

Amendment No. 504

Senate Amendment to Senate Bill No. 182 (BDR 10-795)

Proposed by: Senator Horsford**Amendment Box:** Replaces Amendment No. 496.
Consistent with Amendment No. 313.**Amends:** Summary: No Title: No 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 dashed underlining is newly added transitory language.

BAW



Date: 4/16/2009

S.B. No. 182—Makes various changes relating to common-interest communities.
(BDR 10-795)

SENATE BILL NO. 182—SENATOR SCHNEIDER

MARCH 9, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to common-interest communities.
(BDR 10-795)

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

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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; clarifying various provisions of existing law relating to certain definitions of terms, provisions of governing documents that violate statutory provisions, elections and the authority of an association to levy certain assessments under certain circumstances; revising certain provisions governing the authority of an association to impose fines and construction penalties under certain circumstances; making various other changes to the provisions governing common-interest communities; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill provides that a member of the executive board who has a direct pecuniary interest or commitment to certain persons in a matter before the executive board and who knowingly votes on the matter is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000. **Section 3** of this bill provides that a person who tampers or interferes with the election of a member to the executive board is guilty of a category C felony. (NRS 116.31034) Existing law prohibits a community manager, an officer or a member of the executive board from accepting or soliciting compensation that would influence him or appear to be a conflict of interest. (NRS 116.31185) **Section 4** of this bill provides that a community manager or member of the executive board who asks for or receives compensation to influence his vote, opinion or action upon any official matter is guilty of a category C felony.

Existing law requires each agency to provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, agency regulation or decision of the agency, and the Department of Business and Industry, which includes the Real Estate Division, has accordingly adopted regulations for such petitions. (NRS 233B.120; NAC 232.020) However, the Real Estate Division has not adopted any regulations pertaining to such petitions. **Section 5** of this bill enacts a specific statutory provision requiring the Real Estate Division to adopt regulations pertaining to such petitions.

Under existing law, a “common-interest community” is defined as “real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit.” (NRS 116.021) **Section 6** of this bill clarifies existing law with respect to this definition by providing explicitly that, as used in this definition, the term “real estate other than that unit” does not include any interest in any covenants, conditions or

restrictions to which the unit is subject, and the fact that the unit is subject to covenants, conditions or restrictions is not relevant and not to be considered in determining whether real estate is a "common-interest community."

Existing law contains provisions concerning units or common elements of an association that are acquired by eminent domain. (NRS 116.1107) **Section 7** of this bill clarifies that existing law does not authorize an association to exercise the power of eminent domain. **Section 8** of this bill clarifies that any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of chapter 116 of NRS is superseded by the provisions of chapter 116 of NRS, regardless of whether the provision became effective before the enactment of the statutory provision being violated. (NRS 116.1206)

Sections 9 and 10 of this bill revise existing law to limit an association's power: (1) to include certain provisions in certain contracts involving the association; and (2) to waive provisions of governing documents. (NRS 116.3102, 116.3103)

Existing law authorizes an executive board to impose fines and construction penalties. (NRS 116.310305, 116.31031) **Sections 11 and 12** of this bill provide for an automatic appeal of such fines and construction penalties to the Commission for Common-Interest Communities and Condominium Hotels. **Section 12** also limits the imposition of fines against a unit's owner for violations of the governing documents by a tenant or guest of the unit's owner.

Sections 13, 14 and 16 of this bill revise provisions relating to certain elections and meetings of an association by: (1) requiring members of the executive board to be units' owners; (2) providing that officers of an association are not required to be units' owners, unless the governing documents provide otherwise; (3) providing certain rights for candidates for election to an executive board; (4) reducing the votes necessary for removal of a member of an executive board; and (5) prohibiting an association from interfering with the collection of signatures for a special meeting or removal election. (NRS 116.31034, 116.31036, 116.3108)

Section 15 of this bill clarifies existing law concerning the respective duties of an association and the units' owners regarding the maintenance, repair and replacement of the common elements and the units. (NRS 116.3107)

Sections 17-19 of this bill revise provisions relating to board meetings and hearings by: (1) requiring that meetings of the executive board be audio recorded and available in a certain manner; (2) requiring that certain written complaints be placed on the agenda; and (3) providing due process protections to units' owners at certain hearings. (NRS 116.31083, 116.31085, 116.31087) **Section 17** also revises existing law to allow public comments to be made after every agenda item instead of at the beginning of a meeting. (NRS 116.31083)

~~Existing law contains certain requirements concerning prior approval by an association before commencement of a civil action, as well as certain exceptions to obtaining such prior approval. (NRS 116.21088) Section 20 of this bill: (1) revises the period for ratification of the decision to commence certain civil actions; and (2) provides that a certain exception to the requirement of obtaining prior approval before commencing a civil action does not apply to an action for a constructional defect.)~~

Existing law provides that an association has the statutory obligation to: (1) fund adequately its reserves; (2) include in its annual budget a statement concerning its reserves and whether it will be necessary to impose any special assessments; and (3) review its study of the reserves on an annual basis and make any appropriate adjustments necessary to ensure that the reserves are always funded adequately. (NRS 116.3115, 116.31151, 116.31152) **Section 21** of this bill clarifies existing law by explicitly stating that notwithstanding any provision of the governing documents to the contrary, the executive board may, without seeking or obtaining the approval of units' owners, impose any necessary and reasonable assessments to establish adequate reserves.

Section 22 of this bill authorizes the filing of a civil action to recover certain fees, administrative penalties and interest that were imposed erroneously. (NRS 116.31155)

Section 23 of this bill requires an association to obtain the approval of the Commission before attempting to foreclose on a lien. (NRS 116.3116)

Sections 24, 26 and 28 of this bill provide certain additional rights to units' owners by: (1) increasing the scope and definition of prohibited retaliatory action; (2) authorizing the

exhibition of certain political signs in certain areas; and (3) mandating notice before interruption of utility service to a unit's owner. (NRS 116.31183, 116.325, 116.345)

Section 25 of this bill expands the prohibition against certain contracts between an association and a member of the executive board or officer to include contracts involving financing. (NRS 116.31187) **Section 27** of this bill: (1) provides that existing law concerning drought tolerant landscaping must be construed broadly; and (2) clarifies the definition of "drought tolerant landscaping." (NRS 116.330) **Section 29** of this bill provides that if a member of the executive board, officer of an association or community manager fails or refuses to comply with the governing documents of the association or the provisions of chapter 116 of NRS, any person or class of persons may bring a civil action for damages or other relief. (NRS 116.4117)

Section 30 of this bill increases the membership of the Commission by adding two members who are units' owners but who are not required to have served as members of an executive board. (NRS 116.600) **Sections 31 and 34** of this bill revise provisions relating to the Commission's duties by: (1) providing for the use of training officers to perform certain duties; and (2) establishing a schedule for investigations of certain violations. (NRS 116.605, 116.765)

Section 35 of this bill: (1) eliminates the authority of the Commission or hearing panel to order a respondent to pay the costs of the attorney's fees of the Division; and (2) provides that in any matter brought before the Commission or a hearing panel, attorney's fees must not be granted to the prevailing party, regardless of whether the governing documents provide for such fees to be granted to a prevailing party. (NRS 116.785) **Section 36** of this bill clarifies that if the Commission or hearing officer orders an audit of an association, the audit is conducted at the expense of the association. (NRS 116.790)

Existing law provides that a written affidavit, supporting documentation and information compiled as the result of an investigation of an alleged violation are confidential unless and until a formal complaint is filed. (NRS 116.757, 116A.270) **Sections 33 and 37** of this bill clarify existing law to provide that such confidential information must not be disclosed to any person, including a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed.

Section 39 of this bill provides that the Commission must adopt regulations requiring an applicant for a certificate as a community manager to post a bond. (NRS 116A.410)

Section 40 of this bill revises existing law, which allows a party to apply for confirmation of an award in a nonbinding arbitration and thereby convert the award into a judgment, to provide that no party to a nonbinding arbitration may apply for confirmation of an award, vacation of an award, a judgment on the award or an award of attorney's fees incurred as the result of the nonbinding arbitration. (NRS 38.330)

WHEREAS, The Nevada Legislature previously deemed it important to set forth its intent regarding the creation and proper functioning of planned communities; and

WHEREAS, The Nevada Legislature previously noted that planned communities are a dominant method of residential development in the State of Nevada; and

WHEREAS, The Nevada Legislature previously noted that planned communities are developed for the purposes of preserving neighborhood continuity and creating desirable places to reside; and

WHEREAS, The Nevada Legislature previously noted that planned communities are governed by specific rules and regulations and by unit-owners' associations; and

WHEREAS, The Nevada Legislature previously noted that a unit-owners' association is the form of self-government closest to the people; and

WHEREAS, The Nevada Legislature previously declared that all forms of government should follow the basic principles of democracy found in the United States Constitution and the Nevada Constitution; and

WHEREAS, The Nevada Legislature previously noted that some unit-owners' associations in this State have a history of abuse of power; and

1 WHEREAS, The Nevada Legislature previously noted that unit-owners'
2 associations have power over one of the most important aspects of a person's life,
3 his residence; and

4 WHEREAS, The Nevada Legislature previously noted that homeowners invest
5 financially and emotionally in their homes; and

6 WHEREAS, The Nevada Legislature previously declared that homeowners have
7 the right to reside in a community without fear of illegal, unfair, unnecessary,
8 unduly burdensome or costly interference with their property rights; and

9 WHEREAS, Many of the concerns previously noted by the Nevada Legislature
10 persist to this day; and

11 WHEREAS, The Nevada Legislature deems it necessary and important to
12 reiterate and endorse both the intent and the concerns previously expressed by the
13 Nevada Legislature; and

14 WHEREAS, The establishment of planned communities is required by many
15 local governments as a condition of granting necessary building permits for
16 residential housing; and

17 WHEREAS, The form of self-government of a unit-owners' association includes
18 legislative, executive and quasi-judicial powers and functions; now, therefore,

19
20 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
21 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
22

23 **Section 1.** Chapter 116 of NRS is hereby amended by adding thereto the
24 provisions set forth as sections 2 to 5, inclusive, of this act.

25 **Sec. 2. 1.** *A member of the executive board shall not knowingly vote on*
26 *any matter before the executive board in which the member has:*

27 *(a) A direct pecuniary interest; or*

28 *(b) A commitment to a person:*

29 *(1) Who is a member of his household;*

30 *(2) Who is related to him by blood, adoption or marriage within the third*
31 *degree of consanguinity;*

32 *(3) Who employs him or a member of his household; or*

33 *(4) With whom he has a substantial and continuing business*
34 *relationship.*

35 *2. A member of the executive board who violates the provisions of this*
36 *section is guilty of a misdemeanor and shall be punished by a fine of not more*
37 *than \$1,000.*

38 **Sec. 3.** *A person who tampers or interferes with, or attempts to tamper or*
39 *interfere with, the election of a member of the executive board is guilty of a*
40 *category C felony and shall be punished as provided in NRS 193.130.*

41 **Sec. 4.** *A community manager or member of the executive board who asks*
42 *for or receives, directly or indirectly, any compensation, gratuity or reward, or*
43 *any promise thereof, upon an agreement or understanding that his vote, opinion*
44 *or action upon any matter then pending or which may be brought before him in*
45 *his capacity as a community manager or member of the executive board, will be*
46 *influenced thereby, is guilty of a category C felony and shall be punished as*
47 *provided in NRS 193.130.*

48 **Sec. 5. 1.** *The Division shall provide by regulation for the filing and*
49 *prompt disposition of petitions for declaratory orders and advisory opinions as to*
50 *the applicability of:*

51 *(a) Any provision of this chapter or chapter 116A or 116B of NRS;*

52 *(b) Any regulation adopted by the Commission, the Administrator or the*
53 *Division; or*

1 (c) Any decision of the Commission, the Administrator or the Division or any
2 of its sections.

3 2. Declaratory orders disposing of petitions filed pursuant to this section
4 have the same status as agency decisions.

5 3. A petition filed pursuant to this section must:

6 (a) Set forth the name and address of the petitioner; and

7 (b) Contain a clear and concise statement of the issues to be decided by the
8 Division in its declaratory order or advisory opinion.

9 4. A petition filed pursuant to this section is submitted for consideration by
10 the Division when it is filed with the Administrator.

11 5. The Division shall:

12 (a) Respond to a petition filed pursuant to this section within 60 days after
13 the date on which the petition is submitted for consideration; and

14 (b) Upon issuing its declaratory order or advisory opinion, mail a copy of the
15 declaratory order or advisory opinion to the petitioner.

16 Sec. 6. NRS 116.021 is hereby amended to read as follows:

17 116.021 1. "Common-interest community" means real estate with respect to
18 which a person, by virtue of his ownership of a unit, is obligated to pay for real
19 estate other than that unit.

20 2. As used in this section:

21 (a) "Ownership of a unit" does not include holding a leasehold interest of less
22 than 20 years in a unit, including options to renew.

23 (b) "Real estate other than that unit" does not include any interest in any
24 covenants, conditions or restrictions to which the unit is subject, and the fact that
25 the unit is subject to covenants, conditions or restrictions is not relevant and not
26 to be considered in determining whether real estate is a "common-interest
27 community" pursuant to this section.

28 Sec. 7. NRS 116.1107 is hereby amended to read as follows:

29 116.1107 1. If a unit is acquired by eminent domain or part of a unit is
30 acquired by eminent domain leaving the unit's owner with a remnant that may not
31 practically or lawfully be used for any purpose permitted by the declaration, the
32 award must include compensation to the unit's owner for that unit and its allocated
33 interests, whether or not any common elements are acquired. Upon acquisition,
34 unless the decree otherwise provides, that unit's allocated interests are
35 automatically reallocated to the remaining units in proportion to the respective
36 allocated interests of those units before the taking, and the association shall
37 promptly prepare, execute and record an amendment to the declaration reflecting
38 the reallocations. Any remnant of a unit remaining after part of a unit is taken under
39 this subsection is thereafter a common element.

40 2. Except as otherwise provided in subsection 1, if part of a unit is acquired
41 by eminent domain, the award must compensate the unit's owner for the reduction
42 in value of the unit and its interest in the common elements, whether or not any
43 common elements are acquired. Upon acquisition, unless the decree otherwise
44 provides:

45 (a) That unit's allocated interests are reduced in proportion to the reduction in
46 the size of the unit, or on any other basis specified in the declaration; and

47 (b) The portion of the allocated interests divested from the partially acquired
48 unit are automatically reallocated to that unit and to the remaining units in
49 proportion to the respective allocated interests of those units before the taking, with
50 the partially acquired unit participating in the reallocation on the basis of its
51 reduced allocated interests.

52 3. If part of the common elements is acquired by eminent domain, the portion
53 of the award attributable to the common elements taken must be paid to the

1 association. Unless the declaration provides otherwise, any portion of the award
2 attributable to the acquisition of a limited common element must be equally divided
3 among the owners of the units to which that limited common element was allocated
4 at the time of acquisition.

5 4. The judicial decree must be recorded in every county in which any portion
6 of the common-interest community is located.

7 *5. The provisions of this section do not authorize an association to exercise*
8 *the power of eminent domain pursuant to chapter 37 of NRS, and an association*
9 *may not exercise the power of eminent domain, as provided in NRS 37.0097.*

10 **Sec. 8.** NRS 116.1206 is hereby amended to read as follows:

11 116.1206 1. Any provision contained in a declaration, bylaw or other
12 governing document of a common-interest community that violates the provisions
13 of this chapter ~~{shall}~~:

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

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

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

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

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

30 3. An amendment to the declaration, bylaws or plats and plans authorized by
31 this section to be made under this chapter must be adopted in conformity with the
32 applicable provisions of chapter 117 or 278A of NRS and with the procedures and
33 requirements specified by those instruments. If an amendment grants to any person
34 any rights, powers or privileges permitted by this chapter, all correlative
35 obligations, liabilities and restrictions in this chapter also apply to that person.

36 **Sec. 9.** NRS 116.3102 is hereby amended to read as follows:

37 116.3102 1. Except as otherwise provided in subsection 2, and subject to the
38 provisions of the declaration, the association may do any or all of the following:

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

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

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

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

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

51 (f) Regulate the use, maintenance, repair, replacement and modification of
52 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.

1 **Sec. 10.** NRS 116.3103 is hereby amended to read as follows:

2 116.3103 1. Except as otherwise provided in the declaration, the bylaws,
3 this section or other provisions of this chapter, the executive board may act in all
4 instances on behalf of the association. In the performance of their duties, the
5 officers and members of the executive board are fiduciaries. The members of the
6 executive board are required to exercise the ordinary and reasonable care of
7 directors of a corporation, subject to the business-judgment rule.

8 2. The executive board may not act on behalf of the association to amend the
9 declaration, to terminate the common-interest community, or to elect members of
10 the executive board or determine their qualifications, powers and duties or terms of
11 office, but the executive board may fill vacancies in its membership for the
12 unexpired portion of any term.

13 **3. *The executive board may not waive or refuse to enforce any provision of***
14 ***the governing documents.***

15 **Sec. 11.** NRS 116.310305 is hereby amended to read as follows:

16 116.310305 1. A unit's owner shall adhere to a schedule required by the
17 association for:

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

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

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

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

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

29 (a) The maximum amount of the construction penalty and the schedule are set
30 forth in:

31 (1) The declaration;

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

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

35 (b) The unit's owner receives notice of the alleged violation which informs him
36 that he has a right to a hearing on the alleged violation.

37 **3. *If the association imposes a construction penalty against a unit's owner***
38 ***pursuant to the provisions of this section, an appeal to the Commission is deemed***
39 ***automatically taken by the unit's owner without any action by him, unless he***
40 ***affirmatively waives the appeal within 30 days after the imposition of the***
41 ***construction penalty. A construction penalty imposed by the association must be***
42 ***stayed until a review of the appeal by the Commission is completed. The***
43 ***Commission, when reviewing an appeal, may affirm the imposition of a***
44 ***construction penalty, set aside the imposition of a construction penalty or change***
45 ***the amount of any construction penalty.***

46 **4.** For the purposes of this chapter, a construction penalty is not a fine.

47 **Sec. 12.** NRS 116.31031 is hereby amended to read as follows:

48 116.31031 1. Except as otherwise provided in this section, if a unit's owner
49 or a tenant or guest of a unit's owner violates any provision of the governing
50 documents of an association, the executive board may, if the governing documents
51 so provide:

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

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

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

(b) Impose a fine against the unit's owner or the tenant or guest of the unit's owner for each violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. The limitations on the amount of the fine do not apply to any interest, charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

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

(a) *Participated in or authorized the violation;*

(b) *Had prior notice of the violation; or*

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

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

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

(b) Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:

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

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

~~[3-]~~ 4. The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

~~[4-]~~ 5. The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:

(a) Pays the fine;

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

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

~~[5-]~~ 6. *If the executive board imposes a fine pursuant to the provisions of this section, an appeal to the Commission is deemed automatically taken by the unit's owner or the tenant or guest of the unit's owner without any action by him for a fine imposed pursuant to paragraph (b) of subsection 1 that exceeds \$5,000 or that is for a violation which poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of*

1 *the common-interest community, unless he affirmatively waives the appeal within*
2 *30 days after the imposition of the fine. A fine imposed by the executive board*
3 *must be stayed until a review of the appeal by the Commission is completed. The*
4 *Commission, when reviewing an appeal, may affirm the imposition of a fine, set*
5 *aside the imposition of a fine or change the amount of any fine.*

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

13 ~~6-~~ 8. If the governing documents so provide, the executive board may
14 appoint a committee, with not less than three members, to conduct hearings on
15 violations and to impose fines pursuant to this section. While acting on behalf of
16 the executive board for those limited purposes, the committee and its members are
17 entitled to all privileges and immunities and are subject to all duties and
18 requirements of the executive board and its members.

19 ~~7-~~ 9. The provisions of this section establish the minimum procedural
20 requirements that the executive board must follow before it may impose a fine. The
21 provisions of this section do not preempt any provisions of the governing
22 documents that provide greater procedural protections.

23 ~~8-~~ 10. Any past due fine:

24 (a) Bears interest at the rate established by the association, not to exceed the
25 legal rate per annum.

26 (b) May include any costs of collecting the past due fine at a rate established
27 by the association. If the past due fine is for a violation that does not threaten the
28 health, safety or welfare of the residents of the common-interest community, the
29 rate established by the association for the costs of collecting the past due fine:

30 (1) May not exceed \$20, if the outstanding balance is less than \$200.

31 (2) May not exceed \$50, if the outstanding balance is \$200 or more, but is
32 less than \$500.

33 (3) May not exceed \$100, if the outstanding balance is \$500 or more, but is
34 less than \$1,000.

35 (4) May not exceed \$250, if the outstanding balance is \$1,000 or more, but
36 is less than \$5,000.

37 (5) May not exceed \$500, if the outstanding balance is \$5,000 or more.

38 (c) May include any costs incurred by the association during a civil action to
39 enforce the payment of the past due fine.

40 ~~9-~~ 11. As used in this section:

41 (a) "Costs of collecting" includes, without limitation, any collection fee, filing
42 fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost
43 that an association may reasonably charge to the unit's owner for the collection of a
44 past due fine. The term does not include any costs incurred by an association during
45 a civil action to enforce the payment of a past due fine.

46 (b) "Outstanding balance" means the amount of a past due fine that remains
47 unpaid before any interest, charges for late payment or costs of collecting the past
48 due fine are added.

49 **Sec. 13.** NRS 116.31034 is hereby amended to read as follows:

50 116.31034 1. Except as otherwise provided in subsection 5 of NRS
51 116.212, not later than the termination of any period of declarant's control, the
52 units' owners shall elect an executive board of at least three members, ~~at least a~~
53 ~~majority~~ *all* 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. *Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners.* 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:

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

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

➤ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his candidacy information. The association shall distribute the disclosures to each member of the association with the ballot in the manner established in the bylaws of the association.

6. Unless a person is appointed by the declarant:

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

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

(1) That master association; or

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

7. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the

executive board is not the record owner, he shall file proof in the records of the association that:

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

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

8. The election 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 election of any member of the executive board is conducted by secret written ballot:

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

(d) Only the secret written ballots that are returned to the association may be 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. *An association shall not adopt any rule or regulation that has the effect of prohibiting or interfering with a candidate in his campaign for election as a member of the executive board, except that his campaign may be limited to 90 days before the date that ballots are required to be returned to the association. A candidate may request that the secretary or other officer specified in the bylaws of the association send 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 the campaign literature of the candidate. The campaign literature may be sent with the secret ballot mailed pursuant to subsection 8 or in a separate mailing, provided that the candidate pays for the cost of the mailing. In the event that more than one candidate requests that campaign literature be sent with the secret ballot mailed pursuant to subsection 8, the costs of including the campaign literature must be shared equally among the candidates.*

10. 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. 14. 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}~~ :

(a) ~~The~~ number of votes cast ~~{in favor of removal}~~ constitutes ~~{~~ ~~(a) At~~ at least 35 percent of the total number of voting members of the association; and

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

2. 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:

(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. 15. NRS 116.3107 is hereby amended to read as follows:

116.3107 1. Except to the extent provided by the declaration, subsection 2 and NRS 116.31135, the association ~~{is responsible}~~ *has the duty to provide* for the maintenance, repair and replacement of the common elements, and each unit's owner ~~{is responsible}~~ *has the duty to provide* for the maintenance, repair and replacement of his unit. Each unit's owner shall afford to the association and the other units' owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit's owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

2. In addition to the liability that a declarant as a unit's owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to developmental rights. No other unit's owner and no other portion of the common-interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to developmental rights inures to the declarant.

3. In a planned community, if all developmental rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

Sec. 16. 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 and:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Could not have been reasonably foreseen;

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

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

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

Sec. 17. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every 90 days.

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

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

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

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

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

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

(a) Have a copy of the *audio recording, the* minutes or a summary of the minutes of the meeting provided to the unit's owner upon request 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.

5. The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. ~~[The period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for the beginning of each meeting.]~~ In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

6. At least once every 90 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

- (a) A current year-to-date financial statement of the association;
- (b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;
- (c) A current reconciliation of the operating account of the association;
- (d) A current reconciliation of the reserve account of the association;
- (e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and
- (f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The secretary or other officer specified in the bylaws shall cause *each meeting of the executive board to be audio recorded and the minutes to be recorded or otherwise taken electronically* at each meeting of the executive board ~~to be audio recorded~~, *but if the executive board is meeting in executive session, the meeting must not be audio recorded*. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the *audio recording of the meeting, the minutes* ~~for~~ *of the meeting and* a summary of the minutes of the ~~meetings~~ *meeting* to be made available to the units' owners. A copy of the *audio recording, the minutes* or a summary of the minutes must be provided to any 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.

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

- (a) The date, time and place of the meeting;
- (b) Those members of the executive board who were present and those members who were absent at the meeting;
- (c) The substance of all matters proposed, discussed or decided at the meeting;
- (d) A record of each member's vote on any matter decided by vote at the meeting; and
- (e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

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

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

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

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

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;
- (c) Requires the immediate attention of, and possible action by, the executive board; and
- (d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

1 **Sec. 18.** NRS 116.31085 is hereby amended to read as follows:

2 116.31085 1. Except as otherwise provided in this section, a unit's owner
3 may attend any meeting of the units' owners or of the executive board and speak at
4 any such meeting. The executive board may establish reasonable limitations on the
5 time a unit's owner may speak at such a meeting.

6 2. An executive board may not meet in executive session to enter into, renew,
7 modify, terminate or take any other action regarding a contract, unless it is a
8 contract between the association and an attorney.

9 3. An executive board may meet in executive session only to:

10 (a) Consult with the attorney for the association on matters relating to proposed
11 or pending litigation if the contents of the discussion would otherwise be governed
12 by the privilege set forth in NRS 49.035 to 49.115, inclusive . ~~[- or to enter into,~~
13 ~~renew, modify, terminate or take any other action regarding a contract between the~~
14 ~~association and the attorney.]~~

15 (b) Discuss the character, alleged misconduct, professional competence, or
16 physical or mental health of a community manager or an employee of the
17 association.

18 (c) Except as otherwise provided in subsection 4, discuss a violation of the
19 governing documents, including, without limitation, the failure to pay an
20 assessment.

21 (d) Discuss the alleged failure of a unit's owner to adhere to a schedule
22 required pursuant to NRS 116.310305 if the alleged failure may subject the unit's
23 owner to a construction penalty.

24 4. An executive board shall meet in executive session to hold a hearing on an
25 alleged violation of the governing documents unless the person who may be
26 sanctioned for the alleged violation requests in writing that an open hearing be
27 conducted by the executive board. If the person who may be sanctioned for the
28 alleged violation requests in writing that an open hearing be conducted, the person:

29 (a) Is entitled to attend all portions of the hearing related to the alleged
30 violation, including, without limitation, the presentation of evidence and the
31 testimony of witnesses; ~~[and]~~

32 (b) *Is entitled to invite anyone he wishes, including, without limitation,*
33 *witnesses and the media, to attend with him all portions of the hearing relating to*
34 *the alleged violation;*

35 (c) *Is entitled to due process, including, without limitation, the right to*
36 *testify, the right to call witnesses, the right to confront and cross-examine*
37 *witnesses against him, the right to counsel, the right to see all the documents*
38 *considered by the executive board as a basis for the hearing and the right to*
39 *require written findings of fact which form the basis of any decision made by the*
40 *executive board;*

41 (d) *Is entitled to one peremptory challenge of a member of the executive*
42 *board and may make any subsequent challenges for cause; and*

43 (e) Is not entitled to attend the deliberations of the executive board.

44 5. *The provisions of subsection 4 establish the minimum protections that*
45 *the executive board must provide before it may make a decision. The provisions*
46 *of subsection 4 do not preempt any provisions of the governing documents that*
47 *provide greater protections.*

48 6. Except as otherwise provided in this subsection, any matter discussed by
49 the executive board when it meets in executive session must be generally noted in
50 the minutes of the meeting of the executive board. The executive board shall
51 maintain minutes of any decision made pursuant to subsection 4 concerning an
52 alleged violation and, upon request, provide a copy of the decision to the person

1 who was subject to being sanctioned at the hearing or to his designated
2 representative.

3 ~~[6.]~~ 7. Except as otherwise provided in subsection 4, a unit's owner is not
4 entitled to attend or speak at a meeting of the executive board held in executive
5 session.

6 **Sec. 19.** NRS 116.31087 is hereby amended to read as follows:

7 116.31087 1. If an executive board receives a written complaint from a
8 unit's owner alleging that the executive board has violated any provision of this
9 chapter or any provision of the governing documents of the association, the
10 executive board shall ~~[, if action is required by the executive board,]~~ place the
11 subject of the complaint on the agenda of the next regularly scheduled meeting of
12 the executive board.

13 2. Not later than 10 business days after the date that the association receives
14 such a complaint, the executive board or an authorized representative of the
15 association shall acknowledge the receipt of the complaint and notify the unit's
16 owner that ~~[, if action is required by the executive board,]~~ the subject of the
17 complaint will be placed on the agenda of the next regularly scheduled meeting of
18 the executive board.

19 **Sec. 20.** ~~[NRS 116.31088 is hereby amended to read as follows:]~~

20 ~~116.31088 1. The association shall provide written notice to each unit's~~
21 ~~owner of a meeting at which the commencement of a civil action is to be~~
22 ~~considered at least 21 calendar days before the date of the meeting. Except as~~
23 ~~otherwise provided in this subsection, the association may commence a civil action~~
24 ~~only upon a vote or written agreement of the owners of units to which at least a~~
25 ~~majority of the votes of the members of the association are allocated. The~~
26 ~~provisions of this subsection do not apply to a civil action that is commenced:~~

27 ~~(a) To enforce the payment of an assessment;~~
28 ~~(b) To enforce the declaration, bylaws or rules of the association;~~
29 ~~(c) To enforce a contract with a vendor;~~
30 ~~(d) To proceed with a counterclaim; or~~
31 ~~(e) To protect the health, safety and welfare of the members of the association~~
32 ~~[,], except that the provisions of this paragraph do not apply to the~~
33 ~~commencement of an action for a constructional defect pursuant to NRS 40.600~~
34 ~~to 40.695, inclusive. If a civil action is commenced pursuant to this paragraph~~
35 ~~without the required vote or agreement, the approval by the executive board of the~~
36 ~~commencement of the civil action must be ratified, within 90 days after the date~~
37 ~~on which the executive board approves the commencement of the civil action, by~~
38 ~~a vote or written agreement of the owners of the units to which at least a majority of~~
39 ~~votes of the members of the association are allocated. If the association [, after~~
40 ~~making a good faith effort, cannot obtain the required vote or agreement to~~
41 ~~commence or ratify such a civil action,] fails to ratify the approval by the executive~~
42 ~~board of the commencement of the civil action within the required period, the~~
43 ~~association [may] must thereafter seek to dismiss the action without prejudice. [for~~
44 ~~that reason only if a vote or written agreement of the owners of the units to which at~~
45 ~~least a majority of votes of the members of the association are allocated was~~
46 ~~obtained at the time the approval to commence or ratify the action was sought.]~~

47 ~~2. At least 10 days before an association commences or seeks to ratify the~~
48 ~~commencement of a civil action, the association shall provide a written statement to~~
49 ~~all the units' owners that includes:~~

50 ~~(a) A reasonable estimate of the costs of the civil action, including reasonable~~
51 ~~attorney's fees;~~

~~(b) An explanation of the potential benefits of the civil action and the potential adverse consequences if the association does not commence the action or if the outcome of the action is not favorable to the association; and~~

~~(c) All disclosures that are required to be made upon the sale of the property.~~

~~3. No person other than a unit's owner may request the dismissal of a civil action commenced by the association on the ground that the association failed to comply with any provision of this section.~~

~~4. If any civil action in which the association is a party is settled, the executive board shall disclose the terms and conditions of the settlement at the next regularly scheduled meeting of the executive board after the settlement has been reached. The executive board may not approve a settlement which contains any terms and conditions that would prevent the executive board from complying with the provisions of this subsection.] (Deleted by amendment.)~~

Sec. 21. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

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

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

3. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

4. To the extent required by the declaration:

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

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

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

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

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

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

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

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

Sec. 22. NRS 116.31155 is hereby amended to read as follows:

116.31155 1. Except as otherwise provided in subsection 2, an association shall:

(a) If the association is required to pay the fee imposed by NRS 78.150, 82.193, 86.263, 87.541, 87A.560 or 88.591, pay to the Administrator a fee established by regulation of the Administrator for every unit in the association used for residential use.

(b) If the association is organized as a trust or partnership, or as any other authorized business entity, pay to the Administrator a fee established by regulation of the Administrator for each unit in the association.

2. If an association is subject to the governing documents of a master association, the master association shall pay the fees required pursuant to this section for each unit in the association that is subject to the governing documents of the master association, unless the governing documents of the master association provide otherwise. The provisions of this subsection do not relieve any association that is subject to the governing documents of a master association from its ultimate responsibility to pay the fees required pursuant to this section to the Administrator if they are not paid by the master association.

3. The fees required to be paid pursuant to this section must be:

(a) Paid at such times as are established by the Division.

(b) Deposited with the State Treasurer for credit to the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630.

(c) Established on the basis of the actual costs of administering the Office of the Ombudsman and the Commission and not on a basis which includes any subsidy beyond those actual costs. In no event may the fees required to be paid pursuant to this section exceed \$3 per unit.

4. The Division shall impose an administrative penalty against an association or master association that violates the provisions of this section by failing to pay the fees owed by the association or master association within the times established by the Division. The administrative penalty that is imposed for each violation must equal 10 percent of the amount of the fees owed by the association or master association or \$500, whichever amount is less. The amount of the unpaid fees owed by the association or master association bears interest at the rate set forth in NRS 99.040 from the date the fees are due until the date the fees are paid in full.

5. A unit's owner may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to both an association and a master association.

6. An association that is subject to the governing documents of a master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by the master association.

7. A master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by an association that is subject to the governing documents of the master association.

8. Upon the payment of the fees and any administrative penalties and interest required by this section, the Administrator shall provide to the association or master association evidence that it paid the fees and the administrative penalties and interest in compliance with this section.

9. Any person, association or master association which has been requested or required to pay any fees, administrative penalties or interest pursuant to this section and which believes that such fees, administrative penalties or interest has been imposed in error may, without exhausting any available administrative remedies, bring an action in a court of competent jurisdiction to recover:

(a) Any amount paid in error for any fees, administrative penalties or interest during the immediately preceding 3 years;

(b) Interest on the amount paid in error at the rate set forth in NRS 99.040; and

(c) Reasonable costs and attorney's fees.

Sec. 23. NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

➤ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

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

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

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

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

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

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

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

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

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

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

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

10. 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.

Sec. 24. NRS 116.31183 is hereby amended to read as follows:

116.31183 *1.* An executive board, a member of an executive board, *a community manager* or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

~~1.~~ (a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an attorney, community manager or vendor, unless such a selection or replacement would constitute a material breach of an existing contract; or

~~2.~~ (c) Requested in good faith to review the books, records or other papers of the association.

2. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not intentionally interfere with the exercise of any right conferred on a person pursuant to the provisions of this chapter.

Sec. 25. NRS 116.31187 is hereby amended to read as follows:

116.31187 *1.* Except as otherwise provided in this section, a member of an executive board or an officer of an association shall not:

(a) On or after October 1, 2003, enter into a contract or renew a contract with the association to provide *financing*, goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing *financing*, goods or services to the association.

2. The provisions of this section do not prohibit a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant or an affiliate of a declarant from:

(a) Receiving any commission, personal profit or compensation from the association, the declarant or an affiliate of the declarant for any *financing*, goods or services furnished to the association;

(b) Entering into contracts with the association, the declarant or affiliate of the declarant; or

(c) Serving as a member of the executive board or as an officer of the association.

Sec. 26. NRS 116.325 is hereby amended to read as follows:

116.325 1. The executive board shall not and the governing documents must not prohibit a unit's owner or an occupant of a unit from exhibiting ~~[-a political sign]~~ *one or more political signs* within such physical portion of the common-interest community as that owner or occupant has a right to occupy and use exclusively ~~[-if the political sign is]~~ *and on any wall which is a common element or limited common element and which is immediately adjacent to the unit, subject to the following conditions:*

(a) *All political signs exhibited must not be* larger than 24 inches by 36 inches.

(b) *If the unit is occupied by a tenant, the unit's owner may not exhibit any political sign unless the tenant consents, in writing, to the exhibition of the political sign.*

(c) *If any political sign is exhibited on a wall which is a common element or limited common element, the political sign:*

(1) *Must be exhibited in a manner that does not damage the wall; and*

(2) *Is subject to any applicable provisions of law governing the posting of political signs.*

2. The provisions of this section establish the minimum rights of a unit's owner or an occupant of a unit to exhibit ~~[-a]~~ political ~~[-sign-]~~ *signs*. The provisions of this section do not preempt any provisions of the governing documents that provide greater rights and do not require the governing documents or the executive board to impose any restrictions on the exhibition of political signs other than those established by other provisions of law.

3. *Any provision in a rental agreement which violates the provisions of this section or which requires a tenant to waive any rights pursuant to this section or other provisions of law is void as against public policy.*

4. As used in this section, "political sign" means a sign that expresses support for or opposition to a candidate, political party or ballot question ~~[-]~~ *in any federal, state or local election or any election of an association.*

Sec. 27. NRS 116.330 is hereby amended to read as follows:

116.330 1. The executive board shall not and the governing documents must not prohibit a unit's owner from installing or maintaining drought tolerant landscaping within such physical portion of the common-interest community as that owner has a right to occupy and use exclusively, *including, without limitation, the front yard or back yard of the unit's owner*, except that:

(a) Before installing drought tolerant landscaping, the unit's owner must submit a detailed description or plans for the drought tolerant landscaping for architectural review and approval in accordance with the procedures, if any, set forth in the governing documents of the association; and

(b) The drought tolerant landscaping must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

↪ The provisions of this subsection must be construed liberally in favor of effectuating the purpose of encouraging the use of drought tolerant landscaping, and the executive board shall not and the governing documents must not unreasonably deny or withhold approval for the installation of drought tolerant landscaping or unreasonably determine that the drought tolerant landscaping is not compatible with the style of the common-interest community.

2. Installation of drought tolerant landscaping within any common element or conversion of traditional landscaping or cultivated vegetation, such as turf grass, to drought tolerant landscaping within any common element shall not be deemed to be a change of use of the common element unless:

(a) The common element has been designated as a park, open play space or golf course on a recorded plat map; or

(b) The traditional landscaping or cultivated vegetation is required by a governing body under the terms of any applicable zoning ordinance, permit or approval or as a condition of approval of any final subdivision map.

3. As used in this section, "drought tolerant landscaping" means landscaping which conserves water, protects the environment and is adaptable to local conditions. *The term includes, without limitation, the use of mulches such as decorative rock and artificial turf.*

Sec. 28. NRS 116.345 is hereby amended to read as follows:

116.345 1. An association of a planned community may not restrict, prohibit or otherwise impede the lawful residential use of any property that is within or encompassed by the boundaries of the planned community and that is not designated as part of the planned community.

2. Except as otherwise provided in this subsection, an association may not restrict the access of a person to any of his property. An association may restrict access to and from a unit within a planned community if the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property.

3. An association may not expand, construct or situate a building or structure that is not part of any plat or plan of the planned community if the expansion, construction or situation of the building or structure was not previously disclosed to the units' owners of the planned community unless the association obtains the written consent of a majority of the units' owners and residents of the planned community who own property or reside within 500 feet of the proposed location of the building or structure.

4. *An association may not interrupt any utility service furnished to a unit's owner or a tenant of a unit's owner except for the nonpayment of utility charges when due. The interruption of any utility service pursuant to this subsection must be performed in a manner which is consistent with all laws, regulations and governing documents relating to the interruption of any utility service. An association shall in every case send a written notice of its intent to interrupt any utility service to the unit's owner or the tenant of the unit's owner at least 10 days before the association interrupts any utility service.*

5. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing

document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 29. NRS 116.4117 is hereby amended to read as follows:

116.4117 1. ~~[[Subject to the requirements set forth in subsection 2, if a declarant, member of an executive board, officer of an association, community manager or any other person subject to this chapter fails or refuses to comply with any of its provisions or any provision of the [declaration or bylaws,] governing documents of an association,~~ any person or class of persons suffering actual damages from the failure *or refusal* to comply ~~[has a claim] may bring a civil action for damages or other~~ appropriate relief.

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

(a) By the association against:

- (1) A declarant; ~~for~~
- (2) *A member of the executive board;*
- (3) *An officer of the association;*
- (4) *A community manager; or*
- (5) A unit's owner.

(b) By a unit's owner against:

- (1) The association;
- (2) A declarant; or
- (3) Another unit's owner of the association.

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

- (1) *A member of the executive board;*
- (2) *An officer of the association; or*
- (3) *A community manager.*

3. Punitive damages may be awarded for a willful and material failure *or refusal* to comply with *any provision of* this chapter *or the governing documents of an association* if the failure *or refusal* is established by clear and convincing evidence.

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

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

Sec. 30. NRS 116.600 is hereby amended to read as follows:

116.600 1. The Commission for Common-Interest Communities and Condominium Hotels is hereby created.

2. The Commission consists of ~~[[five]]~~ *seven* members appointed by the Governor. The Governor shall appoint to the Commission:

(a) One member who is a unit's owner residing in this State and who has served as a member of an executive board in this State;

(b) *Two members who are units' owners residing in this State but who are not required to have served as members of an executive board;*

(c) One member who is in the business of developing common-interest communities in this State;

~~[[e]]~~ (d) One member who holds a certificate;

~~(d)~~ (e) One member who is a certified public accountant licensed to practice in this State pursuant to the provisions of chapter 628 of NRS; and

~~(e)~~ (f) One member who is an attorney licensed to practice in this State.

3. Each member of the Commission must be a resident of this State. At least ~~three~~ four members of the Commission must be residents of a county whose population is 400,000 or more.

4. Each member of the Commission must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of his appointment.

5. After the initial terms, each member of the Commission serves a term of 3 years. Each member may serve not more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.

6. While engaged in the business of the Commission, each member is entitled to receive:

(a) A salary of not more than \$80 per day, as established by the Commission; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 31. NRS 116.605 is hereby amended to read as follows:

116.605 1. The Division shall *employ one or more training officers who are qualified by training and experience to* provide ~~for arrange to have provided~~ to each member of the Commission courses of instruction concerning rules of procedure and substantive law appropriate for members of the Commission. *Such courses of instruction may be made available to the staff of the Division as well as to community managers.*

2. *The training officer shall:*

(a) *Prepare and make available a manual containing the policies and procedures to be followed by executive boards and community managers; and*

(b) *Perform any other duties as directed by the Division.*

3. Each member of the Commission must attend the courses of instruction *described in subsection 1* not later than 6 months after the date that the member is first appointed to the Commission.

Sec. 32. NRS 116.675 is hereby amended to read as follows:

116.675 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. *An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.*

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division,

upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 33. NRS 116.757 is hereby amended to read as follows:

116.757 1. Except as otherwise provided in this section and NRS 239.0115, a written affidavit filed with the Division pursuant to NRS 116.760, all documents and other information filed with the written affidavit and all documents and other information compiled as a result of an investigation conducted to determine whether to file a formal complaint with the Commission are confidential. *The Division shall not disclose any information that is confidential pursuant to this subsection, in whole or in part, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 2 and the disclosure is required pursuant to subsection 2.*

2. A formal complaint filed *by the Administrator* with the Commission and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline or take other administrative action pursuant to NRS 116.745 to 116.795, inclusive, are public records.

Sec. 34. NRS 116.765 is hereby amended to read as follows:

116.765 1. Upon receipt of an affidavit that complies with the provisions of NRS 116.760, the Division shall *immediately* refer the affidavit to the Ombudsman.

2. The Ombudsman shall give such guidance to the parties as the Ombudsman deems necessary to assist the parties to resolve the alleged violation.

3. If the parties are unable to resolve the alleged violation with the assistance of the Ombudsman, the Ombudsman shall provide to the Division, *within 30 days after the affidavit is received by the Ombudsman*, a report concerning the alleged violation and any information collected by the Ombudsman during his efforts to assist the parties to resolve the alleged violation.

4. ~~Upon~~ *Except as otherwise provided in this subsection, upon* receipt of the report from the Ombudsman, the Division shall conduct *and complete* an investigation *within 45 days* to determine whether good cause exists to proceed with a hearing on the alleged violation. *The Division may be granted an extension of time in which to complete an investigation if the Division obtains written approval granting such an extension from the person who is aggrieved by an alleged violation.*

5. If, after investigating the alleged violation, the Division determines that the allegations in the affidavit are not frivolous, false or fraudulent and that good cause exists to proceed with a hearing on the alleged violation, the Administrator shall file a formal complaint with the Commission and schedule a hearing on the complaint before the Commission or a hearing panel.

Sec. 35. NRS 116.785 is hereby amended to read as follows:

116.785 1. If the Commission or the hearing panel, after notice and hearing, finds that the respondent has committed a violation, the Commission or the hearing panel may take any or all of the following actions:

(a) Issue an order directing the respondent to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.

(b) Issue an order directing the respondent to take affirmative action to correct any conditions resulting from the violation.

(c) Impose an administrative fine of not more than \$1,000 for each violation.

2. If the respondent is a member of an executive board or an officer of an association, the Commission or the hearing panel may order the respondent removed from his office or position if the Commission or the hearing panel, after notice and hearing, finds that:

(a) The respondent has knowingly and willfully committed a violation; and

(b) The removal is in the best interest of the association.

3. If the respondent violates any order issued by the Commission or the hearing panel pursuant to this section, the Commission or the hearing panel, after notice and hearing, may impose an administrative fine of not more than \$1,000 for each violation.

4. If the Commission or the hearing panel takes any disciplinary action pursuant to this section, the Commission or the hearing panel may order the respondent to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation. ~~{and reasonable attorney's fees.}~~

5. *In any matter brought before the Commission or a hearing panel pursuant to the provisions of this chapter, attorney's fees must not be granted to a prevailing party, regardless of whether the governing documents provide for such fees to be granted to a prevailing party.*

6. Notwithstanding any other provision of this section, unless the respondent has knowingly and willfully committed a violation, if the respondent is a member of an executive board or an officer of an association:

(a) The association is liable for all fines and costs imposed against the respondent pursuant to this section; and

(b) The respondent may not be held personally liable for those fines and costs.

Sec. 36. NRS 116.790 is hereby amended to read as follows:

116.790 1. If the Commission or a hearing panel, after notice and hearing, finds that the executive board or any person acting on behalf of the association has committed a violation, the Commission or the hearing panel may take any or all of the following actions:

(a) Order an audit of the association ~~{ }~~, *at the expense of the association.*

(b) Require the executive board to hire a community manager who holds a certificate.

2. The Commission, or the Division with the approval of the Commission, may apply to a court of competent jurisdiction for the appointment of a receiver for an association if, after notice and a hearing, the Commission or a hearing officer finds that any of the following violations occurred:

(a) The executive board, or any member thereof, has been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs;

(b) The executive board, or any member thereof, has been guilty of misfeasance, malfeasance or nonfeasance; or

(c) The assets of the association are in danger of waste or loss through attachment, foreclosure, litigation or otherwise.

3. In any application for the appointment of a receiver pursuant to this section, notice of a temporary appointment of a receiver may be given to the association alone, by process as in the case of an application for a temporary restraining order or injunction. The hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties.

4. The court may, if good cause exists, appoint one or more receivers pursuant to this section to carry out the business of the association. The members of the executive board who have not been guilty of negligence or active breach of duty must be preferred in making the appointment.

5. The powers of any receiver appointed pursuant to this section may be continued as long as the court deems necessary and proper. At any time, for sufficient cause, the court may order the receivership terminated.

6. Any receiver appointed pursuant to this section has, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided in NRS 78.635,

78.640 and 78.645, whether or not the association is insolvent. Such powers include, without limitation, the powers to:

- (a) Take charge of the estate and effects of the association;
- (b) Appoint an agent or agents;
- (c) Collect any debts and property due and belonging to the association and prosecute and defend, in the name of the association, or otherwise, any civil action as may be necessary or proper for the purposes of collecting debts and property;
- (d) Perform any other act in accordance with the governing documents of the association and this chapter that may be necessary for the association to carry out its obligations; and
- (e) By injunction, restrain the association from exercising any of its powers or doing business in any way except by and through a receiver appointed by the court.

Sec. 37. NRS 116A.270 is hereby amended to read as follows:

116A.270 1. Except as otherwise provided in this section and NRS 239.0115, a complaint filed with the Division alleging a violation of this chapter or chapter 116 or 116B of NRS, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential. ~~{and may be disclosed}~~

2. *The Division shall not disclose any information that is confidential pursuant to subsection 1, in whole or in part ~~{only}~~, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 3 and the disclosure is required pursuant to subsection 3, except that the Division may disclose the information described in subsection 1 as necessary in the course of administering this chapter or to a licensing board or agency or any other governmental agency, including, without limitation, a law enforcement agency, that is investigating a person who holds a certificate or permit issued pursuant to this chapter.*

~~{2.}~~ 3. The *formal* complaint or other charging documents filed *by the Administrator* with the Commission to initiate disciplinary action and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline are public records.

Sec. 38. NRS 116A.300 is hereby amended to read as follows:

116A.300 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. *An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.*

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

1 **Sec. 39.** NRS 116A.410 is hereby amended to read as follows:

2 116A.410 1. The Commission shall by regulation provide for the issuance
3 by the Division of certificates. The regulations:

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

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

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

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

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

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

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

26 **Sec. 40.** NRS 38.330 is hereby amended to read as follows:

27 38.330 1. If all parties named in a written claim filed pursuant to NRS
28 38.320 agree to have the claim submitted for mediation, the parties shall reduce the
29 agreement to writing and shall select a mediator from the list of mediators
30 maintained by the Division pursuant to NRS 38.340. Any mediator selected must be
31 available within the geographic area. If the parties fail to agree upon a mediator, the
32 Division shall appoint a mediator from the list of mediators maintained by the
33 Division. Any mediator appointed must be available within the geographic area.
34 Unless otherwise provided by an agreement of the parties, mediation must be
35 completed within 60 days after the parties agree to mediation. Any agreement
36 obtained through mediation conducted pursuant to this section must, within 20 days
37 after the conclusion of mediation, be reduced to writing by the mediator and a copy
38 thereof provided to each party. The agreement may be enforced as any other written
39 agreement. Except as otherwise provided in this section, the parties are responsible
40 for all costs of mediation conducted pursuant to this section.

41 2. If all the parties named in the claim do not agree to mediation, the parties
42 shall select an arbitrator from the list of arbitrators maintained by the Division
43 pursuant to NRS 38.340. Any arbitrator selected must be available within the
44 geographic area. If the parties fail to agree upon an arbitrator, the Division shall
45 appoint an arbitrator from the list maintained by the Division. Any arbitrator
46 appointed must be available within the geographic area. Upon appointing an
47 arbitrator, the Division shall provide the name of the arbitrator to each party.

48 3. The Division may provide for the payment of the fees for a mediator or an
49 arbitrator selected or appointed pursuant to this section from the Account for
50 Common-Interest Communities and Condominium Hotels created by NRS 116.630,
51 to the extent that:

52 (a) The Commission for Common-Interest Communities and Condominium
53 Hotels approves the payment; and

(b) There is money available in the account for this purpose.

4. Except as otherwise provided in this section and except where inconsistent with the provisions of NRS 38.300 to 38.360, inclusive, the arbitration of a claim pursuant to this section must be conducted in accordance with the provisions of NRS 38.231, 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association, the arbitrator may issue an order prohibiting the action upon which the claim is based. An award must be made within 30 days after the conclusion of arbitration, unless a shorter period is agreed upon by the parties to the arbitration.

5. If all the parties have agreed to nonbinding arbitration ~~[-any]:~~

(a) Any party to the **nonbinding** arbitration may, within 30 days after a decision and award have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the provisions of NRS 38.300 to 38.360, inclusive. ~~[If such an action is not commenced within that period, any party to the arbitration may, within 1 year after the service of the award, apply to the proper court for a confirmation of the award pursuant to NRS 38.239.]~~

(b) No party to the nonbinding arbitration may apply for:

(1) A confirmation of the award pursuant to NRS 38.239;

(2) A vacation of the award pursuant to NRS 38.241;

(3) A judgment on the award pursuant to NRS 38.243; or

(4) Any award of attorney's fees from the arbitrator or any court pursuant to any provision of law, any court rule or any provision in the governing documents of the association, for any attorney's fees incurred as the result of the nonbinding arbitration.

6. If all the parties agree in writing to binding arbitration, the arbitration must be conducted in accordance with the provisions of this chapter. An award procured pursuant to such **binding** arbitration may be vacated and a rehearing granted upon application of a party pursuant to the provisions of NRS 38.241.

7. If, after the conclusion of **binding** arbitration, a party:

(a) Applies to have an award vacated and a rehearing granted pursuant to NRS 38.241; or

(b) Commences a civil action based upon any claim which was the subject of arbitration,

the party shall, if he fails to obtain a more favorable award or judgment than that which was obtained in the initial **binding** arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party after the application for a rehearing was made or after the complaint in the civil action was filed.

8. Upon request by a party, the Division shall provide a statement to the party indicating the amount of the fees for a mediator or an arbitrator selected or appointed pursuant to this section.

9. As used in this section, "geographic area" means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to NRS 38.320.

Sec. 41. The Governor shall appoint to the Commission for Common-Interest Communities and Condominium Hotels pursuant to NRS 116.600, as amended by section 30 of this act:

1. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2010; and

1 2. One member who is a unit's owner residing in this State whose term begins
2 on October 1, 2009, and expires on October 1, 2011.

3 **Sec. 42.** The manual described in subsection 2 of NRS 116.605, as amended
4 by section 31 of this act, must be prepared and made available by October 1, 2010.