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Mar 10 2022 11:52 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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Service List



ADOPTED

ADOPTED DECEMBER 8, 2010  
assessments pursuant to NRS 116.3115<sup>1</sup> and "reasonable charges for the preparation and recording of . . . any assessments or unpaid assessments." NRS 116.3102(C)(3)(iii). Note that the reference in Subsection (3) to NRS 116.3115 appears to be solely for the purpose of identifying what is meant by the word "assessment," though NRS 116.3115(2) provides for the payment of interest on "Any assessment for common expenses or installment thereof that is 60 days or more past due." . . .  
Conclusion: The super priority language contained in UDCA 3-110 reflected a change in the traditional common law principle that granted first priority to a mortgage lien recorded prior to the date a common expense assessment became delinquent. The six month priority rule contained in UDCA 3-110 established a compromise between the interests of the common interest community and the lending community. The argument has been advanced that losing the super priority is a title removal, i.e., UDCA's six months of budgeted common expense assessments, is necessary in order to preserve the compromise and the willingness of lenders to continue to lend in common interest communities. The state of Connecticut, in 1991, rejected, in 2006, as well as "Fannie Mae and local lenders" have all concluded otherwise.  
Accordingly, with a plain reading of the applicable provisions of NRS 116.3115 and the policy determinations of lawmakers, the state of Nevada and lenders themselves support the conclusion that associations should be able to include specified costs of collecting as part of the association's super priority fees. . . . (We reach a similar conclusion in finding that Nevada law

In 2009, Nevada enacted NRS 116.310313, which pro

**NRS 116.310313 Collection of past due obligation; charge of reasonable fee to collect.**

1. An association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation. The Commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.

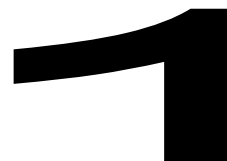
2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

3. As used in this section:

(a) "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

Since Nevada law specifically authorizes an association to recover the "costs of collecting" a past due obligation and, further, limits those amounts, we conclude that a reasonable interpretation of the kinds of "charges" an association















## Bill Digest

*Continued from Page 4*

SB 253 (6) Unless at the time of purchase there is a rental prohibition, the association may not prohibit an owner from renting a unit. Further, unless at the time of purchase the declaration requires the owner to receive approval from the association to rent the unit, this approval cannot be required. If the declaration has a limit on the number of units that can be rented, it cannot be amended to decrease the number of units which can be rented. Even if there is a limitation on the number of rentals, an owner can seek a waiver based upon a showing of "economic hardship." Where there is a limit on the number of rental units, the units owned by the declarant cannot be counted or considered when determining the maximum number of rental units allowed. (NRS 116.335) (Eff. 10/1/09)

SB 253 (8) It is the responsibility of the owner to pay for the resale package when the property is being sold. Further, this resale package must include information on transfer fees, transaction fees, and other fees involved in unit resales. (NRS 116.4109) (Eff. 6/9/09 pursuant to AB 350)

### ELECTIONS AND VOTING

AB 251 changes procedures for elections where the number of candidates running is the same or less than the number of vacancies. In such cases, the executive board must send out a notice informing owners that those nominated will be deemed to be elected to the

*See Bill Digest on Page 6*

## Regulations

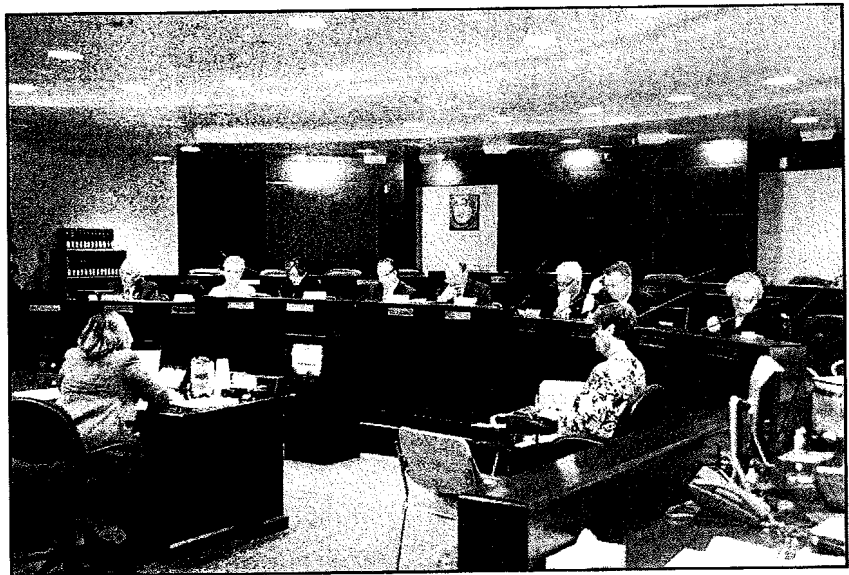
*Continued from Page 1*

The first workshop of the year was for R-204-09, which would affect conditions under which an association could deposit funds with an out-of-state bank. The workshop was conducted by the Division with two members of the Commission on Common-Interest Communities and Condominium Hotels in attendance.

Workshops provide the opportunity for the public to view regulations and submit comment in person before adoption. Both the Division and the Commission hold scheduled workshops.

Future workshops will affect standards for receiving credentials to serve as a community manager or reserve study specialist, the way reserve studies are conducted, among several other matters. For a list of upcoming workshops and adoption hearings, visit [www.red.state.nv.us](http://www.red.state.nv.us), click on Common-Interest Communities and then Workshops and Adoptions (on the left side of the page). Visitors may also find the copies of proposed text on adjoining links.

Workshops conducted by the Commission are usually held in conjunction with regular meetings, the schedule of which may also be found online, under the heading Commission Meetings and Agendas on the Division's Web site.



**The Commission on Common-Interest Communities and Condominium Hotels holds hearings on violations of NRS 116 at a 2009 meeting.**

Regulations add specifics to laws passed by the Legislature and have the full effect of law. In time, those regulations pertaining to NRS 116, the section of law governing common-interest communities, are codified into NAC 116.

Those who wish to write to the Division or Commission regarding a proposed regulation may do so through Administrative Legal Officer Joanne Gierer at Nevada Real Estate Division, 2501 E. Sahara Ave., Las Vegas, NV, 89104.



## Bill Digest

*Continued from Page 5*

board unless an owner submits a nomination form within 30 days after receiving the board's notice (the nomination period). In that case, a regular election will be held with the normal balloting procedure. If no one else is nominated, then no ballots will be mailed out and the previously nominated candidates will be considered elected to the board 30 days after the date of the closing of the nomination period. (NRS 116.31034) (Eff. 7/1/09)

SB 182 (3) states that persons who knowingly, willfully and with fraudulent intent alter the outcome of executive board elections can be found guilty of a category D felony (1 to 4 year sentence, possible fine up to \$5,000). (NRS 116.31034) (Eff. 10/1/09)

SB 182 (4) provides that community managers or executive board members who ask for or receive compensation to influence a vote, opinion or action are guilty of a category D felony, along with those who offer or give such compensation. (NRS 116.31189) (Eff. 10/1/09)

SB 182 (13) prohibits an association from adopting rules or regulations that effectively prohibit or unreasonably interfere with election campaigns for the executive board. However, campaigning can be limited to 90 days before the date ballots are required to be returned. Also, candidates may request (to the secretary or officer specified in the bylaws) that the association send - 30 days before the election date - a "candidate informational statement." This statement may be limited to a single typed page and may be sent either with the ballot, or in a separate mailing, at the association's expense. This campaign material cannot contain defamatory, libelous or profane information. Further, the association, directors, officers, employees and agents are immune from criminal and civil liability for any act or omission resulting from the publication or disclosure of information regarding any individuals that occurs during this election process. (NRS 116.31034) (Eff. 10/1/09)

SB 182 (14) Removal elections: It is now easier to remove members of the executive board. If at least 35% of the voting members vote - and a majority of those voting vote in favor of removal - then the board member is removed. In a practical sense, this means that in a community of 100 voting members, if 35 vote, and 18 vote in favor of removal, then the board member is removed. (NRS 116.31036) Also, pursuant to SB 182 (16), the association cannot adopt any rule or regulation that prevents or unreasonably interferes with the collection of signatures for a petition for a special meeting for a removal election. (NRS 116.3108) (Eff. 10/1/09)

SB 183 (8) (14) (15) (18) (20) (21) provides that there cannot be delegate voting in the election or removal of executive board members. (NRS 116.31105(1)) (Eff. 10/1/09)

SB 183 (22) provides an exception to the prohibition on delegates during the period of declarant control and 2 years after declarant control is terminated. (NRS 116.1201) (Eff. 10/1/11)

SB 183 (14) requires that the association distribute the candidate disclosure statements with the ballots but the association is not obligated to distribute any disclosure if it contains information that is believed to be defamatory, libelous or profane. (NRS 116.31034) (Eff. 10/1/09)

### RECORDS

AB 350 (6.5, 7.5) provides that owners may receive a copy or summary of unit owner or executive board meeting minutes cost-free in an electronic format or, if not in electronic format, at the following costs: 25 cents per page for the first 10 pages, 10 cents per page thereafter. (NRS 116.3108, 116.31083) (Eff. 7/1/09)

AB 350 (10.5, 12.2) provides that association books and records, including the budget, must be made available at a location not to exceed 60 miles from the CIC. (NRS 116.31151, NRS 116.31175) (Eff. 7/1/09)

SB 182 (23.5) now includes attorney's contracts as records that are available for review by owners. (NOTE: It is the opinion of the Division that this applies to current contracts that were in place on the day the statute went into effect, not to past ones.) (NRS 116.31175) (Eff. 10/1/09)

SB 183 (28) provides that although books, records and other papers of the association are generally available to owners - if that document (including minutes, a reserve study, and budget) is in a draft stage and has not been placed on the agenda for final approval by the board - it does not have to be provided to the owner. (NRS 116.31175) (Eff. 10/1/09)

SB 351 (13) Regarding records which are to be made available to owners upon written request, this new law protects the privacy of an owner's architectural plans or specifications submitted for approval to the association's

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## Bill Digest

Continued from Page 6

architectural review committee. (NRS 116.31175) (Eff. 10/1/09)

### MEETINGS

AB 350 (7.5) Regarding executive board meetings, on an annual basis, two of the meetings must be held outside "standard business hours." (NRS 116.31083) (Eff. 7/1/09) NOTE: NAC 116.300 defines standard business hours as follows: "As used in this section, 'regular business hours' means Monday through Friday, 9 a.m. to 5 p.m., excluding state and federal holidays."

SB 182 (17) requires audio recordings of executive board meetings (but not of the executive sessions). Within 30 days of that meeting, the audio recordings, the minutes and/or a summary of the minutes must be made available to owners, including copies. (NRS 116.31083) (Eff. 10/1/09)

SB 182 (18) now requires that if the association is taking any action on contracts with the association's attorney, it must be done during the open portion of the executive board meeting (in the past attorney's contracts were only allowed to be discussed in executive session). Further, these contracts can be reviewed by owners. (NRS 116.31085) (Eff. 10/1/09)

SB 183 (19) provides that executive board meetings must be held at least once every quarter, and not less than once every 100 days (previously the reference was to every 90 days). (NRS 116.31083) (Eff. 10/1/09)

SB 253 (3) provides that if the association solicits bids for an "association project", the bids must be opened during executive board meetings. Such project is defined as including maintenance, replacement and restoration of common elements or the provision of services to the association. (NRS 116.31144) (Eff. 10/1/09)

### BUDGETS/ ACCOUNTS

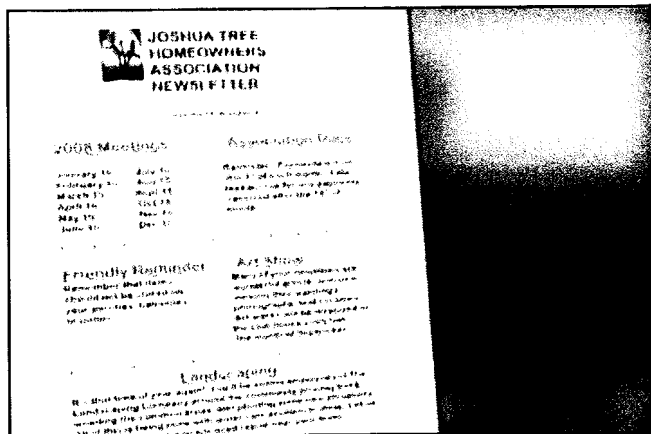
AB 311 (1) changes audit requirements. If the HOA budget is under \$75,000, financial statements only have to be reviewed by a CPA during the year immediately preceding the year of the reserve study (Audits are no longer required). If budgets are \$75,000 to \$150,000, there just needs to be an annual review (again, no audit). For both of these types of associations, however, 15% of the voting members can submit a written request for an audit. Further, if budgets are above \$150,000 there must be an annual audit by a CPA. (NRS 116.31144) (Eff. 10/1/09)

SB 182 (21) provides that even if the governing documents state otherwise, the executive board has authority to impose assessments to establish adequate reserves - without seeking or obtaining the approval of owners. These assessments, however, must be based on the reserve study. (NRS 116.3115) (Eff. 10/1/09)

SB 183 (26) Money in operating accounts may not be withdrawn without 2 signatures: one must be of an executive board member or an officer and the second must be of another mem-

ber of an executive board, an officer or the community manager. However, there can be a withdrawal with just 1 signature for 2 limited purposes: transferring money to the reserve account at regular intervals, or making auto-

## Pass it along



Got a newsletter in your community? Be sure to let your community know where they can review all of recent changes. Residents may see Community Insights, as well as related publications, online at [www.red.state.nv.us](http://www.red.state.nv.us).

SB 182 (17) also provides that there are 2 comment periods for owners. At the beginning of the meeting, comments are limited to agenda items. At the end of the meeting, comments can be on any subject. (NRS 116.31083) (Eff. 10/1/09)

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## Bill Digest

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matic payments for utilities. This does NOT apply to limited-purpose associations. (NRS 116.31153) (Eff. 10/1/09)

SB 351 (3) This section provides that associations, executive boards and community managers must deposit association funds in financial institutions that are 1) in Nevada, 2) qualified to conduct business in Nevada, or 3) have consented to jurisdiction of Nevada courts and the Division, if out-of-state. In addition, except as otherwise provided by the governing documents, an association shall deposit, maintain and invest funds in:

- 1) properly insured accounts (FDIC, National Credit Union Share Insurance Fund, or Securities Investor Protection Corp.);
- 2) with a private insurer (approved under NRS 678.755); or
- 3) 3) in United States government backed securities. (NRS 116.311395) (Eff. 10/1/09)

SB 351 (12) (12.3) and (12.7) require that the association establish reserves not only for major components of the common elements but also for "any other portion of the CIC that the association is obligated to maintain, repair, replace or restore." (NRS 116.31151) (Eff. 10/1/09)

### VIOLATIONS, ENFORCEMENT OF CC&RS

AB 350 (4.5) Past due fines can no longer accrue interest. (NRS 116.31031) However, interest can be accrued for past due assessments under AB 350 (9). (NRS 116.3115) (Eff. 7/1/09)

AB 350 (9) Past due assessments that are 60 days or more past due bear interest at a rate equal to the prime rate at the largest bank in Nevada, plus 2 percent. The official rate is posted at [www.fid.state.nv.us](http://www.fid.state.nv.us). (NRS 116.3115) (Eff. 7/1/09)

SB 182 (12) Where there are fines against an owner for violations which have been committed by tenants or invitees, the board cannot impose a fine against the owner unless the unit owner 1) participated in or authorized the violation, 2) had prior notice of the violation, or 3) had an opportunity to stop the violation and failed to do so. (NRS 116.3101) (Eff. 10/1/09)

SB 182 (18) creates additional due process protections during violation hearings. Owners must be informed that they have the right to counsel, the right to present

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## Glossary

**Assembly Bill (AB)** – One of two potential prefixes for legislation in Nevada, the other being Senate Bill (SB). Nevada has a bicameral Legislature, similar to the U.S. Congress. Legislation may originate in either the state Senate or the state Assembly. Even though it must eventually pass both houses, a bill retains its original name, which also includes a number based upon the order it was drafted (e.g., SB 183 followed right after SB 182). There is no practical difference between the two.

**Assessments (or dues)** – Each unit owner is obligated pay a share of the common expenses of the association, such as the cost of landscape maintenance, insurance, utilities and administrative costs. The amount the unit owner is obligated to pay is the assessment. This may be paid monthly, annually, or anywhere in between depending upon the HOA's governing documents.

**Common-Interest Community (CIC)/ Homeowners Association (HOA or association)** – means real estate described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to

pay for a share of the real estate taxes, insurance premiums, maintenance or other 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 more familiar term "homeowners association" is used interchangeably with CIC.

**Commission on Common-Interest Communities and Condominium Hotels (Commission)** – A seven-member (as of Oct. 1, 2009) panel, appointed by the governor, charged with adopting regulations and holding hearings regarding violations of NRS 116. The commission comprises an attorney, a CPA, a community manager, a development company executive, and three homeowner association members.

**Executive Board/ Board of Directors/ Board** – These terms are used interchangeably. As the governing body of an association, it may create policy, hold hearings on violations of governing documents, and perform administrative roles. After an association transitions from developer to homeowner control, directors are



## Bill Digest

*Continued from Page 8*

witnesses, and the right to present information regarding any conflict of interest of anyone on the hearing panel. The Commission may be adopting regulations on these rights in the future. Also, these rights are minimum due process rights, and do not preempt any governing document provisions that provide greater protections. (NRS 116.31085) (Eff. 10/1/09)

SB 183 (12) With respect to not only owners and tenants but also invitees, there are some changes regarding fines. There can be no fines imposed against an owner, tenant or invitee regarding the delivery of goods or services by vehicle. In addition, "notice" requirements have been expanded so that fines cannot be imposed unless the owner AND, if different, the person against whom the fine will be imposed, has written notice of the violation. An owner will not be deemed to have received written notice unless it was mailed to the address of the unit AND, if different, to a mailing address specified by the owner. At the hearings, an executive board member who has not paid all assessments cannot participate in the hearing or vote. Such actions will render the board's actions void. The party who receives the fine can request, within 60 days after paying any payment on the fine, a

statement of any remaining balance owed. (NRS 116.31031) (Eff. 10/1/09)

SB 183 (13) Associations shall establish a compliance account to account for fines, which must be separate from any account established for assessments. (NRS 116.310315) (Eff. 10/1/11)

### CREDENTIALIAED PROFESSIONALS

SB 182 (24) Community managers are prohibited from taking retaliatory action against an owner who complained in good faith about violations of the law or governing documents, or recommended the selection or replacement of an attorney, community manager or vendor. These prohibitions also apply to executive board members and officers, employees and agents of the HOAs. (NRS 116.31183) (Eff. 10/1/09)

SB 182 (29) A civil suit can now be filed against a manager for failing to comply with NRS 116 or the governing documents. These suits can be filed by the association – or by a class of owners (at least 10% of the voting members). Further, managers are subject to punitive

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## Glossary

elected by the membership, although vacancies of unexpired terms may be appointed by the board (if the governing documents allow). Directors typically select officers (president, etc.) from amongst themselves, although officers are not required by law to be directors.

**Nevada Administrative Code (NAC)** – Many Nevada Revised Statutes (see below) include provisions for regulations that "fill in the details." These details become part of the Nevada Administrative Code. Regulations have the power of law, but are subordinate to the statutes that authorize them and may be adopted only for the purposes specified by the statute. After regulations are adopted, they are later "codified" into the Nevada Administrative Code. The Commission on Common-Interest Communities and Condominium Hotels holds hearings and adopts regulations authorized by NRS 116. These become part of NAC 116.

**Nevada Revised Statutes (NRS)** – The laws passed by the Nevada Legislature, which are organized by subject into chapters. For instance, Chapter 116 of the Nevada

Revised Statutes (NRS 116) is called "Common-Interest Ownership" and directly pertains to homeowners associations. Other chapters of state law also apply to HOAs, such as the chapters affecting the towing of vehicles, pools and spas, energy efficiency and fair housing.

**Ombudsman for Owners in Common-Interest Communities and Condominium Hotels (Ombudsman)** – The office, part of the Real Estate Division, that produces this newsletter. It also educates HOA residents on their rights and responsibilities, assists in resolving HOA-related disputes, and maintains a registry of all HOAs in Nevada. Its duties are supplemented by other sections of the Division, which licenses and regulates community managers and investigates issues relating to NRS 116.

**Senate Bill (SB)** – See Assembly Bill.

**Unit Owner/ Homeowner/ Member** – These terms are used interchangeably. The members of a homeowners association are the owners, not the tenants. A more detailed definition may be found in NRS 116.095.



## Bill Digest

*Continued from Page 9*

damages under certain conditions. (NRS 116.4117) (Eff. 10/1/09)

SB 182 (39) provides for the issuance of temporary certificates for community management for a period of one year under certain circumstances. (NRS 116A.410) (Eff. 1/1/10)

SB 183 (39) Reserve study specialists must be registered with the Division (changed from being required to have a permit). (NRS 116A.260) (Eff. 10/1/09)

### ARBITRATORS

SB 182 (40) This provision establishes that arbitrators must provide specific information to parties, in plain English, that explains the procedures and law, including information on confirmation of awards, judgments on awards, and applicable laws and court rules regarding attorney's fees and costs. It also clarifies that in nonbinding arbitration, parties have 30 days to commence an action in court, and a year to apply to court for confirmation of the award. In binding arbitration, if a party seeks to have that award vacated, or commences an action in court, that person will be responsible for the opposing party's attorney fees and costs if a more favorable award or judgment is not received. (NRS 38.330) (Eff. 10/1/09)

### DECLARANT ISSUES

SB183 (16) provides that the declarant must provide to the association an accounting for money of the association and audited financial statements for each fiscal year and any ancillary period from the date of the last audit.

Further, the declarant must pay for this ancillary audit and must deliver it within 210 days after the date the declarant's control ends. (NRS 116.31038) (Eff. 10/1/09)

SB 183 (17) provides that, with respect to the converted building reserve deficit which the declarant must deliver to the association, it is defined as the amount necessary to replace major components within 10 years after the date of the first close of escrow of a unit (previously had been the date of the first sale). (NRS 116.310395) (Eff. 10/1/09)

### OMBUDSMAN/REAL ESTATE DIVISION

SB 182 (5) allows petitions to the Division for advisory opinions and rulings. (NRS 116.623) (Eff. 10/1/09)

SB 182 (30) adds 2 members who are unit owners to the CICCH Commission. (NRS 116.600) (Eff. 10/1/09)

SB 253 (9) The CICCH Commission now can impose administrative fines of up to \$10,000 per violation (previously the limit was \$5,000). (NRS 116A.900) (Eff. 10/1/09)

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**NOTE: This bill digest is not a legal document or legal advice. It is a summary of select laws from the 2009 Nevada Legislative session relating to common-interest communities. It is not a complete listing of all Legislative changes.**

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## HOAs: Forms have changed — Get yours up to date

When the law changes, so does everything else. This is true especially of all the myriad paperwork associated with a homeowner association.

Some of these changes are internal: Do your agendas list both homeowner comment periods? Do your candidate disclosures forms ask all the relevant questions? Do your resale packages contain a statement listing all current and expected fees, fines, assessments and other costs?

Just as important: Is your association using the most updated form to do business with the Office of the Ombudsman? To ensure compliance with the law, associations should check the Real Estate Division's Web site, [www.red.state.nv.us](http://www.red.state.nv.us), each time they have business with

the state. From the main page, select the gray button marked Forms on the home page, then look for the form by Type (click on the word "Type" to sort). Scroll down to the set of forms marked as Common-Interest Community.

Some of the documents affected by the 2009 Legislative Session include: Annual Association Registration, Reserve Study Summary and the Candidacy Disclosure Statement.

In addition, associations submitting payment for annual registration must remember that all HOA operating expenses now require two signatures (except limited-purpose ones), one from a director or officer AND another from a director, officer or community manager.





## Educational Opportunities expand in 2010

### *Outreach classes cover fundamentals of managing an association*

It is a duty and legal responsibility of all HOA board members to keep informed of changes to the law. While there is much to learn, the Office of the Ombudsman hopes to make this task a little easier. Our staff has created publications and classes to make learning the new material as simple and convenient as possible.

The first class dates are already under way. Basics for Board Members is presented monthly at locations throughout the state. This 3-hour presentation addresses HOA basics, such as meetings, elections, recordkeeping, and fiduciary duty. It also offers a forum for asking ques-

tions, and presents information on addressing common association challenges.

Additional classes on various HOA topics will be scheduled throughout the year. In addition, seminars taught by contracted subject matter experts are planned throughout the year. Visit [http://www.red.state.nv.us/CIC/Seminars/omb\\_seminars](http://www.red.state.nv.us/CIC/Seminars/omb_seminars) for an updated listing of class opportunities.

Registration is required as seating is limited. Contact Nicholas Haley at 486-4480 or email to [nhaley@red.state.nv.us](mailto:nhaley@red.state.nv.us) to register.



HOA residents attend the first "Basics for Board Members" class, held at the Bradley Building and teleconferenced to Carson City. The three-hour presentation covers the fundamentals of serving as a board member and incorporates changes to the law from the 2009 session. Additional dates are scheduled monthly throughout 2010, as well as classes on specific subjects.

### *Publications synthesize old, new law on meetings, elections*

Adding new law to old, the Office of the Ombudsman recently issued updated brochures on meetings, elections, and general information for Spanish speakers.

The brochures are available online at <http://www.red.state.nv.us/CIC/cic.htm> and in print form at select state offices, including the Real Estate Division at 2501 E. Sahara Ave. in Las Vegas and 788 Fairview Drive in Carson City.

*Association Meetings* explains the different kinds of meetings, the general purpose of each, and scheduling and agenda requirements. It lists the varying timelines for all types of meetings—reason alone to keep it handy.

*Association Elections* gives a start-to-finish overview of how to comply with HOA election law, including a depiction of a three-envelope system.

The Ombudsman's Spanish brochure covers the very basics of how an association works, as well as information on our office. It is useful for bridging the communication gap with residents not well versed in English.

"The brochures bring together all of the details of a particular subject within NRS 116," said Nick Haley, education and information officer for the Office of the Ombudsman. "While some of our products speak to changes in the law, the brochures take a particular topic—say elections—and present the topic as a whole. This is ultimately how all of us will come to understand these changes: within the context of the existing law."

Additional subjects are coming online. Check the Web site for updates, or ask the Ombudsman staff what's new.



## ***Frequently used links to government agencies***

Following are links to public agencies used by HOAs:

List of registered Reserve Study Specialists —  
<http://www.red.state.nv.us/CIC/rss.htm>

Nevada Secretary of State (used for HOA's corporate filing) - <http://www.nvsos.gov/online/>

Upcoming classes — [http://www.red.state.nv.us/CIC/Seminars/omb\\_seminars.pdf](http://www.red.state.nv.us/CIC/Seminars/omb_seminars.pdf)

Prime rate (basis for which associations may charge interest on assessments) —  
<http://www.fid.state.nv.us/Prime/PrimeInterestRate.pdf>

Mortgage Lending Division — <http://mld.nv.gov/>

Neighborhood Services, Henderson —  
[http://www.cityofhenderson.com/neighborhood\\_services/index.php](http://www.cityofhenderson.com/neighborhood_services/index.php)

Neighborhood Services, Las Vegas —  
<http://www.lasvegasnevada.gov/Government/neighborhoodservices.htm>

Neighborhood Services, North Las Vegas —  
<http://cityofnorthlasvegas.com/Departments/CityManager/NeighborhoodServices.shtm>

### **Real Estate Division Forms and links**

Real Estate Division — <http://www.red.state.nv.us/>

Annual Associations Registration —  
<http://www.red.state.nv.us/forms/562.pdf>

Reserve Study Summary —  
<http://www.red.state.nv.us/forms/609.pdf>

Declaration of Certification (signed by new board members) —  
<http://www.red.state.nv.us/forms/602.pdf>

Before You Purchase in a Common-Interest Community Did you Know? —  
<http://www.red.state.nv.us/forms/584.pdf>

Intervention Affidavit —  
<http://www.red.state.nv.us/forms/530.pdf>

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 Carson City, NV 89701  
 PERMIT #16

3820  
 State of Nevada  
 Department of Business & Industry  
 Real Estate Division  
 2501 E. Sahara Avenue, Suite 202  
 Las Vegas, NV 89104-4137



# **EXHIBIT “G”**



Logout My Account Search Menu New District Civil/Criminal Search Refine Search Back

Location : District Court Civil/Criminal Help

## REGISTER OF ACTIONS

CASE No. 06A523959

Korbel Family Living Trust vs Spring Mountain Ranch Master  
Assn, Bay Capital Corp

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Case Type: Title to Property  
Subtype: Liens  
Date Filed: 06/27/2006  
Location: Department 15  
Conversion Case Number: A523959

### PARTY INFORMATION

|   | Lead Attorneys   |
|---|--|
| Defendant Bay Capital Corp                  |  |
| Defendant Spring Mountain Ranch Master Assn | John Eric Leach<br>Retained<br>7027910308(W)             |
| Intervenor Recontrust Company               | Jeremy T. Bergstrom<br>Retained<br>702-369-5960(W)       |
| Plaintiff Korbel Family Living Trust        | Anita K. Holden-McFarland<br>Retained<br>702-435-4175(W) |

### EVENTS & ORDERS OF THE COURT

09/18/2006 All Pending Motions (9:00 AM) (Judicial Officer Glass, Jackie)  
ALL PENDING MOTIONS 9/18/06 Court Clerk: Sandra Jeter Reporter/Recorder: Rachelle Hamilton Heard By: Jackie Glass

#### Minutes

09/18/2006 9:00 AM

APPEARANCES CONTINUED: Steven Yarmy, Esq., present representing the Intervenor. INTERVENOR RECONSTRUST CO'S MOTION TO INTERVENE: MOTION TO INTERPLEAD EXCESS PROCEEDS...PLTFS' MOTION FOR PRELIMINARY INJUNCTION Mr. Yarmy stated he wishes to interplead the excess funds. Mr. Leach advised he has no objection to the interpleader; however, he does object to the amount of legal fees Mr. Yarmy requested. Further advised, deft. agreed to the preliminary injunction and has provided Plt. with an accounting; however, there is a legal dispute over the interpretation of NRS 116. Brief argument by Mr. Yarmy in support of his request for attorney's fees. COURT ORDERED, Motion to Interplead Funds, GRANTED. FURTHER, Mr. Yarmy to prepare the Order, attach a detailed billing and leave a blank for the amount of attorney's fees. Mr. Yarmy moved to be relieved as a stake holder. SO ORDERED. Matter trailed for Ms. McFarland's presence. Matter recalled. Ms. McFarland present and stated she told Mr. Yarmy not to file an interpleader because she would make sure he gets his fees and costs. Court informed Ms. McFarland regarding the status of Mr. Yarmy's request for fees. Mr. Leach stated deft. has stipulated to the entry of the Preliminary Injunction and requested that if a bond is required, that it be diminimus. Further, the parties have reached an agreement with everything except the interpretation of the one statute and could probably stipulate to the facts. Colloquy. Ms. McFarland requested the Court elaborate on its decision reference the legal issue stating it keeps coming up over and over again. COURT ORDERED, counsel are to prepare a stipulation of the facts and matter CONTINUED and SET for ARGUMENT. 10/16/06 9:00 AM ARGUMENT

Parties Present  
Return to Register of Actions





## **EXHIBIT “H”**



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BREF  
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Nevada Bar No. 7591  
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(702) 435-4175  
Attorneys for Plaintiff  
KORBEL FAMILY LIVING TRUST

DISTRICT COURT

CLARK COUNTY, NEVADA

\*\*\*\*\*

KORBEL FAMILY LIVING TRUST

Plaintiff(s),

v.

SPRING MOUNTAIN RANCH  
MASTER ASSOCIATION; BAY  
CAPITAL CORP.,

Defendant(s).

Case No.: A523959

Dept. No.: V

PLAINTIFF'S BRIEF

Hearing Date: November 6, 2006.  
Hearing Time: 9:00 a.m.

Plaintiff KORBEL FAMILY LIVING TRUST (hereinafter "Plaintiff"), by and through its attorneys of record, Anita KH McFarland, Esq. and Marty G. Baker, Esq. of The Cooper Christensen Law Firm, LLP, hereby respectfully submits this brief pursuant to the Court's minute order of September 18, 2006 and in support of its position regarding the judicial interpretation of NRS 116.3116.

I. STATEMENT OF THE CASE

This case concerns the determination of what homeowners assessment amounts are owed

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1 by a new property owner who purchases real property a foreclosure sale conducted by the  
2 beneficiary of a first deed of trust.

## 3 II. LEGAL ISSUE PRESENTED

4  
5 What is the correct application of NRS 116.3116(2), which states:

6 "The lien [for assessments] is also prior to all security interests described in  
7 paragraph (b) to the extent of the assessments for common expenses based on the  
8 periodic budget adopted by the association pursuant to NRS 116.3115 which  
9 would have become due in the absence of acceleration during the 6 months  
immediately preceding institution of an action to enforce the lien."

## 10 III. ARGUMENT

### 11 A. GENERAL STATEMENT OF ISSUES AND PROBLEMS

12 Although NRS 116.3116 establishes lien priorities with respect to the rights and  
13 obligations as to a homeowners association such as Defendant Spring Mountain Ranch Master  
14 Association (hereinafter "Spring Mountain"), there has been a great deal of confusion with  
15 respect to what payment may be demanded from persons who purchase property at foreclosure  
16 sales conducted by the beneficiaries of first deeds of trust held against the property. As a general  
17 rule, the first mortgage security interest is of the highest priority, and any junior lien or mortgage  
18 is extinguished when there is a foreclosure by the first deed of trust.  
19

20 Nevada, however, has adopted what is known as a "superpriority" lien statute with  
21 respect to planned community/homeowner's associations. According to NRS 116.3116(2), a lien  
22 assessment for delinquent "common expenses" (i.e. association dues, common area maintenance  
23 dues, etc., as set forth in NRS 116.3115) incurred up to six (6) months prior to institution of an  
24 action to enforce said lien, does have a priority over a first security interest regardless of the prior  
25 recording. Landscape violations, fines, and collection costs are clearly not "common expenses."  
26  
27  
28



1 based on the periodic budget adopted by the association."

2 Unfortunately, since there has been no judicial interpretation of this statute by the  
3 Supreme Court of Nevada, homeowners associations, as well as the collection agencies who  
4 work for them, very frequently and improperly demand payment of thousands of dollars from  
5 new purchasers for items that are not properly included in this superpriority portion of the lien.  
6 Sometimes lien release fees and other items are demanded from both the new owner (as a  
7 superpriority claim) and from available excess proceeds (as a non-superpriority claim).  
8  
9 Frequently, a lien which was only a few hundred dollars balloons into a demand for thousands of  
10 dollars for attorney fees and costs for simply recording a standard lien and notice of default. The  
11 legal and collection fees are often many times the amount of the lien.  
12

13 Like Plaintiff in this case, most parties who purchase homes at foreclosure sales are banks  
14 or investors who intend to refurbish and resell the property as quickly as possible. Frequently,  
15 the amounts demanded remain unknown until the property is to be sold to a subsequent bona fide  
16 purchaser. At this point an Escrow Demand is generally requested from the pertinent association  
17 in order to clear the lien and provide clear title to the subsequent purchaser. Typically, at this  
18 point an escrow has already been opened and the transaction with the buyer must close within a  
19 short period of time. When the owner/investor is faced with an excessive and incorrect demand,  
20 they are forced to make the decision as to whether or not it is financially feasible to file suit  
21 against the association and their agents to have the lien reduced, which may result in the loss of a  
22 sale to a subsequent purchaser because clear title cannot be provided until the association  
23 releases the lien. The owner/investor's other and often more feasible option is to simply pay the  
24 amount demanded by the association in order to preserve the sale to the subsequent purchaser.  
25  
26  
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28





1           B.    NRS 116.3116 AS APPLIED TO THE FACTS OF THIS CASE

2           In the case at hand, the beneficiary of the second deed of trust conducted a non-judicial  
3 foreclosure sale and sold the property locally known as 9021 Little Horse Avenue, Las Vegas,  
4 Nevada, APN #125-08-221-016 (hereinafter "the Property") to Defendant Bay Capital Corp.  
5 (hereinafter "Bay Capital"), who became the vested owner of the Property. Upon taking  
6 ownership of the Property, Bay Capital did not correct landscape issues which were causing  
7 violations to be assessed against the Property, and did not cure amounts owing to Spring  
8 Mountain.  
9

10           Then, on or about May 1, 2006 and after the sale to Bay Capital, the beneficiary of the  
11 first deed of trust conducted a non-judicial foreclosure sale, at which time the Property was sold  
12 to Plaintiff. A Trustee's Deed Upon Sale was recorded in favor of Plaintiff on May 9, 2006.  
13 Plaintiff promptly refurbished the Property and arranged to sell it to a subsequent purchaser.  
14 Even though the monthly assessments on the Property are approximately \$40.00 per month,  
15 Spring Mountain initially presented Plaintiff with a superpriority demand for \$7,528.07. Spring  
16 Mountain also initially presented a non-superpriority demand for payment from excess proceeds  
17 in the amount of \$2,151.67.  
18

19           Plaintiff telephoned the collection agent who was handling this account for Spring  
20 Mountain and requested that said demand be re-apportioned to the correct amounts between the  
21 super-priority portion owed by Plaintiff, and the non-superpriority portion to be paid from excess  
22 proceeds, but Spring Mountain refused to amend its demand to comply with NRS Chapter 116.  
23 Rather than assent to Spring Mountain's demand, Plaintiff elected to file suit under NRS  
24 108.2275 for *Frivolous or Excessive Notice of Lien*. In order to provide their subsequent  
25  
26  
27  
28



1 purchaser with clear title, Plaintiff was forced to deposit \$10,000.00 with the title company  
2 pending the outcome of this case.

3 Because of the dispute between the parties, Counsel for the trustee who conducted the  
4 foreclosure sale on the first deed of trust elected to intervene in this case, interplead the excess  
5 proceeds, and request attorneys' fees for doing so pursuant to NRS 40.462. The excess proceeds  
6 have now been depleted by thousands of dollars because of Spring Mountain's refusal to  
7 reapportion its demand.  
8

9 Under the clear and precise application of NRS 116.3116(2), the only amounts that  
10 survived the foreclosure sale and constitute the superpriority portion of the lien are "assessments  
11 for common expenses based on the periodic budget adopted by the association pursuant to NRS  
12 116.3115 which would have become due in the absence of acceleration during the 6 months  
13 immediately preceding institution of an action to enforce the lien." Based on this language,  
14 Plaintiff's position is that it should have to pay only six months of monthly assessments with  
15 interest thereon, any assessments which accrued during Plaintiff's ownership of the Property, and  
16 any charges incident to the transfer of the Property (Assessments of \$219.00 plus interest;  
17 Escrow Demand of \$150.00; and Transfer Fee of \$300.00, for a total owing of \$669.00 plus  
18 interest on the assessments).  
19

20 In discussing statutory interpretation generally, the Supreme Court of Nevada stated in  
21 Irving v. Irving, 122 Nev. Adv. Rep. 44, 134 P.3d. 718, 720 (2006), as follows:  
22

23 "This court follows the plain meaning of a statute absent an ambiguity. Whether  
24 a statute is deemed ambiguous depends upon whether the statute's language is  
25 susceptible to two or more reasonable interpretations. When a statute is  
26  
27  
28



1                   ambiguous, we look to the Legislature's intent in interpreting the statute."

2   In this case, the language of the statute regarding "assessments for common expenses based on  
3   the periodic budget adopted by the association" is unambiguous. This language clearly includes  
4   delinquent assessments within the statutory six month period, and clearly does not include fines,  
5   late fees, collection costs, or attorneys' fees. Following the plain meaning of NRS 116.3116,  
6   Plaintiff should not have to pay Spring Mountain for these other items. Spring Mountain may  
7   still collect these non-superpriority expenses from the excess proceeds on deposit with the Court.  
8  
9

10           C.    SPRING MOUNTAIN SEEKS AN EXPANSIVE INTERPRETATION OF  
11                NRS 116.3116

12           The Supreme Court of Nevada has yet to interpret NRS 116.3116. The State of  
13   Connecticut has adopted a superpriority statute similar to Nevada's, and Spring Mountain relies  
14   on the Connecticut case of Hudson House Condominium Association, Inc. v. Brooks, 223 Conn.  
15   610, 611 A.2d 862 (1992) in support of its revised demand of \$1,963.00. However, the  
16   Connecticut statute and the Connecticut court's interpretation thereof are inapposite. Nevada and  
17   Connecticut are as far apart legally and they are geographically. As set forth above, the better  
18   interpretation for the Court in this case is to look at the plain meaning of the Nevada statute.  
19  
20

21           Based upon the Connecticut court's decision, in addition to six months of delinquent  
22   assessments, Spring Mountain contends that it is entitled to recover collection costs and  
23   attorneys' fees from Plaintiff as part of its superpriority lien. These costs and fees are associated  
24   with the former owners' delinquency, and pursuant to the plain meaning of NRS 116.3116 are  
25   properly recoverable from the excess proceeds as part of the non-superpriority portion of the lien.  
26

27   \*\*\*  
28



1           D.    THE EQUITIES OF THE INSTANT CASE ALSO DEMAND A STRICT  
2                   INTERPRETATION OF NRS 116.3116

3  
4           In the instant case, the beneficiary of the second deed of trust foreclosed and Bay Capital  
5 became the vested owner of the Property. Thus, after satisfaction of junior liens and mortgages  
6 under NRS 40.462(2)(c), Bay Capital is entitled to recover any excess proceeds remaining  
7 pursuant to NRS 40.462(2)(d). After Bay Capital became the owner of the Property it paid none  
8 of the amounts that were owing to Spring Mountain and did not correct the landscaping  
9 condition, causing additional fines and violations to continually accrue while Bay Capital was the  
10 owner;

11  
12           Spring Mountain originally insisted that the superpriority portion of the lien was  
13 \$7,528.07, and stated that non-superpriority demand was an additional \$2,151.67. Since there  
14 was \$7,495.65 in excess proceeds, Spring Mountain's interpretation of the statute would have  
15 resulted in Bay Capital being awarded approximately \$5,000.00 from the excess proceeds even  
16 though it failed and refused to pay Spring Mountain or correct violations.  
17

18           If this Court were to honor Spring Mountain's request for the adoption of the Connecticut  
19 court's interpretation of our Nevada statute, the result would be that Plaintiff would be forced to  
20 pay an additional \$1,234.00 to Spring Mountain. Since these funds would be paid by Plaintiff  
21 under the superpriority portion of the lien, this amount would not need to come from the  
22 remaining excess proceeds and Bay Capital would therefore benefit by this amount. Spring  
23 Mountain's interpretation of the statute would thus reward Bay Capital's bad behavior by  
24 allowing Bay Capital to profit from not paying amounts it should have paid to Spring Mountain.  
25

26           Additionally, inclusion of these additional fees and costs in the superpriority portion of  
27  
28





1 the lien would give association collection agencies free reign to continue charging thousands of  
2 dollars in collection costs and attorneys' fees for filing a couple of simple, standard documents.  
3 Purchasers at foreclosure sales would thereby be forced to either pay the exorbitant amounts  
4 demanded or seek court review of the lien amounts pursuant to NRS 108.2275. Both of these  
5 options result in improper and excessive expenditures for foreclosure sale purchasers.

#### 6 IV. CONCLUSION

7  
8 At the outset of this matter, Spring Mountain had the choice of collecting \$669.00 from  
9 Plaintiff and collecting the bulk of the remaining monies it was owed from excess proceeds that  
10 were held by the sale trustee. Spring Mountain's refusal to amend its demand resulted in a  
11 depletion of available excess proceeds, and caused Plaintiff to seek relief from the Court.

12  
13 Additionally, Spring Mountain's interpretation of NRS 116.3116 would reward persons  
14 collecting excess proceeds under NRS 40.462(2)(d), such as Bay Capital in this case, for not  
15 paying homeowners assessments, while saddling the foreclosure sale purchaser with thousands of  
16 dollars in additional costs. Finally, Spring Mountain's suggested interpretation of NRS 116.3116  
17 would allow the associations' collection agencies to continue demanding thousands of dollars for  
18 fines, late fees, attorneys' fees and collection costs from foreclosure sale purchasers.

19  
20 Both the clear language of the statute and the equities of this case demand a strict  
21 interpretation of the statute. Pursuant to NRS 116.3116, Plaintiff is entitled to a ruling that  
22 Plaintiff only owes \$669.00 (plus interest on six months of assessments) to Spring Mountain.  
23 Plaintiff is also entitled to an order pursuant to NRS 108.2275 releasing Spring Mountain's lien,

24 \*\*\*

25 \*\*\*



1 and a ruling that Plaintiff recover its attorneys' fees pursuant to NRS 108.2275(6)(b).

2 DATED this 30<sup>th</sup> day of October, 2006

3 THE COOPER CHRISTENSEN LAW FIRM, LLP

4  
5 By: 

6 Anita K. McFarland, Esq.

7 Nevada Bar No. 8118

8 Marty G. Baker, Esq.

9 Nevada Bar No. 7591

10 820 South Valley View Blvd.

11 Las Vegas, Nevada 89107

12 Attorneys for Plaintiff

13 KORBEL FAMILY LIVING TRUST

14 CERTIFICATE OF MAILING

15 I HEREBY CERTIFY that I am an employee of THE COOPER CHRISTENSEN LAW

16 FIRM, LLP, and that on the 30<sup>th</sup> day of October, 2006, I served a true and correct copy of the

17 foregoing PLAINTIFF'S BRIEF, via First Class United States mail, postage prepaid, on the

18 parties indicated below.

19 John E. Leach, Esq.

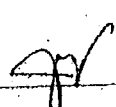
20 Santoro, Driggs, Walch, Kearney, Johnson & Thompson

21 400 South Fourth Street, Third Floor

22 Las Vegas, Nevada 89101

23 Attorneys for Defendant

24 Spring Mountain Ranch Master Association

25  
26 An employee of 

27 THE COOPER CHRISTENSEN LAW FIRM, LLP



## **EXHIBIT “I”**



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11 Facsimile: 702/791-1912

12 Attorneys for Spring Mountain Ranch Master Association

13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 KORBEL FAMILY TRUST

16 Plaintiff,

17 v.

18 SPRING MOUNTAIN RANCH MASTER  
19 ASSOCIATION, BAY CAPITAL CORP.,

20 Defendants.

Case No.: 06-A-523959-C  
Dept. No.: V

DEFENDANT SPRING MOUNTAIN  
RANCH ASSOCIATION'S BRIEF

Hearing Date: November 20, 2006  
Time: 9:00 A.M.

21 Defendant Spring Mountain Ranch Master Association (hereinafter the "Association"),  
22 by and through its attorneys of record, John E. Leach, Esq. of the law firm of Santoro, Driggs,  
23 Walch, Kearney, Johnson & Thompson respectfully submits this Brief pursuant to the Court's  
24 Minute Order of September 18, 2006, and in support of its position regarding the judicial  
25 interpretation of Nevada Revised Statutes ("NRS") 116.3116.

26 STATEMENT OF THE FACTS

27 On or about August 26, 2004, Jose Olivera ("Olivera") purchased the real property  
28 located at 9021 Little Horse Avenue, Las Vegas, Nevada (the "Property"). The Property is  
located within the community known as Spring Mountain Ranch (the "Community") and,  
therefore, is subject to the terms and conditions of the Amended and Restated Master Declaration  
of Covenants, Conditions and Restrictions and Grant of Easements for Spring Mountain Ranch  
(the "Declaration"), which was recorded with the Clark County Recorder's Office on November

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Shirley A. Burges  
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1 25, 1998, in Book No. 981125, as Instrument No. 03642. A true and correct copy of relevant  
2 portions of the Declaration are attached hereto as Exhibit "1" and incorporated herein by this  
3 reference.

4 Concurrent with the purchase of the Property, Olivera executed and consented to the  
5 recordation of a first deed of trust against the Property. Also concurrent with the purchase of the  
6 Property, Olivera executed and consented to the recordation of a second deed of trust against the  
7 Property.

8 According to the Declaration, Olivera was required to pay assessments for common  
9 expenses, among other things, to the Association. See Declaration, Article V, Section 5.1(a).  
10 The Declaration further provides that if an owner fails or refuses to pay assessments due and  
11 owing to the Association, then the Association may place a lien upon the Property and ultimately  
12 foreclose upon the same. See Exhibit "1", Article V, Section 5.10.

13 On or about February 16, 2005, the Association caused a Notice of Delinquent  
14 Assessment Lien (the "Lien") to be recorded against the Property. A true and correct copy of the  
15 Lien is attached hereto as Exhibit "2" and incorporated herein by this reference. When Olivera  
16 continued to fail or refuse to pay his assessments, the Association caused a Notice of Default and  
17 Election To Sell Under Homeowners Association Lien (the "Notice of Default") to be recorded  
18 against the Property on March 25, 2005. A true and correct copy of the Notice of Default is  
19 attached hereto as Exhibit "3" and herein incorporated by this reference.

20 On or about March 14, 2006, the beneficiary of the second deed of trust conducted a non-  
21 judicial foreclosure sale and sold the Property to Defendant Bay Capital Corp. ("Capital") who  
22 recorded its Trustee's Deed Upon Sale on March 22, 2006. A true and correct copy of the  
23 Trustee's Deed Upon Sale is attached hereto as Exhibit "4" and incorporated herein by this  
24 reference.

25 On or about April 28, 2006, the beneficiary of the first deed of trust conducted a non-  
26 judicial foreclosure sale and sold the Property to Plaintiff Korbel Family Living Trust  
27 ("Plaintiff"), who recorded its Trustee's Deed Upon Sale on May 9, 2006. A copy of the  
28 Trustee's Deed Upon Sale is attached hereto as Exhibit "5" and incorporated herein by this



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1 reference.

2 Based on the information provided by the Plaintiff, the Plaintiff paid the sum of Three  
3 Hundred Thousand Forty-Seven Three Hundred Dollars (\$347,300.00) for the Property. The  
4 foreclosing beneficiary of the first deed of trust was only owed Three Hundred Thousand Thirty-  
5 Nine Eight Hundred Four Dollars and Thirty-Nine Cents (\$339,804.35). As a result, surplus  
6 funds in the amount of Seven Thousand Four Hundred Ninety-Five Dollars and Sixty-Five Cents  
7 (\$7,495.65) remained to be distributed in accordance with NRS 40.462.

8 After the foreclosure sale, Plaintiff requested that the Association provide it with a payoff  
9 on the Association's lien so that it could clear title to the Property. The Association initially  
10 presented Plaintiff with a demand for Seven Thousand Five Hundred Twenty-Eight Dollars and  
11 Seven Cents (\$7,528.07). A true and correct copy of the Association's initial payoff is attached  
12 hereto as Exhibit "6" and incorporated herein by this reference. The Association subsequently  
13 provided a payoff demand in the amount of Two Thousand One Hundred Fifty-One Dollars and  
14 Sixty-Seven Cents (\$2,151.67). A true and correct copy of the subsequent payoff demand is  
15 attached hereto as Exhibit "7" and incorporated herein by this reference.

16 When the Plaintiff and the Association could not agree on the apportionment of the  
17 Association's claim, Plaintiff initiated this instant action against the Association. The issue  
18 currently before the court is the value of the superpriority portion of the Association's lien,  
19 which is the responsibility of Plaintiff, and the amount of the surplus funds that should be  
20 distributed to the Association.

#### 21 STATEMENT OF THE LAW

22 In 1991, the Nevada Legislature adopted the Uniform Common-Interest Ownership Act  
23 (the "Act"). The Act, which was originally created by the Uniform Law Commissioners, was  
24 codified at NRS 116 and became effective January 1, 1992. Included in the Act is a section that  
25 governs the association assessment liens and the priority of those liens. Specifically, NRS  
26 116.3116(2) reads, as follows:

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



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

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

11 (c) Liens for real estate taxes and other governmental  
12 assessments or charges against the unit or cooperative. The lien is  
13 also prior to all security interests described in paragraph (b) to the  
14 extent of the assessments for common expenses based on the  
15 periodic budget adopted by the association pursuant to NRS  
16 116.3115 which would have become due in the absence of  
17 acceleration during the 6 months immediately preceding institution  
18 of an action to enforce the lien. This subsection does not affect the  
19 priority of mechanics' or materialmen's liens, or the priority of  
20 liens for other assessments made by the association.

21 This statute provides for the "superpriority" of a portion of an association's lien over  
22 even a first deed of trust or mortgage recorded against the property. In the comments to the  
23 Uniform Common-Interest Ownership Act, it states as follows:

24 To ensure prompt and efficient enforcement of the association's  
25 lien for unpaid assessments, such liens should enjoy statutory  
26 priority over most other liens. Accordingly, subsection (b)  
27 provides that the association's lien takes priority over all other  
28 liens and encumbrances except those recorded prior to the  
recordation of the declaration, those imposed for real estate taxes  
or other governmental assessments or charges against the unit, and  
first security interests recorded before the date the assessment  
became delinquent. However, as to prior first security interests,  
the association's lien does have priority for 6 months' assessments  
based on the periodic budget. A significant departure from  
existing practice, the 6 months' priority for the assessment lien  
strikes an equitable balance between the need to enforce collection  
of unpaid assessments and the obvious necessity for protecting the  
priority of the security interests of lenders. As a practical matter,  
secured lenders will most likely pay the 6 months' assessments  
demanded by the association rather than having the association  
foreclose on the unit.

29 The Nevada Supreme Court has never ruled on the scope and extent of the six (6) month  
30 "superpriority" portion of the Association's lien. Plaintiff requests that the court limit it to no  
31 more than the six (6) months assessments. However, the Association asserts that the  
32 Association's priority should be greater.



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1           A.    The Association's Lien Has Priority Over the Second Deed of Trust.

2           As set forth in NRS 116.3116(2), the Association's Lien has priority over all other liens  
3 or encumbrances recorded against the Property, except: (1) those recorded prior to the  
4 recordation of the Declaration, (2) those imposed for real estate taxes or other governmental  
5 assessments or charges against the Property, and (3) first security interests recorded before the  
6 assessments became due.

7           The Declaration was recorded on November 25, 1998. See Exhibit "I". The second deed  
8 of trust was recorded on August 26, 2004. The second deed of trust was not imposed for real  
9 estate taxes or other governmental assessments. A second deed of trust is not a first security  
10 interest. Accordingly, the Association's lien has priority over the second deed of trust.

11           When the second deed of trust holder foreclosed on the Property, the purchaser, Capital,  
12 acquired title to the Property subject to the Association's lien. The Association's lien claim  
13 survived the second deed of trust foreclosure and has priority over any claim made by Capital.  
14 See NRS 116.3116(2).

15           B.    Association Lien Has Priority Over the First Deed of Trust.

16           As set forth in NRS 116.3116(2) a portion of the Association's lien has priority over even  
17 the first deed of trust. Plaintiff acknowledges the Association's position of priority but  
18 challenges the calculation of the Association's claim.

19           C.    The Superpriority Portion of the Association's Claim Should Include  
20 Interest, Collection Costs, Late Fees and Interest.

21           The Plaintiff contends that the Association's "superpriority" claim should be in the  
22 amount of Six Hundred Ninety Nine Dollars (\$699.00), plus interest. The Association contends  
23 that its "superpriority" claim should be valued at One Thousand Nine Hundred Sixty-Three  
24 Dollars (\$1,963.00), plus interest. As noted above, the Nevada Supreme Court has not ruled on  
25 this issue.

26           The State of Connecticut has also adopted and codified the Uniform Common-Interest  
27 Ownership Act, including the assessment lien and priority of lien provisions. The Connecticut  
28 statute is identical to the one adopted by the Nevada legislature and codified at NRS

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2   HORIZONS AT SEVEN HILLS  
3   HOMEOWNERS ASSOCIATION,

Supreme Court No. 63178

District Court Case No. A-11-647850-B

4                   Appellant,

5                   v.

6   IKON HOLDINGS, LLC, a Nevada  
7   limited liability company,

8                   Respondent.

9  
10  
11                   **APPELLANT'S APPENDIX**

12                   **VOLUME 5 OF 11**

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