

Amendment No. 388

Assembly Amendment to Assembly Bill No. 396

(BDR 10-1284)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

KEL/BAW



Date: 4/21/2007

A.B. No. 396—Makes various changes to the provisions governing common-interest communities. (BDR 10-1284)



ASSEMBLY BILL NO. 396--ASSEMBLYWOMAN ALLEN

MARCH 16, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to the provisions governing common-interest communities. (BDR 10-1284)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to common-interest communities; **requiring a member of an executive board who stands to profit personally from a matter before the board to disclose and abstain from voting on the matter;** prohibiting the use of delegates or representatives to exercise the voting rights of units' owners ~~in the election or removal of a member of the executive board;~~ **allowing the use of delegates or representatives to exercise the voting rights of owners of certain time shares;** prohibiting an association in a common-interest community from imposing an assessment against certain tax-exempt property; requiring the signatures of certain persons **before money in the operating account of an association may be withdrawn;** revising the provisions relating to foreclosure of liens against units; providing that official publications related to issues of official interest must provide equal space for opposing views and opinions; requiring applicants for a certificate for the management of a common-interest community to post certain bonds; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill provides additional ethical requirements for members of an executive board by requiring a member who stands to gain any personal profit or compensation from a matter before the executive board to disclose the matter to the executive board and to abstain from voting on the matter. (NRS 116.31185, 116.31187)

Under existing law, a common-interest community created before January 1, 1992, and a common-interest community, with a declaration so providing, that consists of at least 1,000 units, may have the voting rights of the units' owners in the association for that common-interest community be exercised by delegates or representatives. (NRS 116.1201, 116.31105) **Sections ~~1-6~~ 1.3 and ~~111~~ 3-6.3 of this bill prohibit the use of delegates or representatives to exercise the voting rights of units' owners in the election or removal of a member of the executive board. However, a master association which governs a time-share plan created pursuant to chapter 119A of NRS is allowed to continue using delegates or representatives to exercise the voting rights of owners of time shares.**

Section 2.5 of this bill prohibits an association from imposing an assessment against property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

Existing law requires certain signatures before money in the reserve account of an association may be withdrawn. (NRS 116.31153) Section 6.7 of this bill also requires certain signatures before money in the operating account of an association may be withdrawn.

Existing law provides for an association to have a lien on a unit for any construction penalty, assessment or fine imposed against the unit's owner which may later be foreclosed upon. (NRS 116.3116) Section ~~7.4~~ 7.5 of this bill requires an association to obtain approval from the Commission on Common-Interest Communities before attempting to foreclose its lien. **The Commission must approve the foreclosure of the lien if the association has followed certain procedures.** In addition, section 8 of this bill changes existing law to provide that the sale of a unit as a result of a foreclosure of a lien is subject to an equity or right of redemption. (NRS 116.31166)

Section 9 of this bill provides that if an official publication contains the views or opinions of the association concerning an issue of official interest, the official publication must, upon request, ~~provide equal space and equivalent exposure to opposing views and opinions. If an official publication contains information concerning a civil action or claim in which the association is a party, the official publication is not required to provide equal space to opposing views and opinions. In addition, section 9 provides that if an official publication contains any mention of a candidate or ballot question, the official publication must provide equal space in the same issue to the candidate or a representative of an organization which advocates the passage or defeat of the ballot question.~~

Existing law provides for the Commission to adopt regulations concerning the issuance of certificates for community managers. (NRS 116A.410) Section 10 of this bill provides that the regulations must: (1) require an applicant to post a bond in a form and in an amount established by regulation; and (2) adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control.

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 a new section to read as follows:

A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall:

1. Disclose the matter to the executive board; and
2. Abstain from voting on any such matter.

~~[Section 1.]~~ Sec. 1.3. NRS 116.1201 is hereby amended to read as follows:

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;
- (2) Shall register with the Ombudsman pursuant to NRS 116.31158;
- (3) Shall comply with the provisions of:

(I) NRS 116.31038, 116.31083 and 116.31152; and

(II) 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 does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or 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, inclusive, apply to all contracts for the disposition thereof 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; ~~for~~

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

(d) 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 ~~for~~, 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; or

(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.

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. 1.7. NRS 116.1203 is hereby amended to read as follows:

116.1203 1. Except as otherwise provided in subsection 2, 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. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, the provisions of NRS 116.3101 to 116.350, inclusive, and section 1 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 units.

Sec. 2. ~~[NRS 116.212 is hereby amended to read as follows:~~

~~116.212 1. If the declaration provides that any of the powers described in NRS 116.3102 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of one or more common-interest communities or for the benefit of the units' owners of one or more common-interest communities, or on behalf of a common-interest community and a time-share plan created pursuant to chapter 119A of NRS, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.~~

~~2. Unless it is acting in the capacity of an association described in NRS 116.3101, a master association may exercise the powers set forth in paragraph (b) of subsection 1 of NRS 116.3102 only to the extent expressly permitted in:~~

~~(a) The declarations of common-interest communities which are part of the master association or expressly described in the delegations of power from those common-interest communities to the master association; or~~

~~(b) The declaration of the common-interest community which is a part of the master association and the time-share instrument creating the time-share plan governed by the master association;~~

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

~~4. The rights and responsibilities of units' owners with respect to the unit owners' association set forth in NRS 116.3103, 116.31032, 116.31034, 116.31036, 116.3108, 116.31085, 116.3109, 116.311 [, 116.31105] and 116.3112 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise units' owners within the meaning of this chapter;~~

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

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

~~(b) All members of the executive boards of all common-interest communities subject to the master association may elect all members of the master association's executive board;~~

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

~~(d) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board. (Deleted by amendment.)~~

Sec. 2.5. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in ~~subsection 2,~~ this section, and subject to the provisions of the declaration, the association may do any or all of the following:

(a) Adopt and amend bylaws, rules and regulations.

(b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.

(c) Hire and discharge managing agents and other employees, agents and independent contractors.

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

(e) Make contracts and incur liabilities.

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

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

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

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

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

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

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners.

(k) Impose charges for late payment of assessments.

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

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

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

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

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

(q) Exercise any other powers conferred by the declaration or bylaws.

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

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

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

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

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

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

3. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on any property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

Sec. 3. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, at least a majority of whom must be units' owners. Unless the governing documents provide otherwise, the remaining members of the executive board do not have to be units' owners. The executive board shall elect the officers of the association. The members of the executive board and the officers of the association shall take office upon election.

2. The term of office of a member of the executive board may not exceed 2 years, except for members who are appointed by the declarant. Unless the governing documents provide otherwise, there is no limitation on the number of terms that a person may serve as a member of the executive board.

3. The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an equal number of members of the executive board are elected at each election. The provisions of this subsection do not apply to:

(a) Members of the executive board who are appointed by the declarant; and

(b) Members of the executive board who serve a term of 1 year or less.

4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in the bylaws of the association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the executive board. Each unit's owner who is qualified to serve as a member of the executive board may have his name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association.

5. Each person whose name is placed on the ballot as a candidate for a member of the executive board must:

1 (a) Make a good faith effort to disclose any financial, business, professional or
2 personal relationship or interest that would result or would appear to a reasonable
3 person to result in a potential conflict of interest for the candidate if the candidate
4 were to be elected to serve as a member of the executive board; and

5 (b) Disclose whether the candidate is a member in good standing. For the
6 purposes of this paragraph, a candidate shall not be deemed to be in "good
7 standing" if the candidate has any unpaid and past due assessments or construction
8 penalties that are required to be paid to the association.

9 (c) The candidate must make all disclosures required pursuant to this subsection in
10 writing to the association with his candidacy information. The association shall
11 distribute the disclosures to each member of the association with the ballot in the
12 manner established in the bylaws of the association.

13 6. Unless a person is appointed by the declarant:

14 (a) A person may not be a member of the executive board or an officer of the
15 association if the person, his spouse or his parent or child, by blood, marriage or
16 adoption, performs the duties of a community manager for that association.

17 (b) A person may not be a member of the executive board of a master
18 association or an officer of that master association if the person, his spouse or his
19 parent or child, by blood, marriage or adoption, performs the duties of a community
20 manager for:

21 (1) That master association; or

22 (2) Any association that is subject to the governing documents of that
23 master association.

24 7. An officer, employee, agent or director of a corporate owner of a unit, a
25 trustee or designated beneficiary of a trust that owns a unit, a partner of a
26 partnership that owns a unit, a member or manager of a limited-liability company
27 that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of
28 the association or a member of the executive board. In all events where the person
29 serving or offering to serve as an officer of the association or a member of the
30 executive board is not the record owner, he shall file proof in the records of the
31 association that:

32 (a) He is associated with the corporate owner, trust, partnership, limited-
33 liability company or estate as required by this subsection; and

34 (b) Identifies the unit or units owned by the corporate owner, trust, partnership,
35 limited-liability company or estate.

36 8. ~~Except as otherwise provided in NRS 116.31105, the election of any~~
37 ~~member of the executive board must be conducted by secret written ballot unless~~
38 ~~the declaration of the association provides that voting rights may be exercised by~~
39 ~~delegates or representatives as set forth in NRS 116.31105. If the election of any~~
40 ~~member of the executive board is conducted by secret written ballot, in the~~
41 ~~following manner:~~

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

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

49 (c) A quorum is not required for the election of any member of the executive
50 board.

51 (d) Only the secret written ballots that are returned to the association may be
52 counted to determine the outcome of the election.

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

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for a member of the executive board may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

9. Each member of the executive board shall, within 90 days after his appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.

Sec. 4. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section the number of votes cast in favor of removal constitutes:

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

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

2. ~~[(The)]~~ Except as otherwise provided in NRS 116.31105, the removal of any member of the executive board must be conducted by secret written ballot ~~unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the removal of a member of the executive board is conducted by secret written ballot:~~ in the following manner:

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

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

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

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

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

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

board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against the association, but may be recovered from persons whose activity gave rise to the damages.

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

Sec. 5. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

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

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

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

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

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

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

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

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

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

11 (c) A period devoted to comments by units' owners and discussion of those
12 comments. Except in emergencies, no action may be taken upon a matter raised
13 under this item of the agenda until the matter itself has been specifically included
14 on an agenda as an item upon which action may be taken pursuant to paragraph (b).

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

21 6. The secretary or other officer specified in the bylaws shall cause minutes to
22 be recorded or otherwise taken at each meeting of the units' owners. Not more than
23 30 days after each such meeting, the secretary or other officer specified in the
24 bylaws shall cause the minutes or a summary of the minutes of the meeting to be
25 made available to the units' owners. A copy of the minutes or a summary of the
26 minutes must be provided to any unit's owner upon request and, if required by the
27 executive board, upon payment to the association of the cost of providing the copy
28 to the unit's owner.

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

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

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

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

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

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

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

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

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

52 (a) Could not have been reasonably foreseen;

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

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

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

Sec. 6. NRS 116.311 is hereby amended to read as follows:

116.311 1. If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners cast the votes allocated to that unit without protest made promptly to the person presiding over the meeting by any of the other owners of the unit.

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

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

(a) The proxy must be dated.

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

(c) The proxy must designate the meeting for which it is executed.

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

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

4. A proxy terminates immediately after the conclusion of the meeting for which it is executed.

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

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

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

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

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

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

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

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

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

~~10. The executive board shall not and the governing documents must not provide for or authorize a representative form of government or the use of delegates or representatives to exercise the voting rights of the units' owners.~~

Sec. 6.3. NRS 116.31105 is hereby amended to read as follows:

116.31105 1. If the declaration so provides, in a common-interest community that consists of at least 1,000 units, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives ~~but~~ 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.

2. In addition to a common-interest community identified in subsection 1, if the declaration so provides, in a common-interest community created before October 1, 1999, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives ~~but~~ 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.

3. In addition to a common-interest community identified in subsections 1 and 2, if the declaration so provides, the voting rights of the owners of time shares within a time-share plan created pursuant to chapter 119A of NRS which is governed by a master association may be exercised by delegates or representatives.

4. For the purposes of subsection 1, each unit that a declarant has reserved the right to create pursuant to NRS 116.2105 and for which developmental rights exist must be counted in determining the number of units in a common-interest community.

~~5. For the purposes of subsection 3, each time share that a developer has reserved the right to create pursuant to paragraph (g) of subsection 2 of NRS 119A.380 must be counted in determining the number of time shares in a time-share plan.~~

6. Notwithstanding any provision in the declaration, the election of any delegate or representative must be conducted by secret written ballot.

~~7.~~ 7. When an election of a delegate or representative is conducted by secret written ballot:

(a) The secretary or other officer of the association specified in the bylaws of the association shall cause a secret written ballot and a return envelope to be sent,

1 prepaid by United States mail, to the mailing address of each unit within the
2 common-interest community or to any other mailing address designated in writing
3 by the unit's owner.

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

7 (c) Only the secret written ballots that are returned to the association in the
8 manner prescribed on the ballot may be counted to determine the outcome of the
9 election.

10 (d) The secret written ballots must be opened and counted at a meeting called
11 for the purpose of electing delegates or representatives. A quorum is not required to
12 be present when the secret written ballots are opened and counted at the meeting.

13 (e) A candidate for delegate or representative may not possess, be given access
14 to or participate in the opening or counting of the secret written ballots that are
15 returned to the association in the manner prescribed on the ballot before those
16 secret written ballots have been opened and counted at a meeting called for that
17 purpose.

18 **Sec. 6.7. NRS 116.31153 is hereby amended to read as follows:**

19 116.31153 1. Money in the reserve account of an association required by
20 paragraph (b) of subsection 2 of NRS 116.3115 may not be withdrawn without the
21 signatures of at least two members of the executive board or the signatures of at
22 least one member of the executive board and one officer of the association who is
23 not a member of the executive board.

24 2. Money in the operating account of an association may not be withdrawn
25 without the signatures of at least one member of the executive board or one
26 officer of the association and a member of the executive board, an officer of the
27 association or the community manager.

28 **Sec. 7. ~~NRS 116.3116 is hereby amended to read as follows:~~**

29 ~~116.3116 1. The association has a lien on a unit for any construction penalty~~
30 ~~that is imposed against the unit's owner pursuant to NRS 116.310305, any~~
31 ~~assessment levied against that unit or any fines imposed against the unit's owner~~
32 ~~from the time the construction penalty, assessment or fine becomes due. Unless the~~
33 ~~declaration otherwise provides, any penalties, fees, charges, late charges, fines and~~
34 ~~interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS~~
35 ~~116.3102 are enforceable as assessments under this section. If an assessment is~~
36 ~~payable in installments, the full amount of the assessment is a lien from the time the~~
37 ~~first installment thereof becomes due.~~

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

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

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

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

49 ~~→ The lien is also prior to all security interests described in paragraph (b) to the~~
50 ~~extent of the assessments for common expenses based on the periodic budget~~
51 ~~adopted by the association pursuant to NRS 116.3115 which would have become~~
52 ~~due in the absence of acceleration during the 6 months immediately preceding~~
53 ~~institution of an action to enforce the lien. This subsection does not affect the~~

~~priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.~~

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

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

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

~~6. This section does not prohibit actions to recover sums for which subsection 4 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.~~

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

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

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

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

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

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

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

~~10. The association must obtain approval from the Commission before attempting to foreclose its lien pursuant to the provisions of NRS 116.31162 to 116.31168, inclusive. (Deleted by amendment.)~~

Sec. 7.5. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection 4, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest, at his address if known and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has

executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

- (1) Describe the deficiency in payment.
- (2) State the name and address of the person authorized by the association to enforce the lien by sale.
- (3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) *The Commission has approved of the foreclosure of the lien. The Commission shall grant approval for the foreclosure of the lien if the Commission finds that the association has complied with paragraph (a) and the association or other person conducting the sale has complied with paragraph (b).*

(d) The unit's owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

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

3. The period of 90 days begins on the first day following:

- (a) The date on which the notice of default is recorded; or
 - (b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest at his address, if known, and at the address of the unit,
- ↳ whichever date occurs later.

4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

Sec. 8. NRS 116.31166 is hereby amended to read as follows:

116.31166 1. The recitals in a deed made pursuant to NRS 116.31164 of:

- (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;
- (b) The elapsing of the 90 days; and
- (c) The giving of notice of sale,

↳ are conclusive proof of the matters recited.

2. Such a deed containing those recitals is conclusive against the unit's former owner, his heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.

3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 ~~{vests in the purchaser the title of the unit's owner without}~~ **is subject to an** equity or right of redemption.

Sec. 9. NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association, including, without limitation, all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

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

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2; and

(c) A contract between the association and an attorney.

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

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

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

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

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

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

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

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

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

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

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

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

7. Except as otherwise provided in this subsection, if an official publication contains or will contain the views or opinions of the association, the executive board, a community manager or an officer, employee or agent of an association

concerning an issue of official interest, the official publication must, upon request ~~for~~ and without charge, ~~and without any prior censorship, devote and include~~ provide equal space ~~and equivalent exposure to any~~ to opposing views and opinions of a unit's owner, tenant or resident of the common-interest community. If an official publication contains or will contain any information concerning a civil action or claim in which the association is a party, the official publication is not required to provide equal space to any opposing views or opinions.

8. As used in this ~~subsection~~ section:

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

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

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

(b) "Official publication" means:

(1) An official website;

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

(3) An official bulletin board that is available to each unit's owner,
↳ which is published or maintained at the cost of an association and by an association, an executive board, a member of an executive board, a community manager or an officer, employee or agent of an association.

Sec. 10. NRS 116A.410 is hereby amended to read as follows:

116A.410 1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate.

(b) Must require an applicant to post a bond in a form and in an amount established by regulation. The Commission shall, by regulation, adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control.

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

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

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

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

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

Sec. 11. ~~NRS 116.31105 is hereby repealed.~~ (Deleted by amendment.)

Sec. 12. 1. This ~~act~~ section becomes effective upon passage and approval.

2. Section 10 of this act becomes effective:

1 (a) Upon passage and approval for the purpose of adopting regulations
2 and performing any other preparatory administrative tasks that are necessary
3 to carry out the provisions of this act; and

4 (b) On January 1, 2008, for all other purposes.

5 3. Sections 1 to 9, inclusive, and 11 of this act become effective on ~~July~~
6 October 1, 2007.

f

~~TEXT OF REPEALED SECTION~~

~~116.31105 Voting by delegates or representatives; procedure for electing delegates or representatives.~~

~~1. If the declaration so provides, in a common interest community that consists of at least 1,000 units, the voting rights of the units' owners in the association for that common interest community may be exercised by delegates or representatives.~~

~~2. In addition to a common interest community identified in subsection 1, if the declaration so provides, in a common interest community created before October 1, 1999, the voting rights of the units' owners in the association for that common interest community may be exercised by delegates or representatives.~~

~~3. For the purposes of subsection 1, each unit that a declarant has reserved the right to create pursuant to NRS 116.2105 and for which developmental rights exist must be counted in determining the number of units in a common interest community.~~

~~4. Notwithstanding any provision in the declaration, the election of any delegate or representative must be conducted by secret written ballot.~~

~~5. When an election of a delegate or representative is conducted by secret written ballot:~~

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

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

~~(c) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.~~

~~(d) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.~~

~~(e) A candidate for delegate or representative may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association in the manner prescribed on the ballot before those secret written ballots have been opened and counted at a meeting called for that purpose.]~~