

Amendment No. 748

Assembly Amendment to Senate Bill No. 261 First Reprint (BDR 10-789)

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

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

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

NMB/BAW



Date: 5/15/2009

S.B. No. 261—Makes various changes relating to common-interest ownership.
(BDR 10-789)



SENATE BILL NO. 261—SENATOR CARE

MARCH 16, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to common-interest ownership.
(BDR 10-789)

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

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

AN ACT relating to common-interest ownership; revising the provisions governing the applicability of the Uniform Common-Interest Ownership Act; ~~enacting certain provisions governing master-planned communities;~~ making various other changes relating to common-interest ownership; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill makes various changes relating to common-interest ownership to: (1) incorporate certain revisions to the Uniform Common-Interest Ownership Act promulgated by the Uniform Law Commission; and (2) eliminate references to the preparation of certain plans regarding certain common-interest communities and condominium hotels.

Sections 2, 3, 6 and 9 of this bill provide that the provisions of the Uniform Act only apply to a nonresidential condominium if the declaration so provides.

Sections 4 and 7 of this bill clarify the applicability of the Uniform Act by revising the definition of "common-interest community" to: (1) reflect the revisions promulgated by the Uniform Law Commission; and (2) clarify that certain agreements to share expenses do not create a common-interest community. (NRS 116.021)

~~Section 5 of this bill allows a declaration for a common-interest community to state that the common-interest community is a master-planned community under certain circumstances.~~

Sections 8 and 10-26 of this bill eliminate references to the preparation of certain plans for certain common-interest communities and condominium hotels. (NRS 116.089, 116.1206, 116.2105, 116.2109, 116.211, 116.2112, 116.2113, 116.2114, 116.2117, 116.345, 116.4103, 116.4109, 116B.225, 116B.295, 116B.350, 116B.365, 116B.760)

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

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

Sec. 2. ***"Nonresidential condominium" means a condominium in which all units are restricted exclusively to nonresidential use.***

1 **Sec. 3.** 1. *The provisions of this chapter do not apply to a nonresidential*
2 *condominium except to the extent that the declaration for the nonresidential*
3 *condominium provides that:*

4 (a) *This entire chapter applies to the condominium;*

5 (b) *Only the provisions of NRS 116.001 to 116.2122, inclusive, and NRS*
6 *116.3116 to 116.31168, inclusive, apply to the condominium; or*

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

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

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

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

20 **Sec. 4.** 1. *An agreement between the associations for two or more*
21 *common-interest communities to share the costs of real estate taxes, insurance*
22 *premiums, services, maintenance or improvements of real estate or other*
23 *activities specified in the agreement or declarations does not create a separate*
24 *common-interest community. If the declarants of the common-interest*
25 *communities are affiliates, the agreement may not unreasonably allocate the*
26 *costs among those common-interest communities.*

27 2. *An agreement between an association and the owner of real estate that is*
28 *not part of a common-interest community to share the costs of real estate taxes,*
29 *insurance premiums, services, maintenance or improvements of real estate, or*
30 *other activities specified in the agreement, does not create a separate common-*
31 *interest community. However, the assessments against the units in the common-*
32 *interest community required by the agreement must be included in the periodic*
33 *budget for the common-interest community, and the agreement must be disclosed*
34 *in all public offering statements and resale certificates required by this chapter.*

35 3. *An agreement between the owners of separately owned parcels of real*
36 *estate to share costs or other obligations associated with a party wall, road,*
37 *driveway or well or other similar use does not create a common-interest*
38 *community unless the owners otherwise agree.*

39 4. *As used in this section, "party wall" means any wall or fence constructed*
40 *along the common boundary line between parcels. The term does not include any*
41 *shared building structure systems, including, without limitation, foundations,*
42 *walls and roof structures.*

43 **Sec. 5.** ~~1. The declaration for a common-interest community may state~~
44 ~~that it is a master-planned community if the declarant has reserved the~~
45 ~~development right to create at least 1,000 units that may be used for residential~~
46 ~~purposes and, at the time of the reservation, that the declarant owns or controls~~
47 ~~more than 500 acres on which the units may be built.~~

48 ~~2. If the requirements of subsection 1 are satisfied, the declaration for the~~
49 ~~master-planned community need not state a maximum number of units and need~~
50 ~~not contain any of the information required pursuant to paragraphs (c) to (m),~~
51 ~~inclusive, of subsection 1 of NRS 116.2105, until the declaration is amended~~
52 ~~pursuant to subsection 3.~~

~~3. When each unit in a master-planned community is conveyed to a purchaser, the declaration must contain:~~

~~(a) A sufficient legal description of the unit and all portions of the master-planned community in which any other units have been conveyed to a purchaser; and~~

~~(b) All the information required by paragraphs (c) to (m), inclusive, of subsection 1 of NRS 116.2105 with respect to that real estate.~~

~~4. The only real estate in a master-planned community which is subject to this chapter is units that have been declared or which are being offered for sale and any other real estate described pursuant to subsection 3. Other real estate that is or may become part of the master-planned community is only subject to other law and to any other restrictions and limitations that appear of record.~~

~~5. If the public offering statement conspicuously identifies the fact that the community is a master-planned community, the disclosure requirements contained in NRS 116.4101 to 116.412, inclusive, apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described pursuant to subsection 3.~~

~~6. Limitations in this chapter on the addition of unspecified real estate do not apply to a master-planned community.~~

~~7. The period of declarant control of the association for a master-planned community terminates in accordance with any conditions specified in the declaration or otherwise at the time the declarant, in a recorded instrument and after giving written notice in a record to all the units' owners, voluntarily surrenders all rights to control the activities of the association. (Deleted by amendment.)~~

Sec. 6. NRS 116.003 is hereby amended to read as follows:

116.003 As used in this chapter and in the declaration and bylaws of an association, unless the context otherwise requires, the words and terms defined in NRS 116.005 to 116.095, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 7. NRS 116.021 is hereby amended to read as follows:

116.021 **1.** "Common-interest community" means real estate *described in a declaration* with respect to which a person, by virtue of ~~this~~ *the person's* ownership of a unit, is obligated to pay for *a share of* real estate *taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or* other ~~than that unit. "Ownership" real estate described in that declaration.~~

2. *The term does not include an agreement described in section 4 of this act.*

3. *For purposes of this section, "ownership" of a unit* does not include holding a leasehold interest of less than 20 years in a unit, including options to renew.

Sec. 8. NRS 116.089 is hereby amended to read as follows:

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

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

2. Exercise any developmental right (NRS 116.211);

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

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

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

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

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

Sec. 9. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

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

(1) Shall pay the fees required pursuant to NRS 116.31155;

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

(3) Shall comply with the provisions of:

(I) NRS 116.31038, 116.31083 and 116.31152; and

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

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

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

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter *or a part of this chapter* does apply to that planned community *pursuant to section 3 of this act*. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or if the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

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

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

3. The provisions of this chapter do not:

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

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

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

(d) Prohibit a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government.

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

5. The Commission shall establish, by regulation:

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

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

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

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

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

(2) Facilities for flood control; or

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

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

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

116.1206 1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

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

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

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

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

Sec. 11. NRS 116.2105 is hereby amended to read as follows:

116.2105 1. The declaration must contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Any restrictions:

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

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

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

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

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

Sec. 12. NRS 116.2109 is hereby amended to read as follows:

116.2109 1. Plats ~~and plans~~ are a part of the declaration, and are required for all common-interest communities except cooperatives. Each plat ~~and plan~~ must be clear and legible and contain a certification that the plat ~~for plan~~ contains all information required by this section.

2. Each plat must comply with the provisions of chapter 278 of NRS and show:

(a) The name and a survey of the area which is the subject of the plat;
(b) A sufficient description of the real estate;
(c) The extent of any encroachments by or upon any portion of the property which is the subject of the plat;
(d) The location and dimensions of all easements having a specific location and dimension which serve or burden any portion of the common-interest community;
(e) The location and dimensions, *with reference to an established datum*, of any vertical unit boundaries and that unit's identifying number;
(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on ~~[plans]~~ *plats* recorded pursuant to subsection ~~[4] 3~~ and that unit's identifying number; and
(g) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in subsections 2 and 4 of NRS 116.2102.

3. ~~[To the extent not shown or projected on the] The~~ *plats* ~~[, plans of the units]~~ must show or project any units in which the declarant has reserved the right to create additional units or common elements (paragraph (h) of subsection 1 of NRS 116.2105), identified appropriately.

4. Unless the declaration provides otherwise, *when* the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part ~~[and]~~, *the elevations* need not be depicted on the plats ~~[and plans of the units].~~

5. ~~[A declarant shall also provide a plan of development for the common-interest community with its initial phase of development. The declarant shall revise the plan of development with each subsequent phase. The plan of development may show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common-interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT." The plan of development must also show or project:~~

~~—(a) The location and dimensions of all real estate not subject to developmental rights, or subject only to the developmental right to withdraw, and the location and dimensions of all existing improvements within that real estate;~~

~~—(b) A sufficient description of any real estate subject to developmental rights, labeled to identify the rights applicable to each parcel; and~~

~~—(c) A sufficient description of any real estate in which the units' owners will own only an estate for years, labeled as "leasehold real estate."~~

~~—6.] Upon exercising any developmental right, the declarant shall record new or amended plats necessary to conform to the requirements of subsection 2. [and provide new or amended plans of the units and a new or amended plan of development or new certifications of those plans if the plans otherwise conform to the requirements of subsections 3 and 5.~~

~~—7.] 6. Each plat must be certified by [an independent] a professional land surveyor. [The plans of the units must be certified by an independent professional engineer or architect. If the plan of development is not certified by an independent professional land surveyor or an independent professional engineer or architect, it must be acknowledged by the declarant.]~~

Sec. 13. NRS 116.211 is hereby amended to read as follows:

116.211 1. To exercise any developmental right reserved under paragraph (h) of subsection 1 of NRS 116.2105, the declarant shall prepare, execute and record an amendment to the declaration (NRS 116.2117) and in a condominium or planned community comply with NRS 116.2109. The declarant is the owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or

conversion of units described in subsection 2, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by NRS 116.2108.

2. Developmental rights may be reserved within any real estate added to the common-interest community if the amendment adding that real estate includes all matters required by NRS 116.2105 or 116.2106, as the case may be, and, in a condominium or planned community, the plats ~~and plans~~ include all matters required by NRS 116.2109. This provision does not extend the time limit on the exercise of developmental rights imposed by the declaration pursuant to paragraph (h) of subsection 1 of NRS 116.2105.

3. Whenever a declarant exercises a developmental right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must convey it to the association or reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain (NRS 116.1107); and

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

4. If the declaration provides, pursuant to paragraph (h) of subsection 1 of NRS 116.2105, that all or a portion of the real estate is subject to a right of withdrawal:

(a) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(b) If any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

Sec. 14. NRS 116.2112 is hereby amended to read as follows:

116.2112 1. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those units' owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association.

2. The association:

(a) In a condominium or planned community shall prepare and record plats ~~for plans~~ necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers; and

(b) In a cooperative shall prepare and record amendments to the declaration ~~including any plans~~ necessary to show or describe the altered boundaries between adjoining units, and their dimensions and identifying numbers.

Sec. 15. NRS 116.2113 is hereby amended to read as follows:

116.2113 1. If the declaration expressly so permits, a unit may be subdivided into 2 or more units. Subject to the provisions of the declaration and other provisions of law, upon application of the unit's owner to subdivide a unit, the

1 association shall prepare, execute and record an amendment to the declaration,
2 including in a condominium or planned community the plats , ~~{and-plans,}~~
3 subdividing that unit.

4 2. The amendment to the declaration must be executed by the owner of the
5 unit to be subdivided, assign an identifying number to each unit created, and
6 reallocate the allocated interests formerly allocated to the subdivided unit to the
7 new units in any reasonable manner prescribed by the owner of the subdivided unit.

8 **Sec. 16.** NRS 116.2114 is hereby amended to read as follows:

9 116.2114 The existing physical boundaries of a unit or the physical
10 boundaries of a unit reconstructed in substantial accordance with the description
11 contained in the original declaration are its legal boundaries, rather than the
12 boundaries derived from the description contained in the original declaration,
13 regardless of vertical or lateral movement of the building or minor variance
14 between those boundaries and the boundaries derived from the description
15 contained in the original declaration. This section does not relieve a unit's owner of
16 liability in case of his willful misconduct or relieve a declarant or any other person
17 of liability for failure to adhere to any plats ~~{and-plans}~~ or, in a cooperative, to any
18 representation in the public offering statement.

19 **Sec. 17.** NRS 116.2117 is hereby amended to read as follows:

20 116.2117 1. Except as otherwise provided in NRS 116.21175, and except in
21 cases of amendments that may be executed by a declarant under subsection ~~{6}~~ 5 of
22 NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107,
23 subsection 4 of NRS 116.2106, subsection 3 of NRS 116.2108, subsection 1 of
24 NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of
25 NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or
26 subsection 2 of NRS 116.2118, and except as otherwise limited by subsection 4, the
27 declaration, including any plats , ~~{and-plans,}~~ may be amended only by vote or
28 agreement of units' owners of units to which at least a majority of the votes in the
29 association are allocated, or any larger majority the declaration specifies. The
30 declaration may specify a smaller number only if all of the units are restricted
31 exclusively to nonresidential use.

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

35 3. Every amendment to the declaration must be recorded in every county in
36 which any portion of the common-interest community is located and is effective
37 only upon recordation. An amendment, except an amendment pursuant to NRS
38 116.2112, must be indexed in the grantee's index in the name of the common-
39 interest community and the association and in the grantor's index in the name of the
40 parties executing the amendment.

41 4. Except to the extent expressly permitted or required by other provisions of
42 this chapter, no amendment may change the boundaries of any unit, the allocated
43 interests of a unit or the uses to which any unit is restricted, in the absence of
44 unanimous consent of the units' owners affected and the consent of a majority of
45 the owners of the remaining units.

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

50 **Sec. 18.** NRS 116.345 is hereby amended to read as follows:

51 116.345 1. An association of a planned community may not restrict,
52 prohibit or otherwise impede the lawful residential use of any property that is

1 within or encompassed by the boundaries of the planned community and that is not
2 designated as part of the planned community.

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

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

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

27 **Sec. 19.** NRS 116.4103 is hereby amended to read as follows:

28 116.4103 1. Except as otherwise provided in NRS 116.41035, a public
29 offering statement must set forth or fully and accurately disclose each of the
30 following:

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

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

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

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

41 (e) A current year-to-date financial statement, including the most recent
42 audited or reviewed financial statement, and the projected budget for the
43 association, either within or as an exhibit to the public offering statement, for 1 year
44 after the date of the first conveyance to a purchaser, and thereafter the current
45 budget of the association. The budget must include, without limitation:

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

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

50 (f) A description of any services or subsidies being provided by the declarant
51 or an affiliate of the declarant, not reflected in the budget.

52 (g) Any initial or special fee due from the purchaser at closing, together with a
53 description of the purpose and method of calculating the fee.

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

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

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

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

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

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

Sec. 20. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his authorized agent shall furnish to a purchaser a resale package containing all of the following:

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

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

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

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

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

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

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

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

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

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

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

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

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

(c) The association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

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

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

6. Upon the request of a unit's owner or his authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

Sec. 21. (Deleted by amendment.)

Sec. 22. NRS 116B.225 is hereby amended to read as follows:

116B.225 "Special declarant's rights" means rights reserved for the benefit of a declarant to:

1. Complete improvements indicated on plats ~~{and—plans}~~ or in the declaration;

2. Exercise any developmental right;

3. Maintain sales offices, management offices and signs advertising the condominium hotel and models, provided, however, that the declarant is not required to reserve the right to maintain such offices or signs within the hotel unit or shared components or within any unit owned by the declarant;

4. Use easements through the common elements, shared components or hotel unit for the purpose of making improvements within the condominium hotel;

1 5. Merge or consolidate a condominium hotel with another condominium
2 hotel; or

3 6. Appoint or remove any officer of the association or any member of an
4 executive board during any period of declarant's control.

5 **Sec. 23.** NRS 116B.295 is hereby amended to read as follows:

6 116B.295 1. Any provision contained in a declaration, bylaw or other
7 governing document of a condominium hotel that violates the provisions of this
8 chapter shall be deemed to conform with those provisions by operation of law, and
9 any such declaration, bylaw or other governing document is not required to be
10 amended to conform to those provisions.

11 2. In the case of amendments to a declaration, bylaws or plats ~~{and plans}~~ of
12 any condominium hotel created before January 1, 2008:

13 (a) If the result accomplished by the amendment was permitted before January
14 1, 2008, the amendment may be made in accordance with that law, in which case
15 that law applies to that amendment, or it may be made under this chapter; and

16 (b) If the result accomplished by the amendment is permitted by this chapter
17 and was not permitted by law before January 1, 2008, the amendment may be made
18 under this chapter.

19 **Sec. 24.** NRS 116B.350 is hereby amended to read as follows:

20 116B.350 1. Plats ~~{and plans}~~ are a part of the declaration and are required
21 for all condominium hotels. Each plat ~~{and plan}~~ must be clear and legible and
22 contain a certification that the plat ~~{or plan}~~ contains all information required by
23 this section.

24 2. Each plat must comply with the provisions of chapter 278 of NRS and
25 show:

26 (a) The name and a survey of the area which is the subject of the plat;

27 (b) A sufficient description of the real estate;

28 (c) The extent of any encroachments by or upon any portion of the property
29 which is the subject of the plat;

30 (d) The location and dimensions of all easements having a specific location and
31 dimension which serve or burden any portion of the condominium hotel;

32 (e) The location and dimensions with reference to an established datum of any
33 vertical residential unit boundaries and that unit's identifying number;

34 (f) The location with reference to an established datum of any horizontal unit
35 boundaries not shown or projected on ~~{plans}~~ *plats* recorded pursuant to subsection
36 4 and that unit's identifying number;

37 (g) The location and dimensions of the units, shared components and common
38 elements; and

39 (h) The location and dimensions of limited common elements, if any, including
40 porches, balconies and patios.

41 3. Each plat must be certified by ~~{an independent}~~ *a* professional land
42 surveyor. ~~{The plans of the units must be certified by an independent professional~~
43 ~~engineer or architect.~~

44 ~~4. Plats and plans need not show the location and dimensions of the units'~~
45 ~~boundaries and their limited common elements if:~~

46 ~~(a) The plat shows the location and dimensions of all buildings containing or~~
47 ~~comprising the units; and~~

48 ~~(b) The declaration includes other information that shows or contains a~~
49 ~~narrative description of the general layout of the units in those buildings and the~~
50 ~~limited common elements, if any, allocated to those units.~~

51 ~~5. To the extent not shown or projected on the}~~

1 **4. The** plats ~~[, plans of the units]~~ must show or project any units in which the
2 declarant has reserved the right to create additional units or common elements, or
3 portions of the shared components or hotel unit, identified appropriately.

4 ~~[6.]~~ **5.** Unless the declaration provides otherwise, *when* the horizontal
5 boundaries of part of a unit located outside a building have the same elevation as
6 the horizontal boundaries of the inside part ~~[and]~~, *the elevations* need not be
7 depicted on the plats. ~~[and plans of the units.]~~

8 ~~[7.]~~ **6.** Upon exercising any developmental right, the declarant shall prepare,
9 execute and record new or amended plats necessary to conform to the requirements
10 of this section.

11 **Sec. 25.** NRS 116B.365 is hereby amended to read as follows:

12 116B.365 The existing physical boundaries of a residential unit or a hotel unit
13 are its legal boundaries, rather than the boundaries derived from the description
14 contained in the original declaration, regardless of vertical or lateral movement of
15 the building or minor variance between those boundaries and the boundaries
16 derived from the description contained in the original declaration. This section does
17 not relieve a unit's owner of liability in case of his willful misconduct or relieve a
18 declarant or any other person of liability for failure to adhere to any plats. ~~[and~~
19 ~~plans.]~~

20 **Sec. 26.** NRS 116B.760 is hereby amended to read as follows:

21 116B.760 1. Except in the case of a sale in which delivery of a public
22 offering statement is required, a unit's owner or his authorized agent shall furnish to
23 a purchaser a resale package containing all of the following:

24 (a) A copy of this chapter, the declaration, other than any plats, ~~[and plans,]~~
25 the bylaws, the rules or regulations of the association and the hotel unit owner and
26 the information statement required by NRS 116B.765;

27 (b) A statement setting forth the amount of the monthly assessment for
28 common expenses and any unpaid assessment of any kind currently due from the
29 selling unit's owner;

30 (c) A copy of the current operating budget of the association and current year-
31 to-date financial statement for the association, which must include a summary of
32 the reserves of the association required by this chapter;

33 (d) A current year-to-date statement of the shared expenses charged to the units
34 and the projected budget for the shared expenses, either within or as an exhibit to
35 the public offering statement. The budget must include, without limitation:

36 (1) A statement of the amount included in the budget as reserves for
37 repairs, replacement and restoration pursuant to this chapter;

38 (2) The projected monthly shared expenses for each type of unit, including
39 the amount established as reserves pursuant to this chapter;

40 (e) A description of any other payments, fees and charges that may be charged
41 by the hotel unit owner, including those that may be charged in order to offset the
42 increased burden placed on the shared components as a result of use of residential
43 units as transient rentals; and

44 (f) A statement of any unsatisfied judgments or pending legal actions against
45 the association or the hotel unit owner which affect the shared components and the
46 status of any pending legal actions relating to the condominium hotel of which the
47 unit's owner has actual knowledge.

48 2. The purchaser may, by written notice, cancel the contract of purchase until
49 midnight of the fifth calendar day following the date of receipt of the resale
50 package described in subsection 1, and the contract for purchase must contain a
51 provision to that effect. If the purchaser elects to cancel a contract pursuant to this
52 subsection, he must hand deliver the notice of cancellation to the residential unit
53 owner or his authorized agent or mail the notice of cancellation by prepaid United

1 States mail to the residential unit owner or his authorized agent. Cancellation is
2 without penalty, and all payments made by the purchaser before cancellation must
3 be refunded promptly. If the purchaser has accepted a conveyance of the residential
4 unit, the purchaser is not entitled to:

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

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

9 3. Within 10 days after receipt of a written request by a residential unit owner
10 or his authorized agent, the hotel unit owner shall furnish all of the following to the
11 residential unit owner or his authorized agent for inclusion in the resale package:

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

14 (b) A certificate containing the information necessary to enable the residential
15 unit owner to comply with paragraphs (b) and (d) of subsection 1.

16 4. If the hotel unit owner furnishes the documents and certificate pursuant to
17 subsection 3:

18 (a) The residential unit owner or his authorized agent shall include the
19 documents and certificate in the resale package provided to the purchaser, and
20 neither the residential unit owner nor his authorized agent is liable to the purchaser
21 for any erroneous information provided by the hotel unit owner and included in the
22 documents and certificate.

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

29 (c) The hotel unit owner may charge the residential unit owner a reasonable
30 fee, not to exceed 25 cents per page, to cover the cost of copying the other
31 documents furnished pursuant to subsection 3.

32 (d) Except for the fees allowed pursuant to paragraphs (b) and (c), the hotel
33 unit owner may not charge the residential unit owner any other fees for preparing or
34 furnishing the documents and certificate pursuant to subsection 3.

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

40 6. Upon the request of a residential unit owner or his authorized agent, or
41 upon the request of a purchaser to whom the hotel unit owner has provided a resale
42 package pursuant to this section or his authorized agent, the hotel unit owner shall
43 make the entire study of the reserves of the association or the shared components
44 reasonably available for the residential unit owner, purchaser or authorized agent to
45 inspect, examine, photocopy and audit. The study must be made available at the
46 business office of the association or the hotel unit owner or some other suitable
47 location within the county where the condominium hotel is situated or, if it is
48 situated in more than one county, within one of those counties.