the fact that a contract did exist. It would be unjust to preclude the prevailing party to the dispute over the contract which led to its rescission from recovering the very attorney's fees which were contemplated by that contract.

Id. at 1049.

Similarly, in the present case, the "legal fictions" that accompany the district court's determination in the Underlying Litigation that the Amended CC&Rs were *void ab initio* cannot change the fact that they did, indeed, exist from July 3, 2007, through July 29, 2013, and were enforced against Appellants.

The foregoing is akin to the evidentiary "sword and shield" doctrine. Therein, it is held that a party may not use a privilege as both a sword to assert a claim and a shield to protect the content related to the claim. *Molina v. State* 120 Nev. 185, 194, 87 P.3d 533, 539 (2004). A party attempting to enforce a contract

against another cannot argue that a court's determination that it was void shields the party from the provisions that would be detrimental, *e.g.* an attorneys' fee provision. Or, in the present case, members of the Association should not be permitted to shield themselves from certain provisions of Chapter 116, namely NRS 116.3117, once the district court declared the Amended CC&Rs void after years of those same Amended CC&Rs being recorded and enforced against Appellants. In fact, the Amended CC&Rs' restrictions were so severe that they prevented Appellants from building their dream home in the Rosemere Estates community and thrust Appellants into years of litigation that exhausted Appellants' retirement savings and created emotional turmoil. RJN for Opp., Order Granting Summary Judgment, FOF Nos. 25 – 31, AA000155 – 000156, AA000170 - 000171. Indeed, Appellants, as the only undeveloped lot, were the only targets of the Amended CC&Rs and the prohibitive building restrictions. *Id.*

There are other instances during which the Association took clear advantage of the entirety of Chapter 116 during this operative time period despite a subsequent finding that the Association is a limited purpose association and the Amended CC&Rs are void. For example, the Association filed countersuits against Respondents, something a limited purpose association is not permitted to do. NAC 116.090(1)(c)(1), (prohibiting a limited purpose association from enforcing restrictions against unit owners). The Association moved to dismiss and had the Complaint dismissed in the Underlying Litigation, purportedly as a result

of a failure to timely file under Chapter 38, which does not apply to limited purpose associations.

Appellants obtained a judgment against the Association due to the Association's action taken in order to both defend and impose its position as a unit owners' association. During the entire pendency of the Underlying Litigation (and indeed well before), the Association operated pursuant to the statutory luxuries afforded to it as a litigant by NRS Chapter 116. And had the Association, and not Appellants, prevailed in the Underlying Litigation, the Association would enjoy all of the benefits as a judgment creditor against Appellants, including the right to lien Appellants' property and foreclose thereon. The district court's ruling in the instant case provides the Association with forgiveness to utilize NRS Chapter 116 and the Amended CC&Rs as swords to impose the Association's will during the Underlying Litigation and prior thereto, but as shields from liability and collection once the Association's position was declared invalid. The public policy underlying *Mackintosh* and its progeny is that such two-faced positions cannot stand the test of equities.

c. NRS 116.3117 Applies To Limited Purpose Associations

As set forth in Chapter 116 and explained above, the Association is a common interest community consisting of nine (9) units, as that term is defined by Chapter 116, and organized as a limited purpose association. RJN for Opp., Order

Granting Summary Judgment, FOF No. 6, COL Nos. 7 – 19, AA000155 – 000156, AAA000167 - 000174, *see also* NRS 116.021, NRS 116.093. NRS 116.1201(2)(a)(4) provides, in pertinent part, that Chapter 16 does not apply to a limited purpose association, "except that a limited purpose association shall comply…with the provisions of NRS 116.4101 to 116.412." Included within the scope of these provisions is NRS 116.4117, which addresses civil actions for damages for failure or refusal to comply with provisions of Chapter 116 or an association's governing documents. NRS 116.4117(2) provides:

> 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.

Thus, an owner in a limited purpose association may pursue a civil action against an association as set forth in NRS 116.4117, as Appellants did in the Underlying Litigation.

Following the linear statutory reference, then, from NRS 116.4117, NRS 116.3111(3) provides, among other things, that "[l]iens resulting from judgments against the association are governed by NRS 116.3117." NRS 116.3117 then provides:

> 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.

///

///

As a judgment creditor and lienholder in a proper civil action brought under NRS 116.4117, Appellants have a lien on all units in the Association, a common interest community. Pursuant to this right as set forth in NRS, Chapter 116, Sections 4117(2), 3111 and 3117, Appellants recorded the abstracts of judgment.

3. General Common-Interest Community Principles Define The Association As Including Each Unit Therein, And Appellants May Record An Abstract Against Each Unit

NRS 17.150(2) provides, in pertinent part:

> A transcript of the original docket or an abstract or copy of any judgment or decree of a district court of the State of Nevada or the District Court or other court of the United States in and for the District of Nevada, the enforcement of which has not been stayed on appeal, certified by the clerk of the court where the judgment or decree was rendered, may be recorded in the office of the county recorder in any county, **and when so recorded it becomes a lien upon all the real property of the judgment debtor not exempt from execution in that county**, owned by the judgment debtor at the time, or which the judgment debtor may afterward acquire, until the lien expires.

[Emphasis added.]

In recording the abstracts of judgment against the units within the Association, the abstracts became a lien upon all the real property of the Association, as the judgment debtor. Each unit, owned or unowned, within the Association is property of the Association, as set forth in Chapter 116. NRS 116.3117 mirrors the foregoing by encapsulating the lien framework within a single statute.

NRS 116.021 defines a "common interest community" as all "real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration." NRS 116.093 defines a "unit" as the "physical portion of the common-interest community designated for separate ownership or occupancy..." Thus, an association, or common interest community, includes each unit in the community, including those owned by third parties.

This Nevada Supreme Court concluded as much in granting standing to homeowners' associations to file claims on behalf of unit owners in construction defect cases. In *D.R. Horton, Inc. v. Eighth Judicial Dist. Court,* 125 Nev. 449, 215 P.3d 697 (2009), the Supreme Court held that "provisions of NRS Chapter 116, among other sources, demonstrate that a common-interest community includes individual units..." *Id.*, 125 Nev. at 451, 215 P.3d at 699. Thus, the

Supreme Court concluded that a homeowners' association has standing to file representative actions on behalf of its members for construction defects of units.

NRS 116.3117, clarifies that a judgment may be recorded against each unit. This is not a special rule of any sort in favor of creditors, rather it adds statutory clarity that a judgment against the common-interest community can be recorded against all property within that community, including units defined as being included in the community. These definitions are echoed in the Uniform Common Interest Ownership Act, under Section 1-203(9) and 1-203(35).

a. The Original CC&Rs Defines The Association As Including Each Lot Therein

Pursuant to the Original CC&Rs, a lien or judgment against the Association established under the Original CC&Rs attaches to each lot within the Association. As a result, the individual property of the owners within the Association, defined as Lots 1 through 9, is subject to lien.

The Original CC&Rs provide as follows:

> WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

RJN for Opp., Original CC&Rs, ¶2, AA000155 – 000156, 000159. (referring to the "Lots 1 through 9 of Rosemere Court" in the definition above, thereby including Respondents lots, which Respondents do not dispute).

> A breach or violation of these CC&R's or any re-entry by reason of such breach **or any liens established hereunder** shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value **as to said lots or PROPERTY or any part thereof**; that these CC&R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

Id. at ¶4, AA000160 (emphasis added).

The Original CC&Rs were recorded against each of the nine (9) lots within the Association, and each owner, or prospective owner, including Respondents, purchased property with record and actual notice of the foregoing rights and remedies.[4] RJN for Opp., Order Granting Summary Judgment, FOF No. 1, AA000155 - 000156, 000167.

[4] While CC&Rs are a restrictive covenant, the CC&Rs are interpreted like a contract. *See, e.g., Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.2d 664, 665-66 (2004) (stating that the CC&Rs are a restrictive covenant, which is interpreted like a contract); *see also Lee v. Savalli Estates Homeowners Ass'n*, 2014 WL 4639148 (Nev. Sept. 16, 2014) (affirming *Diaz* that the rules of construction governing contracts apply to the CC&Rs). "A court should not interpret a contract so as to make meaningless its provisions." *Phillips v. Mercer*, 94 Nev. 279, 282, 597 P.2d 174, 176 (1978).

The second provision cited above specifically attaches liens established under the Original CC&Rs "to said lots or Property." The attorneys' fee award, in relevant part, specifically finds Appellants' lien or judgment is established under the Original CC&Rs. RJN for Opp., Order Granting Attorneys' Fees, at 2:1-15, AA000155 – 000156, AA000187. If liens under the Original CC&Rs could not attach to the lots, there would be absolutely no need to include this provision, *i.e.* there would be no need for the Original CC&Rs to state that such a lien could not extinguish the first deed of trust or any other mortgage. Again, the Association has no property to even secure any loan as the only property that exists is Lots 1 through 9, which includes Respondents' properties. Nowhere in the Original CC&Rs is there any inclusion of property owned by the Association or subject to the Original CC&Rs other than "Lots 1 through 9." The district court's finding that a lien against the Association does not attach to Respondents properties, which is included within "Lots 1 through 9," renders these provisions meaningless. *Phillips*, 94 Nev. at 282, 597 P.2d at 176.

Nothing under this provision distinguishes Appellants' liens or judgment pursuant to the attorneys' fees provision from any other provision or lien or judgment in the Original CC&Rs. The Original CC&Rs simply state "any liens established hereunder." RJN for Opp., Original CC&Rs, AA000155 – 000156, 000159. This necessarily includes Appellants' liens.

II. CONCLUSION

For the reasons set forth above, Appellants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust, request this Court reverse the district court's order granting a permanent injunction and remand that case back to the district court.

DATED this 24th day of January, 2018.

GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP

By: _____

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Certificate of Compliance

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[**X**] This brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2010 Times New Roman 14—point font.**

2. I further certify that this Brief complies with the page or type—volume limitations of NRAP 32(a)(7). Excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[ ] Does not exceed 30 pages; or

[**X**] Proportionately spaced, has a typeface of 14 points or more and contains **7,328** words.

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

DATED this 24th day of January 2018.

Richard E. Haskin
Counsel for Appellants

Certificate of Service

1. Electronic Service:

I hereby certify that on this date, the 24th day of January 2018, I submitted the foregoing **Appellant's Opening Brief (Docket 73039)** 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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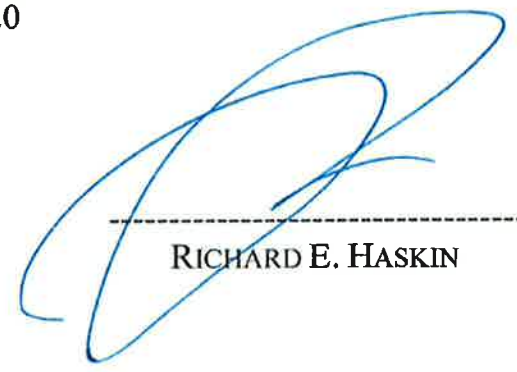

RICHARD E. HASKIN

Exhibit 17

Exhibit 17

Case Information

A-15-716420-C | John Lytle, Plaintiff(s) vs. Rosemere Estates Property Owners Association, Defendant(s)

Case Number	Court	Judicial Officer
A-15-716420-C	Department 30	Wiese, Jerry A.
File Date	Case Type	Case Status
04/02/2015	Other Civil Matters	Closed

Party

Plaintiff
Lytle, John Allen

Active Attorneys ▾
Lead Attorney
Haskin Esq,
Richard Edward
Retained

Plaintiff
Lytle, Trudi Lee

Active Attorneys ▾
Lead Attorney
Haskin Esq,
Richard Edward
Retained

Plaintiff
Lytle Trust

Active Attorneys ▾
Lead Attorney
Haskin Esq,
Richard Edward
Retained

Plaintiff

Attorney: Haskin Esq, Richard Edward

11/04/2015 Stipulation ▾

Comment
Stipulation to Lift Stay and Set Status Conference

11/05/2015 Notice of Entry ▾

Comment
Notice of Entry of Stipulation to Lift Stay and Set Status Conference

11/25/2015 Individual Case Conference Report ▾

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle, as Trustees of The Lytle Trust's Individual Case Conference Report

12/14/2015 Motion to Dismiss ▾

Comment
Renewed Motion to Dismiss

01/04/2016 Opposition to Motion ▾

Comment
Plaintiffs' Opposition to Renewed Motion to Dismiss

01/05/2016 Minute Order ▾

Judicial Officer
Bulla, Bonnie

Hearing Time
7:45 AM

Result
Matter Heard

01/06/2016 Order Shortening Time ▾

Comment
Motion to Withdraw as Attorney of Record on Order Shortening Time

01/07/2016 Receipt of Copy ▾

Comment
Receipt of Copy of Motion to Withdraw as Attorney of Record on Order Shortening Time

01/07/2016 Reply in Support ▾

Comment
Reply in Support of Renewed Motion to Dismiss

01/13/2016 Affidavit ▾

Comment
Affidavit of Service

01/14/2016 Motion to Dismiss ▾

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Matter Continued

Comment
Defendant Rosemere Estates Property Owners Association's Renewed Motion to Dismiss

Parties Present ▴

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

01/14/2016 Motion to Withdraw as Counsel ▾

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Motion Granted

Comment
Ryan W. Reed, Esq.'s Motion to Withdraw as Attorney of Record on Order Shortening Time

Parties Present ▲
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

01/14/2016 All Pending Motions ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Matter Heard

Parties Present ▲
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

01/26/2016 Order to Withdraw as Attorney of Record ▼

Comment
Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

01/27/2016 Notice of Entry of Order ▼

Comment
Notice of Entry of Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

03/31/2016 Status Check ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Matter Heard

Parties Present ▲
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

04/07/2016 Declaration ▼

Comment
Declaration of Trudi Lee Lytle in Support of Motion for Summary Judgment

04/07/2016 Motion for Summary Judgment ▼

Comment
Plaintiff's Motion for Summary Judgment on Order Shortening Time

04/07/2016 Request for Judicial Notice ▼

Comment
Request for Judicial Notice in Support of Plaintiff's Motion for Summary Judgment on Order Shortening Time

05/10/2016 Motion for Summary Judgment ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Result
Minute Order - No Hearing Held

Comment
Plaintiff's Motion for Summary Judgment on Order Shortening Time

05/10/2016 Notice ▾

Comment
Notice of Vacating Hearing

06/20/2016 Order to Statistically Close Case ▾

Comment
Order to Statistically Close Case

09/14/2017 Order Granting Summary Judgment ▾

Comment
Order Granting Summary Judgment

09/15/2017 Notice of Entry of Order ▾

Comment
Notice of Entry of Order Granting Summary Judgment

10/02/2017 Memorandum of Costs and Disbursements ▾

Comment
Verified Memorandum of Costs

10/02/2017 Affidavit in Support ▾

Comment
Affidavit of Richard E. Haskin, Esq. in Support of Plaintiffs' Motion for Attorneys' Fees and Costs

10/02/2017 Motion for Attorney Fees and Costs ▾

Comment
Plaintiffs' Motion for Attorneys' Fees and Costs

11/02/2017 Motion for Attorney Fees and Costs ▾

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Comment
Plaintiff's Motion for Attorney Fees and Costs

Case Information

A-09-593497-C | John Lytle, Plaintiff(s) vs. Rosemere Estates Property Owners Association, Defendant(s)

Case Number	Court	Judicial Officer
A-09-593497-C	Department 12	Leavitt, Michelle
File Date	Case Type	Case Status
06/26/2009	Other Civil Filing	Closed

Party

Plaintiff
Lytle, John Allen

Active Attorneys ▾
Attorney
Sterling, Beau
Retained

Attorney
Martin, David J.
Retained

Attorney
Vilkin, Richard J.
Retained

Attorney
Haskin Esq,
Richard Edward
Retained

Comment
Case Appeal Statement (Amended/Supplemental)

05/29/2014 Order Denying Motion ▾

Order Denying Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

Comment
Order Denying Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

05/30/2014 Notice of Entry of Order ▾

Notice of Entry of Order Denying Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attor

Comment
Notice of Entry of Order Denying Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

11/26/2014 Recorders Transcript of Hearing ▾

Proceedings of Transcript Re:Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorne

Comment
Proceedings of Transcript Re: Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees Monday, April 28, 2014

11/20/2015 NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part ▾

NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part

Comment
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed (63942); Affirmed in Part, Reversed in Part and Remand (65294); Vacated and Remand (65721)

01/06/2016 Order Shortening Time ▾

Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment
Motion to Withdraw as Attorney of Record on Order Shortening Time

01/06/2016 Receipt of Copy ▾

Receipt of Copy of Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment
Receipt of Copy of Motion to Withdraw as Attorney of Record on Order Shortening Time

01/13/2016 Affidavit ▾

Affidavit of Service

Comment
Affidavit of Service

01/25/2016 Motion to Withdraw as Counsel ▾

Motion to Withdraw as Counsel

Judicial Officer
Leavitt, Michelle

Hearing Time
8:30 AM

Result
Granted

Comment
Leach Johnson Song & Gruchow's Motion to Withdraw as Attorney of Record on Order Shortening Time

Parties Present ▴

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

02/02/2016 Order Granting Motion ▾

Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment
Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

02/22/2016 Status Check ▾

Status Check

Judicial Officer
Leavitt, Michelle

Hearing Time
8:30 AM

Result
Off Calendar

Comment
Status Check: New Counsel For Deft. Rosemere Estates Property Owners Association

Parties Present ▲
Plaintiff: Lytle, John Allen

Plaintiff: Lytle Trust

02/29/2016 Memorandum of Costs and Disbursements ▼

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Verified Memorandum of Costs

Comment
Plaintiffs John Allen Lytle and Trudi Lee Lytle's Verified Memorandum of Costs

03/24/2016 Affidavit in Support ▼

Affidavit of Richard E. Haskin, Esq. in Support of Motion for Attorneys' Fees

Comment
Affidavit of Richard E. Haskin, Esq. in Support of Motion for Attorneys' Fees

03/24/2016 Affidavit in Support ▼

Affidavit of Thomas D. Harper in Support of Motion for Attorneys' Fees

Comment
Affidavit of Thomas D. Harper in Support of Motion for Attorneys' Fees

03/24/2016 Affidavit in Support ▼

Affidavit of Michael J. Lemcool in Support of Motion for Attorneys' Fees

Comment
Affidavit of Michael J. Lemcool in Support of Motion for Attorneys' Fees

03/24/2016 Affidavit in Support ▾

Affidavit of George Hand in Support of Motion for Attorneys' Fees

Comment
Affidavit of George Hand in Support of Motion for Attorneys' Fees

03/24/2016 Motion for Attorney Fees ▾

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

Comment
Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

03/29/2016 Notice of Rescheduling ▾

Notice Of Rescheduling Of Hearings

Comment
Notice Of Rescheduling Of Hearings

04/26/2016 Notice ▾

Notice of Non-Opposition to Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys'

Comment
Notice of Non-Opposition to Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

05/02/2016 Motion for Attorney Fees ▾

Motion for Attorney Fees

Judicial Officer
Leavitt, Michelle

Hearing Time
8:30 AM

Result
Granted

Comment
Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

Parties Present ▴
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

05/04/2016 Motion for Prove Up ▾

Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion to Prove-Up Damages Pursuant to Court's Or

Comment
Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion to Prove-Up Damages Pursuant to Court's Order Granting Summary Judgment

06/03/2016 Order Granting Motion ▾

Order on Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

Comment
Order on Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees

06/06/2016 Motion ▾

Motion

Judicial Officer
Leavitt, Michelle

Hearing Time
8:30 AM

Result
Judgment for the Plaintiff

Comment
Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion to Prove-Up Damages Pursuant to Court's Order Granting Summary Judgment

Parties Present ▴

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

06/06/2016 Notice of Entry of Order ▾

Notice of Entry of Order on Motion for Attorneys' Fees

Comment
Notice of Entry of Order on Motion for Attorneys' Fees

06/21/2016 Order ▾

Order Awarding Plaintiffs Damages Following Prove-Up Hearing

Comment
Order Awarding Plaintiffs Damages Following Prove-Up Hearing

06/24/2016 Notice of Entry of Order ▾

Notice of Entry of Order Awarding Damages

Comment
Notice of Entry of Order Awarding Damages

07/27/2016 Order ▾

Order Awarding Costs

Comment
Order Awarding Costs

07/28/2016 Notice of Entry of Order ▾

Notice of Entry of Order Awarding Costs

Comment
Notice of Entry of Order Awarding Costs

08/18/2016 Abstract of Judgment ▾

Abstract of Judgment

Comment
Abstract of Judgment

Case Information

A-10-631355-C | Lytle Trust, Plaintiff(s) vs. Rosemere Estates Property Owners Association, Defendant(s)

Case Number	Court	Judicial Officer
A-10-631355-C	Department 32	Bare, Rob
File Date	Case Type	Case Status
12/13/2010	Other Civil Filing	Closed

Party

Plaintiff
Lytle Trust

Active Attorneys ▾
Attorney
Sterling, Beau
Retained

Lead Attorney
Haskin Esq,
Richard Edward
Retained

Plaintiff
Lytle, John Allen

Active Attorneys ▾
Attorney
Sterling, Beau
Retained

Lead Attorney
Haskin Esq,

Recorder's Transcript of Proceedings: Plaintiffs' / Counter-Defendants' Motion for Relief From Judg

Comment
Recorder's Transcript of Proceedings: Plaintiffs' / Counter-Defendants' Motion for Relief From Judgment and Special Order After Judgment Pursuant to NRCP 60(B); Request for Certification of Intent to Grant Motion; and Notice of Motion 6/24/14

01/06/2016 Order Shortening Time ▾

Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment
Motion to Withdraw as Attorney of Record on Order Shortening Time

01/07/2016 Receipt of Copy ▾

Receipt of Copy of Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment
Receipt of Copy of Motion to Withdraw as Attorney of Record on Order Shortening Time

01/11/2016 Minute Order ▾

Minute Order

Judicial Officer
Bare, Rob

Hearing Time
3:00 AM

Result
Minute Order - No Hearing Held

01/13/2016 Affidavit ▾

Affidavit of Service

Comment
Affidavit of Service

01/14/2016 Motion to Withdraw as Counsel ▾

Judicial Officer
Bare, Rob

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Law Clerk

Comment
Motion to Withdraw as Attorney of Record on Order Shortening Time

01/22/2016 NV Supreme Court Clerks Certificate/Judgment - Remanded ▼

NV Supreme Court Clerks Certificate/Judgment -Remanded

Comment
Nevada Supreme Court Clerk's Certificate Judgment - Vacated and Remand

01/22/2016 NV Supreme Court Clerks Certificate/Judgment - Affirmed ▼

NV Supreme Court Clerks Certificate/Judgment - Affirmed

Comment
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed

02/05/2016 Ex Parte Motion ▼

John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust's Ex Parte Motion for Release

Comment
John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust's Ex Parte Motion for Release of Bond

02/11/2016 Errata ▼

Notice of Errata Re: John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust's Ex Part

Comment
Notice of Errata Re: John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust's Ex Parte Motion for Release of Bond

02/12/2016 Order to Withdraw as Attorney of Record ▼

Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment
Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

02/12/2016 Notice of Entry of Order ▾

Notice of Entry of Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

Comment
Notice of Entry of Order Granting Motion to Withdraw as Attorney of Record on Order Shortening Time

02/19/2016 Order ▾

Order Releasing Cash Bond in the Amount of $123,000.00 to Plaintiffs John Allen Lytle and Trudi Lyt

Comment
Order Releasing Cash Bond in the Amount of $123,000.00 to Plaintiffs John Allen Lytle and Trudi Lytle, as Trustees of the Lytle Trust

02/22/2016 Notice of Entry of Order ▾

Notice of Entry of Order Releasing Cash Bond in the Amount of $123,000.00

Comment
Notice of Entry of Order Releasing Cash Bond in the Amount of $123,000.00

03/08/2016 Motion ▾

Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Leave

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Leave to File First Amended Complaint

04/26/2016 Notice ▾

Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Ly

Comment
Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Leave to File First Amended Complaint

05/25/2016 Minute Order ▾

Minute Order

Judicial Officer
Bare, Rob

Hearing Time
3:00 AM

Result
Minute Order - No Hearing Held

05/31/2016 Motion for Leave ▾

Judicial Officer
Bare, Rob

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Law Clerk

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Leave to File First Amended Complaint

06/03/2016 Order Granting Motion ▾

Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Mo

Comment
Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Leave to File First Amended Complaint

06/06/2016 Notice of Entry of Order ▾

Notice of Entry of Order Granting Motion for Leave to File First Amended Complaint

Comment
Notice of Entry of Order Granting Motion for Leave to File First Amended Complaint

09/14/2016 Motion for Summary Judgment ▾

Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Lytle Trust, Motion for Summar

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Lytle Trust, Motion for Summary Judgment

09/14/2016 Declaration ▾

Declaration of Trudi Lee Lytle in Support of Motion for Summary Judgment

Comment
Declaration of Trudi Lee Lytle in Support of Motion for Summary Judgment

10/10/2016 Notice of Non Opposition ▾

Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Ly

Comment
Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Lytle Trust, Motion for Summary Judgment

11/08/2016 Motion for Summary Judgment ▾

Motion for Summary Judgment

Judicial Officer
Bare, Rob

Hearing Time
9:00 AM

Result
Motion Granted

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of The Lytle Trust, Motion for Summary Judgment

Parties Present ▴

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff

Attorney: Haskin Esq, Richard Edward

11/15/2016 Order ▾

Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Mo

Comment
Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Summary Judgment

11/16/2016 Notice of Entry of Order ▾

Notice of Entry of Order Granting Motion for Summary Judgment

Comment
Notice of Entry of Order Granting Motion for Summary Judgment

11/30/2016 Memorandum of Costs and Disbursements ▾

Verified Memorandum of Costs

Comment
Verified Memorandum of Costs

01/06/2017 Affidavit in Support ▾

Affidavit of Richard Haskin in Support of Motion for Attorneys' Fees

Comment
Affidavit of Richard Haskin in Support of Motion for Attorneys' Fees

01/06/2017 Motion for Attorney Fees ▾

Plaintiff John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, Motion for Attorney

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, Motion for Attorneys' Fees

01/06/2017 Declaration ▾

Declaration of Beau Sterling in Support of Motion for Attorneys' Fees

Comment
Declaration of Beau Sterling in Support of Motion for Attorneys' Fees

01/06/2017 Request for Judicial Notice ▾

Request for Judicial Notice in Support of Motion for Attorneys' Fees

Comment
Request for Judicial Notice in Support of Motion for Attorneys' Fees

01/10/2017 Order to Statistically Close Case ▾

Civil Order To Statistically Close Case

Comment
Civil Order To Statistically Close Case

01/31/2017 Minute Order ▾

Original Type
Minute Order

Minute Order

Judicial Officer
Bare, Rob

Hearing Time
3:00 AM

Result
Minute Order - No Hearing Held

01/31/2017 Notice of Non Opposition ▾

Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Ly

Comment
Notice of Non-Opposition to Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Attorneys' Fees

02/22/2017 Motion ▾

Plaintiff John Allen Lytle and Trudi Lee Lytle's, As Trustees of The Lytle Trust, Motion for Damage

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle's, As Trustees of The Lytle Trust, Motion for Damages

02/22/2017 Affidavit in Support ▾

Affidavit of Richard Haskin in Support of Motion for Damages

Comment
Affidavit of Richard Haskin in Support of Motion for Damages

02/22/2017 Declaration ▾

Declaration of Trudi Lee Lytle in Support of Motion for Damages

Comment
Declaration of Trudi Lee Lytle in Support of Motion for Damages

02/23/2017 Minute Order ▾

Minute Order

Judicial Officer
Bare, Rob

Hearing Time
11:29 AM

Result
Minute Order - No Hearing Held

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle's, As Trustees of the Lytle Trust, Motion for Damages & Plaintiff John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, Motion for Attorneys' Fees

02/23/2017 Amended Affidavit ▾

Amended Affidavit of Richard Haskin in Support of Motion for Damages

Comment
Amended Affidavit of Richard Haskin in Support of Motion for Damages

03/21/2017 Motion for Attorney Fees ▾

Judicial Officer
Bare, Rob

Hearing Time
9:30 AM

Result
Granted

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, Motion for Attorneys' Fees

Parties Present ▴

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

03/21/2017 Motion ▼

Judicial Officer
Bare, Rob

Hearing Time
9:30 AM

Result
Hearing Set

Comment
Plaintiff John Allen Lytle and Trudi Lee Lytle's, As Trustees of The Lytle Trust, Motion for Damages

Parties Present ▲

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

03/21/2017 All Pending Motions ▼

All Pending Motions

Judicial Officer
Bare, Rob

Hearing Time
9:30 AM

Result
Matter Heard

Parties Present ▲

Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

03/27/2017 Minute Order ▾

Minute Order

Judicial Officer
Bare, Rob

Hearing Time
2:00 PM

Result
Minute Order - No Hearing Held

04/11/2017 Prove Up ▾

Judicial Officer
Bare, Rob

Hearing Time
1:30 PM

Cancel Reason
Vacated

Comment
Prove Up Hearing - Plaintiff John Allen Lytle and Trudi Lee Lytle's, As Trustees of The Lytle Trust, Motion for Damages

04/18/2017 Order Granting Motion ▾

Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Mo

Comment
Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Motion for Attorneys' Fees

04/19/2017 Notice of Entry of Order ▾

Notice of Entry of Order Granting Motion for Attorneys' Fees

Comment
Notice of Entry of Order Granting Motion for Attorneys' Fees

04/25/2017 Prove Up ▾

Prove Up

Judicial Officer
Bare, Rob

Hearing Time
1:30 PM

Result
Matter Heard

Comment
Court's Prove Up Hearing Re: Testimony to Plaintiff's Damages

Parties Present ▲
Plaintiff

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, John Allen

Attorney: Haskin Esq, Richard Edward

Plaintiff: Lytle, Trudi Lee

Attorney: Haskin Esq, Richard Edward

05/15/2017 Order Granting ▼

Order Granting - ORDG

Comment
Order Granting Plaintiff John Allen Lytle and Trudi Lee Lytle's, as Trustees of the Lytle Trust, Punitive Damages After Hearing

05/15/2017 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ

Comment
Notice of Entry of Order Granting Punitive Damages After Hearing

07/25/2017 Abstract of Judgment ▼

Abstract of Judgment - AOJ

Comment
Abstract of Judgment

09/29/2017 Ex Parte Motion for Order Allowing Examination of Judgment ▼

Ex Parte Motion for Order Allowing Examination of Judgment - EXPM

Comment
Ex Parte Motion for Judgment Debtor's Examination and Production of Documents

REP
Richard E. Haskin, Esq.
Nevada State Bar # 11592
GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144-0596
(702) 836-9800

Attorneys for Defendant
TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST

DISTRICT COURT

CLARK COUNTY, NEVADA

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,

Plaintiff,

v.

TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST; JOHN DOES I through V, inclusive, ROE ENTITIES I through V, inclusive,

Defendants.

Case No.: A-17-765372-C
Dept.: XVIII

DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST REPLY TO OPPOSITION TO COUNTERMOTION FOR SUMMARY JUDGMENT

Date: March 21, 2018
Time: 9:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs 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 (collectively "Plaintiffs") make every attempt to appeal to a simplistic and superficial fairness argument while ignoring the realities of common interest community law and the obligations that coincide with ownership in a common interest development. Plaintiffs' pitch is simple – we were not parties to the underlying litigation in which Defendants TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (the "Lytles"); therefore, we cannot be held responsible for the judgments obtained therein. While the theme is palatable to a simple sense of equity, it ignores a more complex parity that exists. By virtue of ownership within Rosemere Estates Property Owners' Association (the "Association") and necessary membership therein, Plaintiffs are vested with certain rights and assume obligations that the law imposes. One such imposition is that an owner's unit is essentially an asset of the Association and is subject to a judgment creditor's lien. *See* NRS 116.3117. An owner's unit also is subject to assessment by the Association to satisfy a debt, such as a judgment. *See* NRS 116.3115. If the owner refuses to pay the assessment, the Association can place a lien against the property and foreclose.

The Nevada Common Interest Ownership Act provides mechanisms by which a creditor can lien a unit within a common interest community, whether that be through an interpretation of the Act's definitions or direct reference to NRS 116.3117. The lien is not tantamount to a judgment against the individual nor does such right impart any personal liability. Rather, the lien right recognizes that each unit within an association, owned or unowned, is part of the association.

The only matter that complicates this case is that the Association was declared a *limited purpose association* after the Lytles prevailed in a lengthy lawsuit seeking such declaration. Admittedly, the full breadth of Chapter 116 does not touch limited purposes associations. However, the Act, by virtue of its definitions, permits a judgment creditor to lien each unit within the Association because each unit is a part of the Association.

Further, the Association existed as a full-blown unit owners' association subject to the entirety of Chapter 116 and the Amended CC&Rs at all stages of the litigation against the Lytles, and equity provides that the Lytles can exercise those rights afforded them by Chapter 116 and the Amended CC&Rs. The fact that they prevailed should not now forbid them from enjoying a

privilege of the law that the Association would have benefited from had it prevailed. Such a result produces an absurd inequity.

II. LEGAL ARGUMENT

A. Plaintiffs Are Not Required To Be Parties In The Underlying Litigation For A Judgment Against The Association To Attach To Their Property

Plaintiffs spend a considerable amount of their briefing to convince the Court that due to their not being parties to the underlying litigation, they cannot be bound by a judgment against the Association. The argument is just plain wrong.

Disregarding for a moment the question of whether NRS 116.3117 applies to the Lytles in this case. NRS 116.3117 provides:

> 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.

[Emphasis added.] Quite succinctly, Nevada's Common-Interest Ownership Act, set forth in Chapter 116, provides a judgment creditor has a lien "against all of the units in the common-interest community at the time the judgment was entered." NRS 116.3117(1)(a).[1] Plaintiffs own units within the Association. Therefore, a "judgment for money against the association…is a lien…against…all of the units" in Rosemere Estates, including Plaintiffs' units. This rule relates in no way to whether Plaintiffs were parties to any lawsuit.

Nevada is not alone in providing such a statutory remedy to creditors. The District of Columbia provides that "[a] judgment for money against the unit owners' association shall be a lien against any property owned by the unit owners' association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established." Dst. Columbia Code § 42-1903.09(d).

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[1] Nevada's Common-Interest Ownership Act is modelled after the Uniform Common Interest Ownership Act, which is adopted, in one form or another, by most states.

In *D.R. Horton, Inc. v. Eighth Judicial Dist. Court,* 125 Nev. 449, 215 P.3d 697 (2009), the Supreme Court held that "provisions of NRS Chapter 116, among other sources, demonstrate that a common-interest community includes individual units…" *Id.*, 125 Nev. at 451, 215 P.3d at 699. Thus, the Supreme Court concluded that a homeowners' association has standing to file representative actions on behalf of its members for construction defects of units.

Plaintiffs blanket argument that by being third parties to a lawsuit against the Association, they cannot be held responsible counters other areas of common-interest community law. For example, the Association could impose a special assessment against each unit owner to pay a judgment against it because Plaintiffs' units are assets of the Association. In *James F. O'Toole Co., Inc. v. Los Angeles Kingsbury Court Owners' Ass'n*, 126 Cal.App.4th 459 (2005), the California appeals court dealt with the breadth of the Association's power, indeed duty, to impose a special assessment on unit owners to pay a judgment against the association. Therein, a general contractor obtained a sizeable judgment against the association after it failed to pay the contractor for earthquake remediation work. *Id.* The contractor filed a motion to impose a special emergency assessment against each of the unit owners within the association.[2] *Id.* at 560. The California Court of Appeals imposed the assessment (against the Association's will), stating that the imposition of a special assessment does not "transform the homeowners into judgment debtors or otherwise make them personally liable for the debts of the Association." *Id.* Thus, the court concluded, the contractor did not have its contractual remedies against the homeowners. *Id.* The court further reasoned that when the contractor obtained a judgment against the association, the association was compelled to look to its members to satisfy that judgment. *Id.*

In addition to special assessments, the Nevada legislature provides a judgment creditor with a remedy to lien each and every unit within the Association. *See* NRS 116.3117. This statute recognizes the dilemma spotlighted by the *O'Toole* case – associations are often unwilling to levy special assessments against homeowners, compelling creditors to burden the courts with additional

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[2] California does not provide a statutory remedy for judgment creditors akin to NRS 116.3117.

litigation. The present case is an ideal example of this very conflict. One of the Plaintiffs in this case, Raynaldo G. Sandoval, was President of the Board at the time the Lytles prevailed before the Supreme Court in the NRED 1 and NRED 2 Litigation, after which time he abandoned his position along with the other Board members and left Rosemere Estates without a Board. *See* Declaration of Trudi Lytle in Support of Motion for Summary Judgment in NRED 3 Litigation, ¶¶ 9-12, Exhibit A. The Board members no doubt abandoned their respective positions because of the certain conflict in having to specially assess each unit within the community, including their own. There are eight (8) units in Rosemere Estates, other than the Lytles. The Lytles' judgments total nearly $1,500,000.00,[3] which would mean this Board, had it remained, would be forced to assess each unit, including their own, over $200,000.00. This is the precise conflict necessitating a creditor's right to lien the units, rather than rely on the conflicted association to specially assess.

Indeed, the drafters of the Uniform Common Interest Ownership Act, which was adopted by the Nevada legislature and codified in Chapter 116, provided explicit responsibility for residents to pay the judgments against an association. *See* UCIOA § 3-117, 7 ULA 605 (1994). The drafters reasoned that pressuring residents through a direct statute is a more effective collection proceeding for creditors than relying on the association as the intermediary to levy assessments and then lien its own residents. UCIOA § 3-117, cmt. 3 at 607. The association, with few assets to satisfy a judgment against itself, will make an additional assessment against the unit owners to cover the judgment; and, even if it refuses, a court can order a garnishment on the association's accounts, and the association would need to levy special, but necessary, assessments against its residents to continue its normal operation. *Id.* at 608-09.

Unlike shareholders in typical corporations, individual homeowners within a homeowners' association can be held liable, directly or indirectly, for the liabilities of the association. *See, e.g.* NRS 116.3117, *see also* Cal. Civ. Code Ann. § 1365.9 (West 2004); Colo. Rev. Stat. § 38-33.3-311 (2003); Fla. Stat. Ann. § 718.119 (West 2004), *Davert v. Larson*, 163 Cal. App. 3d 407 (1985) (holding that tenants in common who delegate control and management to the association remain

[3] The judgments total $1,482,022.11; however, the judgments are earning interest at the legal rate since entered and are now well over $1,500,000.00.

joint and severally liable for tortious acts or omissions by the association against third parties),; *Dutcher v. Owens*, 647 S.W.2d 948 (Tex. 1983) (holding that owners were vicariously liable for the homeowners' association, but only to the extent of the owners' proportionate ownership in the common area. The logic behind this is that residents delegate control and management to the association, as well as providing full financial support to the association and thus, should be fully responsible for the association's liability. In other words, an association's excessive liability is equated into a special assessment levied upon residents according to their pro rata share in the community. In Nevada, like most other states, residents are obligated to pay special assessments. NRS 116.3115.

The drafters of the UCIOA recognized the difference between associations and corporations. Although the drafters purport that the UCIOA creates "almost identical" obligations for community associations compared to corporations, the drafters acknowledge that an association should not provide immunity to members. UCIOA § 3-117(a) cmt. 4-5, 608. Community associations do not serve the same *entrepreneurial function* as a corporation, thus it is reasonable that homeowners carry full liability for the association, even when the homeowner has little control over the day-to-day business conducted by the Board. *Id.* at cmt. 5, 609. The drafters of the UCIOA found personal liability of homeowners preferable to the sale of common elements such as golf courses or swimming pools, highlighting the preference in favor of the continuation, rather than dissolution, of the community association. Consequently, the units in the community "itself should be viewed as equity property of the association capable of being reached by judgment creditors in satisfaction of the judgment." *Id.*[4]

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[4] Corporation statutes provide shareholders immunity from liability for debts of the corporation to encourage investment in corporations whose entrepreneurial activities in the marketplace contribute to the general wealth and well-being of society. The common interest community association does not serve the same entrepreneurial function. It seems equitable and reasonable as a matter of social policy, that an individual homeowner who would be fully liable for debts incurred in the renovation and maintenance of his home or for torts caused by his failure to adequately maintain the premises should not be able to entirely avoid that liability through the device of organizing with other homeowners into a condominium or planned community association.

Simply stated, Plaintiffs argument that they cannot be held responsible for a judgment against the Association is a fallacy contradicted by the wealth of common interest community law. Nevada unequivocally provides two distinct mechanisms to compel homeowners to pay judgments against the Association. First, the Association can specially assess each owner for a proportional share of the judgment to the extent the Association's budget cannot satisfy the same (NRS 116.3115), and second, a judgment creditor can place a lien on each unit to satisfy the debt. NRS 116.3117. The creditor can elect each remedy afforded to it.

B. A Plain Reading Of NRS 116 Permits The Lytles To Lien Plaintiffs Property, Even As A Limited Purpose Association

The Lytles may record the Abstracts of Judgment against Plaintiffs' properties within the Association pursuant to provisions of NRS 116, even though the Association is now declared a limited purpose association. The foregoing right is prescribed by provisions of Chapter 116 applicable to limited purpose associations.

NRS 17.150(2) provides, in pertinent part:

> A transcript of the original docket or an abstract or copy of any judgment or decree of a district court of the State of Nevada or the District Court or other court of the United States in and for the District of Nevada, the enforcement of which has not been stayed on appeal, certified by the clerk of the court where the judgment or decree was rendered, may be recorded in the office of the county recorder in any county, and when so recorded it becomes a lien upon all the real property **of the judgment debtor** not exempt from execution in that county, owned by the judgment debtor at the time, or which the judgment debtor may afterward acquire, until the lien expires.

[Emphasis added.]

Each unit, owned or unowned, within the Association is property **of the Association**, as set forth in Chapter 116. Under the *definitions* section of Chapter 116, NRS 116.021 defines a "common interest community"[5] as all "real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration."

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[5] It is uncontested that the Association is a "common interest community."

The Original CC&Rs describe each of the nine (9) units within the Association. Original CC&Rs, ¶2, Exhibit A to the Opposition and Countermotion (referring to the "Lots 1 through 9 of Rosemere Court" in the definition above, thereby including Respondents lots, which Respondents do not dispute).[6]

NRS 116.093 defines a "unit" as the "physical portion of the common-interest community designated for separate ownership or occupancy…" Therefore, the common interest community includes each and every unit therein, whether owned or unowned. In the present case, the Association includes each unit therein, including Plaintiffs' units.

The Lytles, as judgment creditors against the Association, can place a lien against all property of the Association, which pursuant to the statutes cited herein, necessarily includes Plaintiffs' properties. *See* NRS 116.021, 116.093.

C. NRS 116.4117 And NRS 116.3111 Are Clear And Unambiguous And Not Subject To Reference Beyond The Plain Meaning of The Statutes

In addition to a direct reading of the language of NRS 116 and application of NRS 116.021 and 116.093, as set forth above, the Lytles provided the Court with an alternative route to applying NRS 116.3117 in this case. Specifically, NRS 116.4117(2), which unquestionably applies to limited purpose associations, provides that an owner (within even a limited purpose association) may pursue a civil action against the association, similar to what the Lytles did in the NRED Litigation.[7] NRS 116.3111, which is specifically referenced in 116.4117, provides that "[l]iens resulting from judgments against the association are governed by NRS 116.3117."

Plaintiffs, to discredit the plain reading of the statute, argue that the operative language in 116.3111 directing the reader to 116.3117 did not exist until 2011. When a statute is facially clear, the Court should give effect to the statute's plain meaning. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court (First Light I)*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). When a statute is clear on its face, the court should not go beyond the language of the statute to determine the legislative intent.

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[6] The Original CC&Rs were recorded against each of the nine (9) lots within the Association, and each owner, or prospective owner, including Plaintiffs.

[7] NRS 116.4117(7) provides that an owner's right to sue the association is available to the owner in addition to any other remedy or penalty.

Robert E. v. Justice Court, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). Further, where a former statute is amended by subsequent legislation, the subsequent legislation is persuasive evidence of the legislation's original intent. 2B Norman J. Winger & JD Shambie Singer, Sutherland Statutory Construction § 49.11, at 145 (7th ed. 2008); *see also Public Employees' Benefits Program v. Las Vegas Metro. Police Dept.*, 124 Nev. 138, 156-57, 179 P.3d 542, 554-55 (2008).

In the present case, the language of NRS 116.3111 is quite clear - if a judgment is obtained against the association, liens resulting therefrom are governed by NRS 116.3117.[8] The timing of the addition of NRS 116.3117 is irrelevant as there is no ambiguity in the statute that would require the Court to look beyond the plain meaning of the language. Plaintiffs cite to no actual legislative language to provide the intent, only the timing of an amendment and suggested reasoning in that timing. The argument lacks both foundation and relevancy.

Further, Plaintiffs cite discussion by Assemblyman MacArthur in a May 13, 2011 session, which is a misguided attempt to mislead the Court. As an initial matter, there is no May 13, 2011 session notes. *See* Legislative History, Exhibit B. The proposed amendment contained in Senate Bill 204 states that the purpose of the amendment is to "enact certain amendments to the UCIOA which related to the governance of common-interest communities." 2011 Nevada Laws Ch. 389 (S.B 204), at Sections 32-51, Exhibit D.

The Nevada Senate Committee Minutes for the amendment to NRS 116.3111, noted as Section 44 of Senate Bill 204, demonstrate the Committee was adding a provision to guard unit owners against personal liability "or damages to the common elements just by the fact of being unit owners," and an additional clarification that the proper party in a lawsuit involving common elements is the association. NV Senate Comm. Min., March 16, 2011, Exhibit C; *see also* NV Senate Comm. Min., May 10, 2011, Exhibit E. With respect to the reference to NRS 116.3117, the Committee clarified that "[s]ubsection 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

[8] Plaintiffs concedes in Plaintiffs' Opposition that 116.3111 provides that a creditor can record a judgment lien against a unit owner, and to that end, the parties agree.

lien on units. The change is that it is also a lien on any other property the association may own." There is no discussion or proclamation that the statute deals solely with condominium units.

Plaintiffs also argue NRS 116.4117 and 116.3111 contradict one another. This contention is hard to follow in as much as NRS 116.4117 specifically points to NRS 116.3111 as a limitation on actions against the association brought by an owner. The two statutes clearly work in conjunction with one another. NRS 116.3111 is intended, generally, to limit liability against individual unit owners (NRS 116.3111), while maintaining a creditor's right to enforce a judgment against a unit within the association (NRS 116.3111(3), NRS 116.3117).

D. The Court Should Permit The Lytles To Enforce The Amended CC&Rs And Entirety of NRS 116 Because The Association Enforced The Same During The Entire Pendency Of The NRED Litigation

The effect of rescission is to void a contract *ab initio*. *Long v. Newlin*, 144 Cal.App.2d 509, 512 (1956), *see also DuBeck v. California Physicians' Service*, 234 Cal.App.4th 1254 (2015), *Little v. Pullman*, 219 Cal.App.4th 558, 568 (2013) (holding that once a contract has been rescinded it is void ab initio, as if it never existed). Thus, the effect is exactly the same. *Id.*

Plaintiffs contend that a party cannot enforce the benefits of a contract declared void *ab initio*. This matter was dealt with in two Nevada Supreme Court cases. In *Bergstrom v. Estate of DeVoe*, 109 Nev. 575, 854 P.2d 860 (1993), a plaintiff filed suit for rescission or, in the alternative, for damages from breach of contract. *Id.* at 578, 854 P.2d at 862. The district court found in favor of the plaintiff and rescinded the contract, declaring it void *ab initio*. *Id.* The district court also awarded the plaintiff breach of contract damages. *Id.* The Nevada Supreme Court disagreed and ultimately precluded the plaintiff from recovering damages for breach of contract together with rescission. *Id.* The Supreme Court stated that under general common law legal principles, it could not award both rescission and breach of contract damages because doing so would be double recovery. *Id.*

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In *Mackintosh v. Cal. Fed. Sav. & Loan Ass'n.*, 113 Nev. 393, 935 P.2d 1154 (1997), however, the Supreme Court overturned a district court's refusal to award attorneys' fees on a rescinded contract declared void *ab initio*. *Id.* at 405, 406, 935 P.2d at 1162. The *Mackintosh* court found that an award of attorneys' fees to a grieving party following rescission was not akin to double recovery, as opposed to an award of breach of contract damages. *Id.* The key principal at issue is that a court should not treat a void contract as if it never existed. *Id.*

The issue before this Court is not a matter of double recovery that would implicate *Bergstrom*. Rather, the equitable principal in play is the same as *Mackintosh* – the Court should not disregard the fact that the Amended CC&Rs were in full force and effect from 2007 through July 29, 2013. Once more, in the NRED 2 Litigation, the parties stipulated that the Amended CC&Rs were valid and enforceable, so the "legal fiction" did not even exist, rather enforceability was actual.

The Court should recognize the reality between the Lytles and the Association from July 3, 2007 through July 29, 2013. During this time, the Association fully enforced the Amended CC&Rs and the entirety of NRS 116. The Lytles' initiation of the NRED Litigation was pursuant to the Amended CC&Rs and governed by that governing document as well as the entirety of Chapter 116. The Association was not a limited purpose association during this time. The Lytles obtained judgments against the Association due to the Association's actions taken to both defend and impose its position as a unit owners' association. Had the Association, and not the Lytles, prevailed in the NRED Litigation, the Association would enjoy all of the benefits as a judgment creditor against the Lytles, including the right to lien the Lytles' property and foreclose thereon.

The legal fiction, during this same time, is that the Association was a limited purpose association. While that is now true due to the Lytles' sole efforts, that truth was not reality during the NRED Litigation.[9] The Lytles should be afforded the same rights the Association would have enjoyed had it prevailed. A finding to the contrary produces an absurd result that only one party can benefit as a prevailing party.

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[9] The entire basis for the NRED 1 Litigation was to void the Amended CC&Rs which were being enforced and reposition the Association as a limited purpose association.

E. Judicial Estoppel Does Not Bar Application Of The Amended CC&Rs To The Enforcement Of The Judgment Against The Association

Judicial estoppel applies to prevent a party from taking inconsistent legal positions. *Marcuse v. Del. Webb Communities, Inc.*, 123 Nev. 278, 288, 163 P.3d 462 (2007). In the present case, the Lytles are not making inconsistent arguments. The Lytles steadfastly maintained in the NRED 1 Litigation that the Amended CC&Rs were unlawfully adopted and should be declared void *ab initio*.[10] And every court has agreed. In the present action, the Lytles articulate that while the Amended CC&Rs were declared void *ab initio* on July 29, 2013, and the Association went from being a unit owners' association to a limited purpose association on that same date, the judgment enforcement mechanisms of the Amended CC&Rs and NRS 116.3117 should be available to the Lytles as a matter of equity. *See* Section II(C), supra.

F. The District Court's Order In Case No. A-16-747800-C Is Interlocutory, Not Final, And Not Binding On This Court

Plaintiffs argue that the Order Granting Partial Summary Judgment and entering an injunction in this consolidated case, by Judge Timothy C. Williams, is res judicata and necessarily binding on this Court. Now, in the alternative, Plaintiffs argue that Judge Williams' order has established the "law-of-the-case." However, Nevada case law contradicts this argument and establishes that this Court can revisit Judge Williams' prior rulings.

1. The Court's Order Granting Partial Summary Judgment Is Not A Final Order

As set forth in the Lytles' Opposition and Countermotion, the doctrines of res judicata and issue preclusion are "triggered when judgment is entered." *Univ. of Nev. v. Tarkanian*, 1110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). There must be a ***final determination*** by a court of competent jurisdiction. *Id.* An order granting partial summary judgment is not a final order or judgment where issues of damages remain. *Mid-Century Ins. Co. v. Pavilkowski*, 94 Nev. 162, 576 P.2d 748 (1978), *see also Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986). Further, there

[10] In the NRED 2 Litigation, the parties stipulated that the Amended CC&Rs governed and, consequently, that the Association was a full-blown unit owners' association, subject to the entirety of NRS 116.

was no certification by the court that this was a final judgment under NRCP 54(b). The Order Granting Partial Summary Judgment is not a final order as claims remain in that case. *See generally* Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law, Exhibit V to Opposition and Countermotion.

2. This Court Can Revisit Prior Rulings At its Discretion As There Is No "Law-Of-The-Case" Yet In This Action

The law-of-the-case doctrine "refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases." *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C.Cir.1995). "Normally, 'for the law-of-the-case doctrine to apply, the appellate court must actually address and decide the issue explicitly or by necessary implication.'" *Reconstruct Co. v Zhang*, 317 P.3d 814, 818 (2014) (quoting *Dictor v. Creative Mgmt. Servs., L.L.C.*, 126 Nev. ——, ——, 223 P.3d 332, 334 (2010)), *see also Dictor v. Creative Management Services, LLC*, 126 Nev. 41, 44-46, 223 P.2d 332, 335 (2010) (holding that in order for the law-of-the-case doctrine to apply, the appellate court must specifically and actually address and decide the issue). A trial court's ruling does not constitute law of the case. *Byford v. State* 116 Nev. 215, 232, 994 P.2d 700, 711-12 (2000). The issue must be adjudicated on appeal. *Id.*

Indeed, a court has the discretion to revisit prior rulings in the same case, provided such rulings and issues decided therein have not been decided by the appeal or Supreme Court. *Bejarano v. State*, 122 Nev. 1066, 1074-75, 146 P.3d 265, 271-72 (2006). Thus, in *Dictor*, supra, the Supreme Court held that a district court could entertain a renewed motion for summary judgment based on new and alternative statutory defenses that were not raised in a prior summary judgment motion.

In the present case, the Court has the jurisdiction and discretion to revisit all prior rulings, specifically Judge Williams' Order Granting Partial Summary Judgment.

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3. The Court's Order Granting Partial Summary Judgment Only Applied To The NRED 1 Litigation

Judge Williams' Order Granting Partial Summary Judgment only applied to Abstracts of Judgment recorded in the NRED 1 Litigation. There is an important distinction this Court needs to make between the NRED 1 and NRED 2 Litigation.

In the NRED 2 Litigation, the Lytles and the Association stipulated that the Amended CC&Rs were valid and enforceable. *See* Stipulation, Exhibit H to the Opposition and Countermotion, *see also* Complaint in NRED 2 Litigation, ¶ 11, Exhibit I to the Opposition and Countermotion. Plaintiffs dismiss this distinction as irrelevant. However, the Nevada Supreme Court would disagree with Plaintiffs argument, stating that the parties' stipulation to the Amended CC&Rs was binding and authoritative to the NRED 2 Litigation. Supreme Court Order Re: NRED 2 Litigation, Fn. 2, Exhibit U to Opposition and Countermotion.

In the NRED 2 Litigation, there is no declaration that the Amended CC&Rs were *void ab initio*. Indeed, the Amended CC&Rs define the rights, liabilities and obligations of the parties. The Lytles obtained a judgment in the NRED 2 Litigation in the total amount of $1,103,158.12, which amount was awarded pursuant to the Amended CC&Rs and NRS, Chapter 116.

G. The Lytles' Judgments Against The Association Are Not Akin To Default Judgments

In an effort to somehow discredit the Lytles' judgments against the Association, Plaintiffs argue that the judgments are akin to defaults. The facts demonstrate otherwise, and any lack of fight by the Association at the conclusion of the litigation should be blamed on Plaintiffs.

1. The NRED Litigation Was Substantial And Contentious

The Court can easily quantify how contentious and lengthy the NRED Litigation was by virtue of the $586,508.44 in attorneys' fees awarded to the Lytles (in the various NRED Litigation). The litigation commenced in 2007 and concluded in 2016. During this time, the case proceeded from arbitrations, to district court litigation, to the Nevada Supreme Court on three occasions, to remands to the district court, and then to conclusion in the Lytles' favor. It should also be noted that the Association, not the Lytles, appealed the NRED 1 Litigation to the Nevada Supreme Court. The

Association was represented the entire time. The Association's prior counsel withdrew in 2016, **after** the Lytles prevailed before the Nevada Supreme Court in the NRED 1 and NRED 2 Litigation.

2. Plaintiff Ray Sandoval Was The Board President And Is At Fault For The Association's Failure To Retain Counsel At The Conclusion Of The NRED Litigation

What is oddly omitted from Plaintiffs' characterization of the Lytles' judgments is that Plaintiff Raynaldo G. Sandoval was the President of the Board, until he and the other Board members abandoned their positions without notice. Declaration of Trudi Lytle in Support of Motion for Summary Judgment, ¶¶ 9, 11, Exhibit A (hereto). Mr. Sandoval received every notice from the various courts as he was included on the service list. Mr. Sandoval affirmatively chose to do nothing in response to each and every pleading he received.

III. CONCLUSION

For the reasons set forth herein, the Lytles respectfully request that the Court deny Plaintiffs' Motion for Summary Judgment, or in the alternative, for Judgment on the Pleadings. The Lytles also respectfully request that the Court grant summary judgment in favor of the Lytles on the grounds that the Abstracts of Judgment are lawfully recorded pursuant to the Amended CC&Rs and NRS, Chapter 116, and that the Lytles be permitted to record abstracts of judgment obtained in the NRED 2 and NRED 3 Litigation. The Lytles also request an award of attorneys' fees and costs and such other relief as the Court deems proper.

DATED: February 9, 2018

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

By: _____

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CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on March 14, 2018, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST REPLY TO OPPOSITION TO COUNTERMOTION FOR SUMMARY JUDGMENT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

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EXHIBIT "A"

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CLERK OF THE COURT

DEC
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LYTLE, as Trustees of the Lytle Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the Lytle Trust,

Plaintiff,

v.

ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION; and DOES 1 through 10, inclusive,

Defendants.

CASE NO. A-15-716420-C
Dept.: XXX

DECLARATION OF TRUDI LEE LYTLE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I, Trudi Lee Lytle, do declare and state as follows:

1. I am a co-trustee of the Lytle Trust, Plaintiff in the above-captioned litigation. I have personal knowledge of the following facts and if called upon to testify to the truth thereof, I could and would do so competently.

2. At all relevant times, I, together with my husband, John Allen Lytle, owned property located at 1930 Rosemere Court, Las Vegas, Nevada, Assessor Parcel No. 163-03-313-009, which was and is part of Rosemere Estates ("Rosemere Estates"). We hold our lot in our trust, the Lytle Trust. We purchased the lot on November 6, 1996, from the original buyer who first purchased it from Baughman & Turner Pension Trust (the "Developer) on August 25, 1995.

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3. Rosemere Estates consists of nine (9) properties, which originally were sold as undeveloped lots. As an owner of one (1) of nine (9) lots, the Lytle Trust represents 11% of the voting power.

4. When we purchased in Rosemere Estates, we were provided with the community's CC&Rs, which were drafted by the Developer, and dated January 4, 1994 (the "CC&Rs"). The CC&Rs are attached as **Exhibit 1** to the Request for Judicial Notice filed concurrently herewith, and are incorporated herein by reference.

5. The CC&Rs created a "property owners' committee" ("Owners Committee"), tasked with specific maintenance obligations. The Owners Committee was designed to maintain the four (4) exterior wall planters, entrance way planters, perimeter wall and frontage, the entrance gate, and the private driveway. The Owners Committee had no additional powers, duties or obligations.

6. On February 25, 1997, Linda Lamothe and Marge Boulden, two Rosemere Estates homeowners who served on the Owners Committee, formed "Rosemere Estates Property Owners' Association" on February 25, 1997, a NRS 82 non-profit corporation, for the purpose of holding a bank account for the Owners Committee and performing the actions required of the Owners Committee and Nevada Revised Statutes, Chapter 116. The Articles of Incorporation are attached as **Exhibit 2** to the Request for Judicial Notice, filed concurrently herewith.

7. Other than the first two to three years when the Owners Committee was limited to two members, the Owners Committee has consisted of three members, a President, Secretary and Treasurer.

8. The Association held Board elections every three (3) years through March 2010, pursuant to the protocols and methodology of NRS 116.31034. Each election cycle, homeowners would be invited to submit applications to run for the Board. Thereafter, election forms would be distributed, and an election would take place wherein three (3) Board members were elected every three (3) years.

9. The Board last held an election on March 24, 2010. The Board members in place from 2010 through July 2013 were as follows: Ray Sandoval (President), Orville McCumber (Secretary), and Johnnie McCumber (Treasurer).

10. On January 27, 2014, during an unrelated court hearing involving the Lytle Trust and the Association, Orville McCumber, former Board Secretary, testified under oath that he no longer sat on the Association's Board. I attended this hearing and heard the foregoing testimony. Attached as **Exhibit 3** to the Request for Judicial Notice is a transcript from that hearing, wherein Mr. McCumber testifies that he no longer sits on Association's Board. The foregoing litigation, brought by the Lytle Trust, resulted in the revocation of unlawfully recorded Amended CC&Rs, which were declared *void ab initio* by the court. The Lytle Trust recently prevailed in an appeal before the Nevada Supreme Court brought by the Association.

11. In September 2014, Ray Sandoval, former Board President, and I had a telephone conversation. During this call, and in response to my inquiry regarding the then current state of the Board, Mr. Sandoval told me that the Board "dissolved" and had not conducted any business since July 29, 2013. Further, Mr. Sandoval stated that the Board had not conducted any meetings since July 2013, and did not intend on conducting any future meetings or conducting any future Association business. It was abundantly clear from this conversation that the Board simply does not exist, and all former officers abandoned their positions.

12. Presently, there is no sitting and acting Board for the Association. The Board has not conducted any meetings

13. As a result of not having a Board, the Association cannot conduct business and maintain the community. The Rosemere Estates community has begun to dilapidate.

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14. The Association has not paid its annual dues to the Nevada Secretary of State, the Nevada Department of Real Estate or filed any of the required forms with these agencies. As it stands, the Association is in "revoked" status with the Nevada Secretary of State. Attached as **Exhibit 4** to the Request for Judicial Notice is Rosemere Estates status with the Nevada Secretary of State.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 7th day of April 2016.

TRUDI LEE LYTLE

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on April 7, 2016, she served a copy of the foregoing **DECLARATION OF TRUDI LEE LYTLE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** by U.S. Mail:

Rosemere Estates Owners Association
c/o Ray Sandoval
1860 Rosemere Court
Las Vegas, NV 89117

Shara Berry

AN EMPLOYEE OF
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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EXHIBIT "B"

Legislative History Materials (17)

Laws 2011, c. 389, § 44, eff. Jan. 1, 2012

Reports

1. June 03, 2011, Nevada Senate Committee Minutes, June 3, 2011, NV S. Comm. Min., 6/3/2011
2. May 20, 2011, Nevada Assembly Committee Minutes, May 20, 2011, NV Assem. Comm. Min., 5/20/2011
3. May 10, 2011, Nevada Assembly Committee Minutes, May 10, 2011, NV Assem. Comm. Min., 5/10/2011
4. Mar. 25, 2011, Nevada Senate Committee Minutes, March 25, 2011, NV S. Comm. Min., 3/25/2011
5. Mar. 16, 2011, Nevada Senate Committee Minutes, March 16, 2011, NV S. Comm. Min., 3/16/2011
6. Feb. 28, 2011, Nevada Bill History, Seventy-Sixth Session Senate Bill 204, NV B. Hist., 76th Sess. S.B. 204
7. Feb. 28, 2011, Nevada Bill History, Seventy-Sixth Session Senate Bill 204, NV B. Hist., 76th Sess. S.B. 204

Journals

8. June 05, 2011, Nevada Senate Journal, Seventy-Sixth Session, One Hundred and Nineteenth Legislative Day, NV S. Jour., 76th Sess. No. 119
9. June 04, 2011, Nevada Assembly Journal, Seventy-Sixth Session, One Hundred and Eighteenth Legislative Day, NV Assem. Jour., 76th Sess. No. 118
10. June 04, 2011, Nevada Senate Journal, Seventy-Sixth Session, One Hundred and Eighteenth Legislative Day, NV S. Jour., 76th Sess. No. 118
11. June 02, 2011, Nevada Senate Journal, Seventy-Sixth Session, One Hundred and Sixteenth Legislative Day, NV S. Jour., 76th Sess. No. 116
12. May 30, 2011, Nevada Assembly Journal, Seventy-Sixth Session, One Hundred and Thirteenth Legislative Day, NV Assem. Jour., 76th Sess. No. 113
13. May 29, 2011, Nevada Assembly Journal, Seventy-Sixth Session, One Hundred and Twelfth Legislative Day, NV Assem. Jour., 76th Sess. No. 112
14. Apr. 27, 2011, Nevada Assembly Journal, Seventy-Sixth Session, Eightieth Legislative Day, NV Assem. Jour., 76th Sess. No. 80
15. Apr. 26, 2011, Nevada Senate Journal, Seventy-Sixth Session, Seventy-Ninth Legislative Day, NV S. Jour., 76th Sess. No. 79
16. Apr. 25, 2011, Nevada Senate Journal, Seventy-Sixth Session, Seventy-Eighth Legislative Day, NV S. Jour., 76th Sess. No. 78
17. Feb. 28, 2011, Nevada Senate Journal, Seventy-Sixth Session, Twenty-Second Legislative Day, NV S. Jour., 76th Sess. No. 22

EXHIBIT "C"

NV S. Comm. Min., 3/16/2011

Nevada Senate Committee Minutes, March 16, 2011

March 16, 2011
Nevada Senate Committee on Judiciary
Seventy-Sixth Session, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:07 a.m. on Wednesday, March 16, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair

Senator Allison Copening, Vice Chair

Senator Shirley A. Breeden

Senator Ruben J. Kihuen

Senator Mike McGinness

Senator Don Gustavson

Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst

Bradley A. Wilkinson, Counsel

Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Karen D. Dennison, Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada

Michael Buckley, Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada

Renny Ashleman, City of Henderson

Michael Schulman

Robin Huhn, D.C.

Michael Randolph, HOA Services

John W. Griffin, Nevada Justice Association

Tim Stebbins

Bob Robey

Jonathan Friedrich

John Radocha

CHAIR WIENER:

I will open the hearing on Senate Bill (S.B.) 204.

SENATE BILL 204: Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6): I am sponsoring S.B. 204 at the request of the Uniform Law Commission.

The Nevada Legislature adopted the 1982 version of the Uniform Common-Interest Ownership Act (UCIOA) in 1991. It was a culmination of a nine-year effort by the Commission to offer comprehensive legislation providing an overall structural scheme applicable to the three forms of common ownership of real property: condominiums, planned communities or planned unit developments and cooperatives. These are now referred to as common-interest communities (CICs).

The Commission was established in 1892 and is a nonprofit, unincorporated association. Its members are practicing lawyers, judges, legislators, legislative staff and law professors who have been appointed by state governments to research, draft and promote enactment of uniform state laws in areas where uniformity is desirable and practical. State uniform law commissioners come together to study and review the laws of the states to determine areas in which the law should be uniform. It should be emphasized that the Commission can only propose legislation. No uniform law is effective until a state legislature adopts it.

Since it was first written in 1982, the UCIOA has been amended twice by the Commission.

KAREN D. DENNISON (Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada):

The Common Interest Communities Subcommittee is made up of real estate law practitioners. The group is representative of all the stakeholders in this bill, including developers, builders, homeowner associations and managers. We come from different points of view, but we adhere to the Real Property Section's mission statement, which states:

> The Section's proposed legislation or position on legislation must relate closely and directly to the administration of justice. It must involve 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 come within the Section's special expertise and jurisdiction.

In addition, it must be legislation that comes within the Section's special expertise and jurisdiction. For this reason, we did not include every revision of the UCIOA in S.B. 204. We did not include any provision that was political or controversial.

If you recall, last Session this Legislature adopted several uniform act revisions that either were in the 1994 UCIOA Act or the 2008 UCIOA Act. Those had to do with commercial projects, cost-sharing agreements and a definition of CIC. Senate Bill 204 is long and seems daunting at first. However, many of the sections simply move things around to make them easier to find, make stylistic or technical changes or do some wordsmithing. I will point those out as we go through the bill.

You might wonder what the value of a uniform act is. Nevada does not always have a lot of case law to help us interpret laws. A uniform act allows us to look at case law from other jurisdictions that have adopted the same uniform act. That is the value of conforming our law to the uniform provisions, to the extent we can.

I have a handout describing the impact and intent of each section of S.B. 204 (Exhibit C). I will cover sections 2 through 38, and Michael Buckley will cover sections 39 through 61.

Section 2 of S.B. 204 is a universal notice provision. If there is no other provision in law requiring a specific method of giving notice, section 2 specifies the way notice must be given to owners in a CIC. The first method is to send either mail or e-mail to the address designated by the owner. If the owner has not designated an address, the notice can be delivered to the unit by hand or sent to the mailing address. Finally, subsection 2, paragraph (d) allows notice to be given by "Any other method reasonably calculated to provide notice to the unit's owner." This might include posting a notice on a central bulletin board or placing sandwich boards at the entrances. Subsection 2 states that if a good-faith effort is made to give notice and fails, that does not invalidate actions taken at or without a meeting. Subsection 3 states that this provision does not apply to foreclosure notices or to any other provision that specifies the method by which notice is to be given.

Section 3 states that S.B. 204 supersedes any contrary provisions in federal law in the federal Electronic Signatures In Global and National Commerce Act, Pub.L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96. This is not a new provision to Nevada statutory law. *Nevada Revised Statute* (NRS) 107A also contains this language.

Section 4 is a provision entitled "termination following catastrophes" in the UCIOA. It covers termination of a CIC in extreme situations. This provision would apply if substantially all of the units of a CIC are destroyed and normal means of notifying owners are not available. Section 4 provides that in such a circumstance, the executive board "or other interested person" may bring an action in district court to terminate the CIC. The court is given latitude to terminate or reduce the size of the CIC.

Representatives of the city of Henderson have contacted me and expressed concern that a court could force a city to form a maintenance district if the CIC was a blight and if it was not sold as a whole to a third party because of economic conditions. I have looked at the official comments to the UCIOA, and I do not find any evidence that this would be possible. The units' owners are a party to the action, and third parties would have to be brought in separately. It is not our intent that a city would have to form a maintenance district or otherwise be burdened with the cost of the blight or problem.

Section 5 is not a change in the law. It merely moves NRS 116.31036, subsection 3, to a separate section. The same is true of section 6 of the bill, which moves NRS 116.31175 to a separate section.

Section 7 is an important change. Existing law could be read as allowing statutory definitions in NRS 116 to be changed through the declaration or the bylaws of a CIC. This section makes it clear that the terms defined in NRS 116 shall have the meaning set forth in statute and no other.

Sections 8 and 9 are grammatical changes.

Section 10 recognizes that common elements can include property interests outside the plotted subdivision of the CIC. For example, there may be easements outside the subdivision or other interests that both benefit the owners and are subject to the declaration.

Section 11 is a grammatical and conforming correction. The conforming corrections recognize that a declarant can be a person or a group of persons.

Section 12 is a correction recognizing that the executive board of a CIC is often not designated in the declaration but in the bylaws of the CIC.

Sections 13 through 16 are grammatical or stylistic changes.

Section 17 is a conforming change to recognize an exception in another provision of the law.

Section 18 adds to existing law that says that when you are interpreting NRS 116, you must look to the entire body of law that could affect real property or associations, such as the law of corporations. Section 18 adds that this applies to other forms of organization, such as limited liability companies or nonprofit organizations.

Section 19 is not substantive; it eliminates language duplicated in NRS 116.1114, subsection 1.

Section 20 clarifies which provisions of the bill apply to a subdivision located outside of Nevada. These sections relate to the delivery of a public offering statement, which is the disclosure document given to prospective purchasers. A technical correction may be needed to this section. I believe NRS 116.41035 has been omitted. It is not a section in the UCIOA under that numbering sequence.

CHAIR WIENER:

Could you tell where you would put that reference?

MS. DENNISON:

If we change section 20, subsection 2, paragraph (c) to say, "... to the extent applicable, NRS 116.41035, 116.4104 to 116.4107, inclusive ...," that would cover it.

Sections 21 through 27 are all either technical or conforming changes.

Section 28 pertains to further subdivision of units. In this case, "units" includes subdivision lots. This section provides for the reallocation of the allocated interests, such as how assessments are allocated and how votes are allocated. This change recognizes, consistent with the allocation section, that the further subdivision can be reallocated on any basis as provided for in the declaration of conditions, covenants, and restrictions (CC&Rs). That recognizes what is in existing law.

Section 29 adds to owners' easements. Existing law applies only to planned communities such as single-family lot subdivisions. This change recognizes that owner easements are also important or applicable in condos and co-ops, which are two other forms of ownership included in NRS 116. Subsection 3 clarifies that the owner's use of the common elements does not include limited common elements, which are things like patios and balconies that are intended for use by one unit.

Section 30 pertains to amendments to declarations. Subsection 1 is a uniform act change that allows amendment by a percentage other than a majority vote if the declaration provides for it. It could be more or less than a simple majority.

I would like to point out an error in subsection 4 of section 30. The deleted language should be retained, so that the section ends, "... of the units' owners affected and the consent of a majority of the owners of the remaining units."

Section 30, subsection 6 deals with amendments that restrict the use of the unit or the qualifications of persons who may occupy the unit. For example, if an amendment were to restrict the age of the residents of a CIC, it would not apply to persons who purchased before the amendment went into effect. In fact, it would not apply to that unit until it was sold. This is a protection from amendments that did not apply when the unit was purchased.

Section 30, subsection 7 provides that if there is a provision in the declaration that creates special declarants' rights, those provisions may not be amended without the declarant's consent. An example of a special declarant's right would be the right to add additional property to the CIC. Most sophisticated CC&Rs contain these provisions, and this codifies them.

Section 30, subsection 8 is consistent with the concept of an eligible mortgage holder that was adopted by the Federal National Mortgage Association, commonly known as Fannie Mae, some years ago. This provision has to do with which lenders are entitled to notice of amendments. To be eligible for notice of an amendment to the CC&Rs, a lender, guarantor or insurer of the loan must give notice to the homeowners' association (HOA) that it desires such notice. This provision recognizes that an amendment should not be delayed just because the lender fails to respond. It provides that the lender's consent is not required if refusal to consent is not received within 60 days after delivery of notice to the lender.

Section 31 incorporates the new termination provisions from section 4 into the existing termination statute.

Section 32 makes clarification changes. Subsection 3 provides that an HOA must have an executive board. There are many references in existing statute to such boards, and this section clarifies that an HOA must have an executive board to conduct its business. Subsection 4 recognizes that there are other forms of organizations beside those listed.

Section 33, subsection 1 makes it mandatory that the HOA adopt bylaws and adopt and amend budgets. These two powers are permissive in existing law. With respect to the amendment of bylaws, we have added that the bylaws could provide that amendment powers reside in the unit owners. The executive board is only required to amend bylaws if it has the power to do so. The rest of this subsection lists the permissive powers of an HOA.

Section 33, subsection 3 is a clarification as to when the executive board may take action. Many declarations of CC&Rs provide that the executive board is empowered to enforce the provisions of the declaration but is not required to do so. This subsection recognizes that there are certain circumstances in which it would not be in the best interest of the HOA to enforce the CC&Rs.

Enforcement actions can be expensive. Subsection 3 sets criteria the executive board can follow to determine when and when not to enforce the CC&Rs.

Section 33, subsection 4 states that failure to enforce any section of the CC&Rs is not a waiver by the HOA of their right to enforce that section. Enforcement action can be taken in the future under different circumstances as long as their decision to enforce or not is neither arbitrary nor capricious.

Section 34, subsection 1 adds officers to the statutes regarding standards of care for directors. It is clear now that officers and directors of an HOA are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation. This incorporates the nonprofit corporation statute. They are also subject to the business-judgment rule. They are also subject to rules concerning conflict of interest governing officers and directors of nonprofit corporations.

Section 34, subsection 2 specifies actions executive boards may not do. They may not amend the declaration, except as otherwise provided in NRS 116.2117; they may not terminate the CIC; they may not elect members of the executive board except to fill vacancies; and they may not determine the qualifications, powers, duties or terms of office of members of the executive board.

Section 35 is not new. This language was taken from NRS 116.3108, subsection 5.

In Section 36, the language regarding the voluntary surrender of declarant control of an executive board is also not new.

Section 37 was moved from NRS 116.3108.

Section 38 was taken from the UCIOA. Under existing law, an executive board can terminate management contracts, employment contracts and contracts relating to the lease of recreational or parking facilities with the declarant or an affiliate of the declarant. The executive board, which is elected by the owners, has an unlimited time to terminate these contracts, and it may do so without cause. This section would place a two-year statute of limitations on the ability of the owner-controlled executive board to terminate contracts with the declarant. There is no limitation on contracts or

leases not entered into in good faith or unconscionable. If either of those two elements exist, there is no limitation on termination.

SENATOR COPENING:

In section 38, what was the reasoning behind the two-year statute of limitations?

MS. DENNISON:

I do not know. I can only say there would be no certainty in contracts if you had an unlimited time within which to terminate these contracts after the owners took over the executive board. Two years seems like a reasonable amount of time for an owner-controlled executive board to decide a contract is not fair and terminate it.

CHAIR WIENER:

The Legislature cannot bind a future legislature to a course of action. Is there a similar rule governing executive boards of HOAs?

MS. DENNISON:

I do not know of anything that would bind an executive board to decisions made by a prior executive board. The executive board must act within the scope of the CC&Rs, the declaration and the law, but a decision made by one executive board could certainly be changed by another executive board.

CHAIR WIENER:

What is the business-judgment rule?

MS. DENNISON:

I am not prepared to give a definitive answer. In general, the business-judgment rule gives the executive board latitude to exercise good business judgment. It is rather liberally interpreted in favor of the executive board's decisions. Executive board members have a fiduciary duty to unit owners to act in the best interest of the HOA and not in their own self-interest. The business-judgment rule allows the executive board, within that fiduciary duty, to use its best business judgment.

MICHAEL BUCKLEY (Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada):

With regard to the decisions of executive boards, in *Nevada National Bank v. Huff*, 94 Nev. 506, 582 P.2d 364 (1978), the court ruled that the bank could not suddenly start enforcing a rule it had always ignored unless it notified its customers first. The courts have placed limits on the power of an executive board to change its mind if people have relied on the way it has done business in the past.

CHAIR WIENER:

When there is a shift in a practice, would that require some sort of notice that we are changing how we do business?

MR. BUCKLEY:

Yes. If the executive board always did things one way and never enforced its own rules, they would have to give notice of the change.

With regard to the business-judgment rule, it is basically a defense. It means that so long as the executive board acted in good faith and was reasonably informed, its decisions are not going to be second-guessed. A court will not say, "That's not what they should have done." The executive board's business judgment will be upheld.

I would like to clarify a couple of matters of intent. Section 30, subsection 1 states that the declaration could require the approval of another person as a condition of the effectiveness of an amendment. There has been some concern that this might allow a declarant to be the other person. That is not the intent of this provision. The intent is that it might be a lender, a municipality or some similar entity. There are other statutes in NRS 116 that prohibit a declarant from trying to get more power than allowed by law.

The other clarification is in section 34, subsection 2, paragraph (c). Existing law allows directors to fill vacancies. The UCIOA places a limit on the term of people appointed by the executive board, which is an important safeguard for homeowners. Directors may appoint someone to serve either for the unexpired term or until there is an election, but they do not have an unlimited right to fill vacancies.

I will continue going through the provisions of S.B. 204. Most of the changes in section 39 are grammatical changes. Subsection 1, paragraphs (i) and (j) require that bylaws address procedural rules and any other matters required by the law governing that type of entity.

Section 40 moves provisions regarding removal of executive board members to a separate section. This is also covered in S.B. 174, and the language of the two bills will need to be conformed. The intent was that when existing law covered a number of topics, we put it into a separate section so it would be easier to find.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

MR. BUCKLEY:

Section 41 is a technical change. This section now has a cross-reference to section 2.

Section 42, subsection 1 incorporates the concept of ballots that has been added to NRS 116.311, subsection 2. It refers to the ballot provisions of section 43. Subsection 3 clarifies that a quorum is determined when the vote is taken rather than when the meeting starts. Subsection 4 specifies that *Robert's Rules of Order* are to be used as the default procedural reference. The intent is that there be a default way of running meetings if an HOA has not adopted them.

Section 43 deals with ballots. The intent was to allow balloting and specify in greater detail how vote by ballot is to occur. The intent is to lay out a procedure to tell the HOA how to conduct a vote by ballot.

Section 44, subsection 1 states that unit owners are not liable for damages to the common elements just by the fact of being unit owners. Subsection 2 clarifies that the proper party in a common element lawsuit is the HOA, not the unit owners. Subsection 3 is a cross-reference to NRS 116.4116, subsection 4. It allows for a warranty inspection process before the end of the declarant control period.

Section 45 states that in addition to property, casualty and liability insurance, an association should have fidelity insurance. This was addressed in greater detail in section 10 of S.B. 174. The two sections should be combined.

Sections 46 and 47 are basically stylistic changes.

Section 48, subsections 1 and 2 are stylistic changes. Subsection 4 clarifies that an HOA can have cost centers, where particular units are charged for particular services. In assisted living facilities, for example, food services are charged on a different basis than other common elements. The new definition that was enacted last Session refers to services.

Subsection 6 is a uniform change. This is addressed in section 12 of S.B. 174. The concept is that if someone damages a common element, the HOA can look to the person who did the damage for repair. If someone creates a problem for a common element, the HOA can look to the wrongdoer for payment rather than its own insurance.

Section 49 deals with the lien for assessments. This is dealt with in section 12 of S.B. 174. As Ms. Dennison mentioned, we did not address the issue of collection costs being a part of the superpriority, since we thought that was a policy decision. We did make all the technical UCIOA changes to this section, some of which might not be in S.B. 174.

Section 49, subsection 11 says if the HOA enforces a lien, it has the right to obtain the appointment of a receiver to collect any rents and have them applied to the assessments owed by that unit.

Section 50, subsection 1, paragraph (a) clarifies that if somebody gets a judgment against the HOA, it would cover not just the common elements but any other property the HOA owns. The remaining changes in section 50 are basically grammatical and cleanup.

Section 51 is an amendment to NRS 116.31175. It is not a uniform change but is also addressed in section 2 of S.B. 30. Basically, NRS 116.31175 and NRS 116.31177 deal with types of records that unit owners can inspect. Section 51 puts all of these things in one statute and repeals NRS 116.31177, which is now incorporated into NRS 116.31175. The intent is to put everything into one statute.

SENATE BILL 30: Makes various changes relating to common-interest communities. (BDR 10-477)

MR. BUCKLEY:

Section 51, subsections 6, 7 and 9 deal with official publications of an HOA, which have nothing to do with books and records of the HOA. Therefore, those provisions are being moved into a new section. The language in subsection 8 deals with the liability of officers and directors of an HOA, and that is being moved into the general section of NRS 116.4117.

Section 52 exempts the requirement of a public offering statement in the case of a commercial unit.

Section 53 deals with public offering statements. The declaration is recorded at the start of the project. The public offering statement is intended to be the most important disclosure document in connection with the sale or resale of the unit. The public offering statement and the resale certificate are updated from time to time. Section 53 is intended to expand and beef up some of those disclosures. The deletion of subsection 1, paragraph (e), which refers to financial statements, is because financial information is now going to be covered in subsection 2. This relates to sections 18 and 30 of S.B. 185.

SENATE BILL 185: Makes various changes relating to real property. (BDR 10-23)

Section 53, subsection 1, paragraph (f) of S.B. 204 is an expansion of the provision that all the fees a person would have to pay in an HOA must be disclosed. Paragraph (g) deals with transfer fees. This provision requires that the public offering statement clearly describe any kind of fee that would be payable in connection with the transfer of a unit. Paragraph (m) requires the public offering statement to include restrictions on leasing. The declaration is often around 100 pages or so; the public offering statement is intended to be more user-friendly and short, and is thus more likely to be read than the declaration. Paragraph (n) requires the public offering statement to include any cost-sharing arrangement that is a part of the CIC.

Section 53, subsection 2 is an expansion of the financial information in a public offering statement. At the meeting of the Commission on Common-Interest Communities and Condominium Hotels on Friday, Commissioner Gary Lein indicated he had some technical changes that would probably be appropriate in describing this kind of financial information.

Section 54 is a grammatical correction.

Section 55, subsection 3, paragraph (b) corrects an inadvertent omission. The intent of subsection 5 is that if the HOA fails to disclose fees payable by the seller, it is the purchaser who is protected, not the seller. The seller is liable because he or she incurred the fees when he or she lived there and does not escape personal liability for those charges by selling the unit.

Section 56 is basically stylistic changes. Subsection 1, paragraph (b) is a clarification. A model is an express warranty unless there is a clear disclosure that it could be changed. This recognizes what is common practice.

Section 57 is basically stylistic changes.

Section 58 includes stylistic changes and new cross-references. Subsection 4 reflects what HOAs and developers do in practice. This section permits the opportunity to create an independent committee of directors who can examine the common elements to determine whether there are any warranty claims before the declarant pulls out. This independent audit committee would look at these things. This provision does not require such a committee be formed, but it does give the flexibility to allow it to happen so HOAs can work with declarants before they are gone to resolve warranty claims.

Section 59, subsection 3 states members of the executive board are not personally liable to victims of crimes; this was moved from another section. Subsection 5 regarding punitive damages was enacted last Session, and it was moved from another section. This language also appears in S.B. 174; however, we have added paragraph (d) protecting community managers as well. Since the intent was to protect volunteers rather than community managers, paragraph (d) should come out.

Section 60 repeals NRS 116.31177, which is now incorporated into NRS 116.31175.

Section 61 gives an effective date of January 1, 2012.

CHAIR WIENER:

You mentioned Commissioner Lein was going to provide additional information on section 53. Will you work with him to get that to us?

MR. BUCKLEY:

Yes, I will.

SENATOR COPENING:

With regard to section 59, subsection 5, paragraph (d), you said the intent was to protect volunteers. I presume you are talking about the volunteer executive board members who are mentioned previously in subsection 5.

MR. BUCKLEY:

I was talking about the volunteer executive board. We did not intend to change the law; we only wanted to move it from another location. The volunteers referred to are the members and officers of the executive board.

SENATOR BREEDEN:

Section 51, subsection 2 states the fee for copying documents may not exceed 25 cents per page. In other discussions, this has been stated as 25 cents per page up to 10 pages, and then 10 cents per page after that. That is not reflected here.

MR. BUCKLEY:

This is existing law, NRS 116.31177. Our subcommittee is open to whatever numbers you decide would be the best.

SENATOR COPENING:

I believe S.B. 185 strikes the language that said executive boards could charge 25 cents for the first 10 pages and 10 cents after that, which was existing law. I do not think it was Senator Schneider's intention to allow management companies or HOAs to charge more, but that was how it was interpreted. The question then is would this provision trump existing law?

MR. BUCKLEY:

Section 51 applies only to copies of minutes. This is not changing existing law.

RENNY ASHLEMAN (City of Henderson):

Ms. Dennison covered my major concerns on S.B. 204. The only other matter I would bring to your attention is in section 4, which has to do with emergency termination of an HOA. This provision states it applies when "substantially all" of the units in a CIC are destroyed. In Henderson and elsewhere in Clark County, we have some extremely large HOAs. It is conceivable that they might have a situation in which they have 100 units left standing and 1,500 units have been destroyed. The Committee and the sponsor might want to consider specifying a percentage in this section to make it clear when this provision would apply.

CHAIR WIENER:

Please work with Ms. Dennison and Bradley A. Wilkinson, Counsel, to see what other states do.

BRADLEY A. WILKINSON (Counsel):

Since this provision comes from UCIOA, I am not sure if it exists in other states.

CHAIR WIENER:

We want to determine an adequate and equitable percentage. There might be something comparable in other states. Please take a look and tell us what you find.

MICHAEL SCHULMAN:

I am in support of S.B. 204.

You asked whether the decisions of a prior executive board affect future executive boards. The answer from a practitioner's standpoint is that they do. There is case law from around the Country that if an executive board waives something enough times, it has probably waived enforcement for good. As Mr. Buckley suggested, if you then reinstate it through a new rule, you can start enforcing it again once you warn people. However, it is our practice to advise HOAs that if they do not enforce a rule once or twice, it might be okay; if they do not enforce a rule 10 or 20 times, suddenly enforcing it will be considered selective enforcement.

I would also like to explain what we as practitioners think the business-judgment rule is. It clearly says if an executive board acts in good faith as a reasonable person would in similar circumstances, it will be alleviated of any responsibility, and the decision should be upheld.

With regard to the charge for copies, before 2009, the charge for copies was the cost of copying up to 25 cents per page, though everyone charged 25 cents a page. In 2009, a section was passed related to minutes that made the charge 25 cents a page for the first 10 pages and 10 cents a page thereafter. It would be nice if it was consistent throughout.

With respect to the bill itself, I am concerned about section 7. If we take out the language being stricken here, some developers may try to make the definitions in their documents different from the definitions in statute.

I have great concerns about the possibility of developers reserving the right to amend the documents forever by specifying that they cannot be amended without the developer's approval. I would like the statute to make it clear that once the declarant control period is over, developers no longer have a right to disapprove amendments.

With respect to municipalities and lenders, I have no problem.

Sections 42 and 43 talk about absentee ballots. Before I fell into the world of HOAs, I was a corporate lawyer. There is no concept of absentee ballots in corporations. You either vote at meetings or you vote by written ballot that goes out and comes back. If we allow absentee ballots, there will be more likelihood of fraud. The absentee ballots as designed will only go out to those people who ask for them. We will not know who is actually asking for absentee ballots. Written ballots are sent to everyone. I request that you consider taking that provision out.

I have no problems with the provisions in sections 39 and 40, but you have given us no mechanism to include provisions in the bylaws. We cannot just put things in documents. We have to have the right for the executive board to amend the documents since we will not be able to get unit owners to participate because of apathy. If these provisions are going to pass, you must either give the executive boards the right to make these amendments to bring them into compliance or grandfather in everyone as of the day you pass the law and tell developers to include these provisions when they write documents in the future.

Section 42 talks about when a quorum is needed in a meeting. With this change, if you have an executive board of five people and three show up for the meeting, one could leave before the vote and kill the meeting. That should not be allowed. If you have a quorum at the beginning of the meeting, you should be allowed to conduct business. If those three people are going to vote two to one on an issue, the one dissenting voter should not be able to get his way by walking out.

ROBIN HUHN, D.C.:

I have written testimony describing my concerns with specific language in S.B. 204 (Exhibit D). As it says in the preamble to S.B. No. 192 of the 70th Session, "Some unit-owners' associations in this state have a history of abuse of power." That is what I experienced.

I would like to keep in section 37, subsections 3 and 4 that are stricken in this bill. I also feel that the attorneys who made these changes could be construed as biased since they represent the HOAs, the property management companies and the collection companies. This is how they will put money in their pockets.

CHAIR WIENER:

In your testimony, you mentioned a concern with section 19. That language is in NRS 116.4117, which this bill does not change. Exhibit C is an analysis of the entire bill, and you might find it helpful in understanding the impact or lack of impact of each section of the bill. It is available online at < https://nelis.leg.state.nv.us/App#/Meeting/499/Exhibit/2320/SB204>.

MICHAEL RANDOLPH (HOA Services):

I am neutral on S.B. 204. I have a comment on section 49, subsection 11, which allows HOAs to ask for receivers to collect rents. If an HOA is to the point where it is asking the court for a receiver, can it get late charges? We are not worried about fines, just the expenses that come along with them.

JOHN W. GRIFFIN (Nevada Justice Association):

We are neutral on the bill as a whole. We oppose section 56, subsection 1, paragraph (b), which talks about express warranties on models. The law of express warranties is fairly well-settled not only in Nevada but across the Nation. Existing language says an express warranty is created in a CIC if there is a representation that the product will reasonably

conform to a model or description that is offered. The new language suggests there can be some sort of disclosure exemption. The concern we have is that having that disclosure exemption, maybe unintentionally, invites misleading or exaggerated models or pictures with a small disclaimer at the bottom stating, "Your unit will never look like this."

CHAIR WIENER:

Do you have language to replace this?

MR. GRIFFIN:

Our recommendation is that section 56, subsection 1, paragraph (b) be deleted, leaving the existing statute unchanged.

TIM STEBBINS:

I have written testimony explaining my concerns with S.B. 204 (Exhibit E).

BOB ROBEY:

I have written testimony regarding some possible concerns with section 6 of this bill (Exhibit F). This echoes Mr. Stebbins' comments about section 48.

Mr. Schulman objected to absentee ballots based on his experience as a corporate lawyer. We are not General Electric or RCA. We are a community of people trying to get along with each other. We should have the right to vote. This bill gives us the right to use absentee ballots and proxies. We need proxies mailed to homeowners. The proxy vote process is set up in NRS 116 with specific requirements that must be done in a specific way. I have had too many people go to their executive board with a petition and get turned away because they did not have proxies from the people who signed the petition. That is not a way to run an HOA.

JONATHAN FRIEDRICH:

I have written testimony detailing specific language in S.B. 204 that have raised concerns (Exhibit G). Mr. Schulman mentioned the practice of absentee ballots being distributed to homeowners. In the HOA I have had for the past eight years, we have never received a ballot for the budget, only for the election of executive board members.

CHAIR WIENER:

Some of your concerns may also be covered by the information in Exhibit D.

JOHN RADOCHA:

When it comes to the blank checks that are given to HOAs, double-priced lawyers, management companies, arbitrators and collection agencies, homeowners need some reasonable caps. I know a lot of people on fixed incomes.

I would like to amend section 40, subsection 1 to allow for flexibility. Executive board members and homeowners may not be available to attend meetings on a fixed day. A 10- to 20-day window would be a good option.

I would like to see section 40, subsection 2 include the provision that signers of a petition cannot be fined or served with violations for 45 days. What happens is you take a petition to the executive board, and two days later, everyone who signed the petition receives a fine of some sort. People who sign a petition should be free from retaliation.

With regard to section 44, where does it define capital improvements? The dictionary says capital expenditures are funds used for something permanent.

Also, in my HOA, the executive board normally holds meetings locally. However, when it is a budget meeting, it is held 15 or 20 miles away.

I would appreciate a definition of "common elements" as used in section 58, subsection 2, paragraph (b).

MR. WILKINSON:

The term "common elements" is defined in NRS 116.017. This definition is also contained in section 10 of S.B. 204.

MR. RADOCHA:

My understanding is that capital expenditures are permanent. If the executive board decides to put a speed bump in front of someone's house, it is permanent. How can the executive board then call it a common element? There are too many loopholes. If the executive board is going to put bricks around an entrance, that is permanent, and we should be able to vote on that. But the executive board says that is a common element, and therefore we do not get to vote on it. The board should not have the right to do whatever it wants with our money.

CHAIR WIENER:

I will close the hearing on S.B. 204 and open the hearing on S.B. 222.

SENATE BILL 222: 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 S.B. 222 for your consideration. I have prepared opening remarks (Exhibit H).

MR. ROBEY:

After listening to Senator Copening's introduction to the bill, I applaud her for recognizing that there is a problem with some management companies charging a fee to register renters. I have a prepared statement suggesting a small change to section 4 (Exhibit I).

One interesting thing Senator Copening said was about the per door fee. It was amazing to hear her say the management company actually asked the executive board to change the bylaws so they could collect more money to keep down the per door fee.

SENATOR COPENING:

Your point is well-taken. However, I want to make it clear that I was speculating about per door fees. I do not know the reasons behind why they do it, and I will probably never be told.

MR. FRIEDRICH:

I have written testimony speaking to specific language in S.B. 222 (Exhibit J).

MR. RADOCHA:

I agree with Mr. Robey's comments. I am having a tough time with executive board members and the management company. When I question something like this, they do not like it, and they fine me. A lot of my neighbors ask why I fight them, and I say it is because they try to intimidate me. I own my house; I pay my assessments. If the person up the street has 10-inch weeds and mine are 2 inches, why fine me and not him? All I ask is that you throw some fairness into NRS 116 for homeowners who do not have the big dollars.

CHAIR WIENER:

Is there any further business or public comment to come before the Committee? Hearing none, I will adjourn this meeting at 10:26 a.m.

RESPECTFULLY SUBMITTED:

_____

Lynn Hendricks,
Committee Secretary

APPROVED BY:

_____

Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 204	C	Karen D. Dennison	"Analysis of SB 204"
S.B. 204	D	Dr. Robin Huhn	Written testimony opposing S.B. 204
S.B. 204	E	Tim Stebbins	Written testimony opposing S.B. 204
S.B. 204	F	Bob Robey	Written testimony opposing S.B. 204
S.B. 204	G	Jonathan Friedrich	Written testimony opposing S.B. 204
S.B. 222	H	Senator Allison Copening	Written testimony introducing S.B. 222
S.B. 222	I	Bob Robey	Proposed amendment to S.B. 222
S.B. 222	J	Jonathan Friedrich	Written testimony regarding S.B. 222

NV S. Comm. Min., 3/16/2011

End of Document

EXHIBIT "D"

2011 Nevada Laws Ch. 389 (S.B. 204)

NEVADA 2011 SESSION LAWS

REGULAR SESSION OF THE 76TH LEGISLATURE (2011)

Additions are indicated by **Text**; deletions by
~~Text~~ .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

Ch. 389
S.B. No. 204
UNIFORM LAWS--AMENDMENTS--COMMON INTEREST COMMUNITIES

AN ACT relating to common-interest communities; enacting certain amendments to the Uniform Common–Interest Ownership Act; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law relating to common-interest communities is based on the Uniform Common–Interest Ownership Act (UCIOA), which was proposed by the Uniform Law Commission (ULC). (Chapter 116 of NRS) This bill enacts certain amendments to the UCIOA which have been proposed by the ULC.

Sections 2, 40 and 41 of this bill prescribe the manner in which an association must provide notice of meetings of units' owners and of the executive board and any other notice required to be given by an association other than notices relating to the foreclosure of a lien on a unit held by the association.

Section 4 of this bill authorizes the executive board or any other person with an interest in the common-interest community to commence an action in the district court for the termination of a common-interest community if: (1) substantially all the units in the common-interest community have been destroyed or are uninhabitable; and (2) the available methods for giving notice of a meeting of units' owners to consider termination are not likely to result in receipt of the notice.

Sections 5 and 6 of this bill reorganize and reenact certain provisions of existing law relating to the indemnification of members of executive boards and the provision of equal space to opposing views in official publications under certain circumstances. Additionally, section 6 enacts provisions providing for equal time for candidates and representatives of ballot questions on a closed-circuit television station maintained by an association.

Under existing law, the definitions applicable to laws relating to common-interest communities apply to the declarations and bylaws of associations. (NRS 116.003) **Section 7** of this bill clarifies that those definitions apply to those declarations and bylaws.

Sections 8–16 of this bill change certain definitions set forth in existing law to conform to the language of the UCIOA.

Existing law provides that other principles of law, including, without limitation, the law of corporations and the law of unincorporated associations, supplement the existing law relating to common-interest communities. (NRS 116.1108) Section 18 of this bill provides that the laws governing other forms of organization supplement the existing law relating to common-interest communities.

Sections 20–22 of this bill adopt the language of certain amendments to the UCIOA relating to the applicability of existing law governing common-interest communities. **Section 21** also requires certain associations containing not more than 12 units to provide each unit with a copy of any changes made to the governing documents within 30 days after such changes are made.

Sections 24–31 of this bill adopt the language of certain amendments to the UCIOA relating to the creation, alteration and termination of common-interest communities. **Section 29** grants units' owners the right to use the common elements for the purposes for which they were intended rather than granting an easement to use the common elements for all purposes. **Section 30** amends provisions relating to requirements for amending the declaration of a common-interest community and to the enforcement of certain amendments. **Section 31** amends the requirements for the termination of a common-interest community.

Sections 32–51 of this bill enact certain amendments to the UCIOA which relate to the governance of common-interest communities. **Section 32** requires an association larger than 12 units to have an executive board and allows an association to be organized as any form of organization authorized by the law of this State. **Section 33** allows the executive board not to take enforcement action if it determines that: (1) the law does not support such action; (2) the violation is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or (3) it is not in the best interest of the association to pursue an enforcement action. **Section 34** provides that officers of the association and members of the executive board are subject to the conflict of interest rules which govern officers and directors of nonprofit corporations organized under the law of this State. **Section 34.5** provides that if an association seeks to impose and enforce a construction penalty, the association must provide notice of the maximum allowable penalty and schedule in the public offering statement or resale package. **Section 36** authorizes a declarant to end the period of declarant's control by giving notice to units' owners and recording an instrument stating that the declarant surrenders all rights to control activities of the association. **Section 37** amends provisions relating to the removal of members of the executive board. **Section 38** amends provisions relating to the termination of certain contracts entered into before the election of an executive board by units' owners. **Section 40** provides that the portion of a meeting of the units' owners devoted to comments by units' owners is limited to comments by units' owners regarding any matter affecting the common-interest community or the association. **Section 42** amends requirements for determining whether a quorum is present at a meeting of the executive board to provide that a majority of the votes on the executive board must be present at the time a vote is taken rather than at the beginning of the meeting. **Section 43** authorizes units' owners to vote by absentee ballot at a meeting of the units' owners. **Section 44** provides that a unit's owner is not liable, by reason of being a unit's owner, for injuries or damage arising out of the condition or use of the common elements. **Sections 45 and 59.5** of this bill require an association to obtain crime insurance and remove the requirement that a community manager post a bond. **Section 45** also requires the association to maintain property, liability and crime insurance subject to reasonable deductibles. **Section 48** amends provisions relating to common expenses caused by a unit's owner, a tenant or an invitee of a unit's owner or tenant. **Section 49** authorizes a court to appoint a receiver when an association brings an action to foreclose a lien or collect assessments. **Sections 51 and 60** amend provisions relating to the books and records of an association and the inspection of such books and records by units' owners.

Sections 52–58 of this bill enact certain amendments to the UCIOA which relate to the disclosures provided to purchasers of real estate located in a common-interest community and the warranties applicable to real estate located in a common-interest community. **Section 52** exempts the disposition of a unit restricted to nonresidential purposes from the requirement to provide a public offering statement or certificate of resale. **Section 53** amends the information required to be included in the public offering statement provided to an initial purchaser of a unit.

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2.

1. Except as otherwise provided in subsection 3, an association shall deliver any notice required to be given by the association under this chapter to any mailing or electronic mail address a unit's owner designates. Except as otherwise provided in subsection 3, if a unit's owner has not designated a mailing or electronic mail address to which a notice must be delivered, the association may deliver notices by:

(a) Hand delivery to each unit's owner;

(b) Hand delivery, United States mail, postage paid, or commercially reasonable delivery service to the mailing address of each unit;

(c) Electronic means, if the unit's owner has given the association an electronic mail address; or

(d) Any other method reasonably calculated to provide notice to the unit's owner.

2. The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

3. The provisions of this section do not apply:

(a) To a notice required to be given pursuant to NRS 116.3116 to 116.31168, inclusive; or

(b) If any other provision of this chapter specifies the manner in which a notice must be given by an association.

Sec. 3.

This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 U.S.C.§ 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. § 7003(b).

Sec. 4.

If substantially all the units in a common-interest community have been destroyed or are uninhabitable and the available methods for giving notice under NRS 116.3108 of a meeting of units' owners to consider termination under NRS 116.2118 will not likely result in receipt of the notice, the executive board or any other person holding an interest in the common-interest community may commence an action in the district court of the county in which the common-interest community is located seeking to terminate the common-interest community. During the pendency of the action, the court may issue whatever orders it considers appropriate, including, without limitation, an order for the appointment of a receiver. After a hearing, the court may terminate the common-interest community or reduce its size and may issue any other order the court considers to be in the best interest of the units' owners and persons holding an interest in the common-interest community.

Sec. 5.

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.

Sec. 6.

1. If an official publication contains any mention of a candidate or ballot question, the official publication must, upon request and under the same terms and conditions, provide equal space to all candidates or to a representative of an organization which supports the passage or defeat of the ballot question.

2. If an official publication contains the views or opinions of the association, the executive board, a community manager or an officer, employee or agent of an association concerning an issue of official interest, the official publication must, upon request and under the same terms and conditions, provide equal space to opposing views and opinions of a unit's owner of the common-interest community.

3. If an association has a closed-circuit television station and that station interviews, or provides time to, a candidate or a representative of an organization which supports the passage or defeat of a ballot question, the closed-circuit television station must, under the same terms and conditions, allow equal time for all candidates or a representative of an opposing view to the ballot question.

4. The association and its officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to subsection 1, 2 or 3.

5. As used in this section:

(a) "Issue of official interest" means:

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

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

(b) "Official publication" means:

(1) An official website;

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

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

Sec. 7. NRS 116.003 is hereby amended to read as follows:

<< NV ST 116.003 >>

As used in this chapter and in the declaration and bylaws of an association, ~~unless the context otherwise requires,~~ the words and terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those sections.

Sec. 8. NRS 116.007 is hereby amended to read as follows:

<< NV ST 116.007 >>

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

~~2.~~ **For purposes of this section:**

1. A person ~~"controls"~~ **controls** a declarant if the person:

(a) Is a general partner, officer, director or employer of the declarant;

(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the declarant;

(c) Controls in any manner the election of a majority of the directors of the declarant; or

(d) Has contributed more than 20 percent of the capital of the declarant.

~~3.~~ **2.** A person ~~"is~~ **is** controlled ~~by"~~ **by** a declarant if the declarant:

(a) Is a general partner, officer, director or employer of the person;

(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the person;

(c) Controls in any manner the election of a majority of the directors of the person; or

(d) Has contributed more than 20 percent of the capital of the person.

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

Sec. 9. NRS 116.009 is hereby amended to read as follows:

<< NV ST 116.009 >>

"Allocated interests" means the following interests allocated to each unit:

1. In a condominium, the undivided interest in the common elements, the liability for common expenses, and votes in the association;

2. In a cooperative, the liability for common expenses~~,and~~ the ownership **interest** and votes in the association; and

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

Sec. 10. NRS 116.017 is hereby amended to read as follows:

<< NV ST 116.017 >>

"Common elements" means:

1. In a **the case of:**

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

~~2. In a~~

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

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

Sec. 11. NRS 116.035 is hereby amended to read as follows:

<< NV ST 116.035 >>

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

1. As part of a common promotional plan, offers to dispose of ~~his or her or its~~ **the** interest **of the person or group of persons** in a unit not previously disposed of; or

2. Reserves or succeeds to any special declarant's right.

Sec. 12. NRS 116.045 is hereby amended to read as follows:

<< NV ST 116.045 >>

"Executive board" means the body, regardless of name, designated in the declaration **or bylaws** to act on behalf of the association.

Sec. 13. NRS 116.079 is hereby amended to read as follows:

<< NV ST 116.079 >>

"Purchaser" means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other thana **:**

1. A leasehold interest, including options to renew, of less than 20 years~~, or as~~ **; or**

2. As security for an obligation.

Sec. 14. NRS 116.081 is hereby amended to read as follows:

<< NV ST 116.081 >>

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

Sec. 15. NRS 116.089 is hereby amended to read as follows:

<< NV ST 116.089 >>

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

1. Complete improvements indicated on plats or in the declaration ~~(NRS 116.2109)~~ or, in a cooperative, to complete improvements described in the public offering statement pursuant to **paragraph (b) of** subsection ~~2~~ **1** of NRS 116.4103;

2. Exercise any developmental right~~;(NRS 116.211);~~

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

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

5. Make the common-interest community subject to a master association~~;(NRS 116.212);~~

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

7. Appoint or remove any officer of the association or any master association or any member of an executive board during any period of declarant's control~~.(NRS 116.31032).~~

Sec. 16. NRS 116.095 is hereby amended to read as follows:

<< NV ST 116.095 >>

"Unit's owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated ~~(NRS 116.2107)~~ until that unit has been conveyed to another person.

Sec. 17. NRS 116.1104 is hereby amended to read as follows:

<< NV ST 116.1104 >>

Except as expressly provided in this chapter, its provisions may not be varied by agreement, and rights conferred by it may not be waived. ~~A~~ **Except as otherwise provided in paragraph (b) of subsection 2 of NRS 116.12075, a** declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

Sec. 18. NRS 116.1108 is hereby amended to read as follows:

<< NV ST 116.1108 >>

The principles of law and equity, including the law of corporations~~;~~ **and any other form of organization authorized by law of this State,** the law of unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

Sec. 19. NRS 116.1114 is hereby amended to read as follows:

<< NV ST 116.1114 >>

~~1.~~ The remedies provided by this chapter must be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Consequential, special or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

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

Sec. 20. NRS 116.1201 is hereby amended to read as follows:

<< NV ST 116.1201 >>

1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

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

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

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

(3) Shall comply with the provisions of:

(I) NRS 116.31038;

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

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

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

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

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

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

(c) Common-interest communities or units located outside of this State, but ~~the provisions of~~ NRS 116.4102 ~~to 116.4108,~~ **and 116.4103, and, to the extent applicable, NRS 116.41035 to 116.4107,** inclusive, apply to ~~all contracts~~ **a contract** for the disposition ~~thereof~~ **of a unit in that common-interest community** signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

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

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

3. The provisions of this chapter do not:

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

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

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

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

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

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

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

5. The Commission shall establish, by regulation:

(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and

(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.

6. As used in this section, "limited-purpose association" means an association that:

(a) Is created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community; and

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

Sec. 21. NRS 116.1203 is hereby amended to read as follows:

<< NV ST 116.1203 >>

1. Except as otherwise provided in ~~subsection 2,~~ **subsections 2 and 3,** if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. **The provisions of NRS 116.12065 and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that the definitions are necessary to construe any of those provisions, apply to a residential planned community containing more than 6 units.**

3. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, the provisions of NRS 116.3101 to 116.350, inclusive, **and sections 5 and 6 of this act** and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than ~~six~~ **6** units.

Sec. 22. NRS 116.1206 is hereby amended to read as follows:

<< NV ST 116.1206 >>

1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter:

(a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

(b) Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

2. In the case of amendments to the declaration, bylaws or plats of any common-interest community created before January 1, 1992:

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

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

3. An amendment to the declaration, bylaws or plats authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of chapter 117 or 278A of NRS and**, except as otherwise provided in subsection 8 of NRS 116.2117,** with the procedures and requirements specified by those instruments. If an amendment grants to ~~any~~ **a** person ~~any rights, powers or privileges~~ **a right, power or privilege** permitted by this chapter, ~~all~~ **any** correlative ~~obligations, liabilities and restrictions~~ **obligation, liability or restriction** in this chapter also ~~apply to that~~ **applies to the** person.

Sec. 23. NRS 116.12075 is hereby amended to read as follows:

<< NV ST 116.12075 >>

1. The provisions of this chapter do not apply to a nonresidential condominium except to the extent that the declaration for the nonresidential condominium provides that:

(a) This entire chapter applies to the condominium;

(b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and 116.3116 to 116.31168, inclusive, apply to the condominium; or

(c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, apply to the condominium.

2. If this entire chapter applies to a nonresidential condominium, the declaration may also require, subject to NRS 116.1112, that:

(a) Notwithstanding NRS 116.3105, any management, maintenance operations or employment contract, lease of recreational or parking areas or facilities and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(b) Notwithstanding NRS 116.1104 and subsection ~~2~~ **3** of NRS 116.311, purchasers of units must execute proxies, powers of attorney or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

Sec. 24. NRS 116.2103 is hereby amended to read as follows:

<< NV ST 116.2103 >>

1. The inclusion in a governing document of an association of a provision that violates any provision of this chapter does not render any other provisions of the governing document invalid or otherwise unenforceable if the other provisions can be given effect in accordance with their original intent and the provisions of this chapter.

2. The rule against perpetuities and NRS 111.103 to 111.1039, inclusive, do not apply to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to NRS 116.3102.

3. ~~In the event of~~ **If** a conflict **exists** between ~~the provisions of~~ the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

4. Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

Sec. 25. NRS 116.2105 is hereby amended to read as follows:

<< NV ST 116.2105 >>

1. The declaration must contain:

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

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

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

(d) A statement of the maximum number of units that the declarant reserves the right to create;

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

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

(g) A description of any real estate, except real estate subject to developmental rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in subsections 2 and 4 of NRS 116.2102, together with a statement that they may be so allocated;

(h) A description of any developmental rights and other special declarant's rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time **limit** within which each of those rights must be exercised;

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

(1) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each developmental right or a statement that no assurances are made in those regards; and

(2) A statement whether, if any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right must be exercised in all or in any other portion of the remainder of that real estate;

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

(k) An allocation to each unit of the allocated interests in the manner described in NRS 116.2107;

(l) Any restrictions:

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

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

(m) The file number and book or other information ~~to show where~~ **for recorded** easements and licenses ~~are recorded~~ appurtenant to or included in the common-interest community or to which any portion of the common-interest community is or may become subject by virtue of a reservation in the declaration; and

(n) All matters required by NRS 116.2106 to 116.2109, inclusive, 116.2115, 116.2116 and 116.31032.

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

Sec. 26. NRS 116.2106 is hereby amended to read as follows:

<< NV ST 116.2106 >>

1. Any lease the expiration or termination of which may terminate the common-interest community or reduce its size must be recorded. Every lessor of those leases in a condominium or planned community shall sign the declaration. The declaration must state:

(a) The recording data ~~where~~ **for** the lease ~~is~~ **or a statement of where the** recorded; **lease may be inspected;**

(b) The date on which the lease is scheduled to expire;

(c) A legally sufficient description of the real estate subject to the lease;

(d) Any right of the units' owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the units' owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(f) Any rights of the units' owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

2. After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit's owner who makes timely payment of his or her share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. The leasehold interest of a unit's owner in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

3. Acquisition of the leasehold interest of any unit's owner by the owner of the reversion or remainder does not merge the leasehold and freehold interests unless the leasehold interests of all units' owners subject to that reversion or remainder are acquired.

4. If the expiration or termination of a lease decreases the number of units in a common-interest community, the allocated interests must be reallocated in accordance with subsection 1 of NRS 116.1107 as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

Sec. 27. NRS 116.2107 is hereby amended to read as follows:

<< NV ST 116.2107 >>

1. The declaration must allocate to each unit:

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

(b) In a cooperative, a proportionate ownership in the association, a fraction or percentage of the common expenses of the association ~~(NRS 116.3115)~~ and a portion of the votes in the association; and

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

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

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

4. The declaration may provide:

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

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

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

Except as otherwise provided in NRS 116.31032, a declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter nor may units constitute a class because they are owned by a declarant.

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

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

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

Sec. 28. NRS 116.2113 is hereby amended to read as follows:

<< NV ST 116.2113 >>

1. If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to ~~the provisions of~~ the declaration and ~~other provisions of~~ law~~;~~ **other than this chapter,** upon application of the unit's owner to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including, in a condominium or planned community, the plats, subdividing that unit.

2. The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit~~:~~ **or on any other basis the declaration requires.**

Sec. 29. NRS 116.2116 is hereby amended to read as follows:

<< NV ST 116.2116 >>

1. Subject to ~~the provisions of~~ the declaration, a declarant has an easement through the common elements as may be reasonably necessary to discharge the declarant's obligations or exercise special declarant's rights, whether arising under this chapter or reserved in the declaration.

2. ~~In a planned community, subject to the provisions of~~ **Subject to** paragraph (f) of subsection 1 of NRS 116.3102 and NRS 116.3112, the units' owners have an easement~~:~~

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

~~(b) To~~

3. Subject to the declaration and any rules adopted by the association, the units' owners have a right to use the common elements **that are not limited common elements** and all real estate that must become common elements ~~(paragraph (f) of subsection 1 of NRS 116.2105) for all other~~ **for the** purposes~~:~~ **for which they were intended.**

3. **4.** Unless the terms of an easement in favor of an association prohibit a residential use of a servient estate, if the owner of the servient estate has obtained all necessary approvals required by law or any covenant, condition or restriction on the property, the owner may use such property in any manner authorized by law without obtaining any additional approval from the association. Nothing in this subsection authorizes an owner of a servient estate to impede the lawful and contractual use of the easement.

4. **5.** The provisions of subsection 3 **4** do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 30. NRS 116.2117 is hereby amended to read as follows:

<< NV ST 116.2117 >>

1. Except as otherwise provided in NRS 116.21175, and except in cases of amendments that may be executed by a declarant under subsection 5 of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by ~~subsection~~ **subsections** 4, **7 and 8,** the declaration, including any plats, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, ~~or any larger majority~~ **unless** the declaration specifies. ~~The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.~~ **a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.**

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

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

4. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit ~~or~~ **, change** the allocated interests of a unit **or change the uses to which any unit is restricted,** in the absence of unanimous consent of ~~the~~ **only those** units' owners **whose units are** affected and the consent of a majority of the owners of the remaining units.

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

6. An amendment to the declaration which prohibits or materially restricts the permitted uses of a unit or the number or other qualifications of persons who may occupy units may not be enforced against a unit's owner who was the owner of the unit on the date of the recordation of the amendment as long as the unit's owner remains the owner of that unit.