

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 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 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:

1 **Section 3** of this bill provides that a person who knowingly, willfully and with
2 the intent to fraudulently alter the outcome of the election of a member to the
3 executive board of an association or other votes of the units' owners engages in
4 certain acts pertaining to the ballot or the casting of votes in such election is guilty
5 of a category D felony. (NRS 116.31034) Existing law prohibits a community
6 manager, an officer or a member of the executive board from accepting or soliciting
7 compensation that would influence him or appear to be a conflict of interest. (NRS
8 116.31185) **Section 4** of this bill provides that a community manager or member of
9 the executive board who asks for or receives compensation to influence his vote,
10 opinion or action upon any official matter is guilty of a category D felony. **Section**
11 **4** also provides that a person who offers or gives any gratuity, compensation or
12 reward, or makes a promise thereof, to a community manager or member of the
13 executive board in exchange for a vote, opinion or action on any official matter is
14 guilty of a category D felony.

15 Existing law requires each agency to provide by regulation for the filing and
16 prompt disposition of petitions for declaratory orders and advisory opinions as to
17 the applicability of any statutory provision, agency regulation or decision of the
18 agency, and the Department of Business and Industry, which includes the Real



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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.

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)

Section 8.5 of this bill provides that an association may not charge a fee for entry into the common-interest community against a person providing services to a unit, a unit's owner or a tenant of a unit's owner or against a visitor, guest or invitee of a unit's owner or a tenant of a unit's owner. (NRS 116.2111)

Section 9 of this bill revises existing law to limit an association's power to include certain provisions in certain contracts involving the association. (NRS 116.3102)

Existing law authorizes an executive board to impose fines under certain circumstances. (NRS 116.31031) **Section 12** of this bill limits the imposition of fines against a unit's owner for violations of the governing documents by a tenant or an invitee of the unit's owner or the tenant.

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; (5) prohibiting an association from interfering with the collection of signatures for a special meeting or removal election; and (6) providing immunity from criminal or civil liability for an association, its officers, employees and agents for the disclosure or publication of certain information pursuant to certain duties required of the association or its officers, employees and agents. (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 at both the beginning and the end of a meeting. (NRS 116.31083)

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



74 establish adequate reserves. This section also provides that any such assessments
75 imposed must be based on the study of the reserves of the association conducted
76 pursuant to NRS 116.31152.

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

80 **Sections 24, 26 and 28** of this bill provide certain additional rights to units'
81 owners by: (1) increasing the scope and definition of prohibited retaliatory action;
82 (2) authorizing the exhibition of certain political signs in certain areas; and (3)
83 mandating notice before interruption of utility service to a unit's owner. (NRS
84 116.31183, 116.325, 116.345)

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

94 **Section 30** of this bill increases the membership of the Commission by adding
95 two members who are units' owners but who are not required to have served as
96 members of an executive board. (NRS 116.600) **Section 31** of this bill revises
97 provisions relating to the Commission's duties by providing for the use of training
98 officers to perform certain duties. (NRS 116.605)

99 **Section 36** of this bill clarifies that if the Commission or hearing officer orders
100 an audit of an association, the audit is conducted at the expense of the association.
101 (NRS 116.790)

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

109 **Section 39** of this bill provides that the Commission must adopt regulations
110 requiring an applicant for a certificate as a community manager or the applicant's
111 employer to post a bond. (NRS 116A.410)

112 **Section 40** of this bill revises existing law to provide that upon selection or
113 appointment of an arbitrator, the arbitrator must provide certain information
114 concerning the procedures of the arbitration and applicable law to each party to the
115 arbitration, and each party must return to the arbitrator an acknowledgment of the
116 information provided by the arbitrator. (NRS 38.330)

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

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

4 **Sec. 2.** (Deleted by amendment.)



1 **Sec. 3. 1.** *A person shall not knowingly, willfully and with*
2 *the intent to fraudulently alter the true outcome of an election of a*
3 *member of the executive board or any other vote of the units'*
4 *owners engage in, attempt to engage in, or conspire with another*
5 *person to engage in, any of the following acts:*

6 (a) *Changing or falsifying a voter's ballot so that the ballot*
7 *does not reflect the voter's true ballot.*

8 (b) *Forging or falsely signing a voter's ballot.*

9 (c) *Fraudulently casting a vote for himself or for another*
10 *person that the person is not authorized to cast.*

11 (d) *Rejecting, failing to count, destroying, defacing or*
12 *otherwise invalidating the valid ballot of another voter.*

13 (e) *Submitting a counterfeit ballot.*

14 **2.** *A person who violates this section is guilty of a category D*
15 *felony and shall be punished as provided in NRS 193.130.*

16 **Sec. 4. 1.** *Except as otherwise provided in subsection 3, a*
17 *community manager or member of the executive board who asks*
18 *for or receives, directly or indirectly, any compensation, gratuity*
19 *or reward, or any promise thereof, upon an agreement or*
20 *understanding that his vote, opinion or action upon any matter*
21 *then pending or which may be brought before him in his capacity*
22 *as a community manager or member of the executive board, will*
23 *be influenced thereby, is guilty of a category D felony and shall be*
24 *punished as provided in NRS 193.130.*

25 **2.** *Except as otherwise provided in subsection 3, a person who*
26 *offers or gives, directly or indirectly, any compensation, gratuity or*
27 *reward, or any promise thereof, upon an agreement or*
28 *understanding that the vote, opinion or action of a community*
29 *manager or member of the executive board upon any matter then*
30 *pending or which may be brought before the community manager*
31 *or member of the executive board in his capacity as a community*
32 *manager or member of the executive board will be influenced*
33 *thereby, is guilty of a category D felony and shall be punished as*
34 *provided in NRS 193.130.*

35 **3.** *The provisions of this section do not prohibit:*

36 (a) *An employee of a declarant or an affiliate of a declarant*
37 *who is a member of an executive board from asking for or*
38 *receiving, directly or indirectly, any compensation, gratuity or*
39 *reward, or any promise thereof, from the declarant or affiliate.*

40 (b) *A declarant or an affiliate of a declarant whose employee is*
41 *a member of an executive board from offering or giving, directly*
42 *or indirectly, any compensation, gratuity or reward, or any*
43 *promise thereof, to the employee who is a member of the executive*
44 *board.*



(c) A community manager from asking for or receiving, directly or indirectly, or an employer of a community manager from offering or giving, directly or indirectly, any compensation for work performed by the community manager pursuant to the laws of this State.

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

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

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

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

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

3. A petition filed pursuant to this section must:

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

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

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

5. The Division shall:

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

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

Sec. 6. (Deleted by amendment.)

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

116.1107 1. If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit's owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit's owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the



1 reallocations. Any remnant of a unit remaining after part of a unit is
2 taken under this subsection is thereafter a common element.

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

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

11 (b) The portion of the allocated interests divested from the
12 partially acquired unit are automatically reallocated to that unit and
13 to the remaining units in proportion to the respective allocated
14 interests of those units before the taking, with the partially acquired
15 unit participating in the reallocation on the basis of its reduced
16 allocated interests.

17 3. If part of the common elements is acquired by eminent
18 domain, the portion of the award attributable to the common
19 elements taken must be paid to the association. Unless the
20 declaration provides otherwise, any portion of the award attributable
21 to the acquisition of a limited common element must be equally
22 divided among the owners of the units to which that limited
23 common element was allocated at the time of acquisition.

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

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

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

31 116.1206 1. Any provision contained in a declaration, bylaw
32 or other governing document of a common-interest community that
33 violates the provisions of this chapter ~~[shall]~~ :

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

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

42 2. In the case of amendments to the declaration, bylaws or plats
43 and plans of any common-interest community created before
44 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. 8.5. NRS 116.2111 is hereby amended to read as follows:

116.2111 1. Except as otherwise provided in this section and subject to the provisions of the declaration and other provisions of law, a unit's owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community;

(b) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

2. An association may not:

(a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.

(b) *Charge any fee for a person to enter the common-interest community to provide services to a unit, a unit's owner or a tenant of a unit's owner or for any visitor to the common-interest community or invitee of a unit's owner or a tenant of a unit's owner to enter the common-interest community.*

(c) Unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit:



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(1) Improvements such as ramps, railings or elevators that are necessary to improve access to the unit for any occupant of the unit who has a disability;

(2) Additional locks to improve the security of the unit;

(3) Shutters to improve the security of the unit or to reduce the costs of energy for the unit; or

(4) A system that uses wind energy to reduce the costs of energy for the unit if the boundaries of the unit encompass 2 acres or more within the common-interest community.

~~[(e)]~~ (d) With regard to approving or disapproving any improvement or alteration made to a unit, act in violation of any state or federal law.

3. Any improvement or alteration made pursuant to subsection 2 that is visible from any other portion of the common-interest community must be installed, constructed or added in accordance with the procedures set forth in the governing documents of the association and must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

4. A unit's owner may not add to the unit a system that uses wind energy as described in subparagraph 4 of paragraph ~~[(b)]~~ (c) of subsection 2 unless he first obtains the written consent of each owner of property within 300 feet of any boundary of the unit.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

(k) Impose charges for late payment of assessments.

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

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

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

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

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

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

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

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



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

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

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

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

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

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

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

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or ~~guest~~ *the invitee* of the unit's owner *or the tenant* 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~~ *the invitee* of the unit's owner *or the tenant* 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~~ *the invitee* of the unit's owner *or the tenant* 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



1 each violation or a total amount of \$1,000, whichever is less. The
2 limitations on the amount of the fine do not apply to any interest,
3 charges or costs that may be collected by the association pursuant to
4 this section if the fine becomes past due.

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

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

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

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

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

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

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

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

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

27 ~~[3-]~~ 4. The executive board must schedule the date, time and
28 location for the hearing on the violation so that the person against
29 whom the fine will be imposed is provided with a reasonable
30 opportunity to prepare for the hearing and to be present at the
31 hearing.

32 ~~[4-]~~ 5. The executive board must hold a hearing before it may
33 impose the fine, unless the person against whom the fine will be
34 imposed:

35 (a) Pays the fine;

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

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

39 ~~[5-]~~ 6. If a fine is imposed pursuant to subsection 1 and the
40 violation is not cured within 14 days, or within any longer period
41 that may be established by the executive board, the violation shall
42 be deemed a continuing violation. Thereafter, the executive board
43 may impose an additional fine for the violation for each 7-day
44 period or portion thereof that the violation is not cured. Any



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1 additional fine may be imposed without notice and an opportunity to
2 be heard.

3 ~~[6-]~~ 7. If the governing documents so provide, the executive
4 board may appoint a committee, with not less than three members,
5 to conduct hearings on violations and to impose fines pursuant to
6 this section. While acting on behalf of the executive board for those
7 limited purposes, the committee and its members are entitled to all
8 privileges and immunities and are subject to all duties and
9 requirements of the executive board and its members.

10 ~~[7-]~~ 8. The provisions of this section establish the minimum
11 procedural requirements that the executive board must follow before
12 it may impose a fine. The provisions of this section do not preempt
13 any provisions of the governing documents that provide greater
14 procedural protections.

15 ~~[8-]~~ 9. Any past due fine:

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

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

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

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

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

29 (4) May not exceed \$250, if the outstanding balance is
30 \$1,000 or more, but is less than \$5,000.

31 (5) May not exceed \$500, if the outstanding balance is
32 \$5,000 or more.

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

35 ~~[9-]~~ 10. As used in this section:

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

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



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1 **Sec. 12.5.** NRS 116.310315 is hereby amended to read as
2 follows:

3 116.310315 If an association has imposed a fine against a
4 unit's owner or a tenant or ~~[guest]~~ *an invitee* of a unit's owner *or a*
5 *tenant* pursuant to NRS 116.31031 for violations of the governing
6 documents of the association, the association:

7 1. Shall, in the books and records of the association, account
8 for the fine separately from any assessment, fee or other charge; and

9 2. Shall not apply, in whole or in part, any payment made by
10 the unit's owner for any assessment, fee or other charge toward the
11 payment of the outstanding balance of the fine or any costs of
12 collecting the fine, unless the unit's owner provides written
13 authorization which directs the association to apply the payment
14 made by the unit's owner in such a manner.

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

17 116.31034 1. Except as otherwise provided in subsection 5 of
18 NRS 116.212, not later than the termination of any period of
19 declarant's control, the units' owners shall elect an executive board
20 of at least three members, ~~[at least a majority]~~ *all* of whom must be
21 units' owners. ~~[Unless the governing documents provide otherwise,
22 ~~the remaining members of the executive board do not have to be~~
23 ~~units' owners.]~~ The executive board shall elect the officers of the
24 association. *Unless the governing documents provide otherwise,*
25 *the officers of the association are not required to be units' owners.*
26 The members of the executive board and the officers of the
27 association shall take office upon election.~~

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

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

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

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

42 4. Not less than 30 days before the preparation of a ballot for
43 the election of members of the executive board, the secretary or
44 other officer specified in the bylaws of the association shall cause
45 notice to be given to each unit's owner of his eligibility to serve as a



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1 member of the executive board. Each unit's owner who is qualified
2 to serve as a member of the executive board may have his name
3 placed on the ballot along with the names of the nominees selected
4 by the members of the executive board or a nominating committee
5 established by the association.

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

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

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

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

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

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

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

32 (1) That master association; or

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

35 7. An officer, employee, agent or director of a corporate owner
36 of a unit, a trustee or designated beneficiary of a trust that owns a
37 unit, a partner of a partnership that owns a unit, a member or
38 manager of a limited-liability company that owns a unit, and a
39 fiduciary of an estate that owns a unit may be an officer of the
40 association or a member of the executive board. In all events where
41 the person serving or offering to serve as an officer of the
42 association or a member of the executive board is not the record
43 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 unreasonably 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, 30 days before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing*



1 *by the unit's owner a candidate informational statement. The*
2 *candidate informational statement:*

3 *(a) Must be no longer than a single, typed page;*

4 *(b) Must not contain any defamatory, libelous or profane*
5 *information; and*

6 *(c) May be sent with the secret ballot mailed pursuant to*
7 *subsection 8 or in a separate mailing.*

8 *↪ The association and its directors, officers, employees and*
9 *agents are immune from criminal or civil liability for any act or*
10 *omission which arises out of the publication or disclosure of any*
11 *information related to any person and which occurs in the course*
12 *of carrying out any duties required pursuant to this subsection.*

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

22 **Sec. 14.** NRS 116.31036 is hereby amended to read as
23 follows:

24 116.31036 1. Notwithstanding any provision of the
25 declaration or bylaws to the contrary, any member of the executive
26 board, other than a member appointed by the declarant, may be
27 removed from the executive board, with or without cause, if at a
28 removal election held pursuant to this section ~~the~~ :

29 *(a) The* number of votes cast ~~in favor of removal~~ constitutes ~~:~~
30 ~~—(a) At~~ *at* least 35 percent of the total number of voting members
31 of the association; and

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

34 2. The removal of any member of the executive board must be
35 conducted by secret written ballot unless the declaration of the
36 association provides that voting rights may be exercised by
37 delegates or representatives as set forth in NRS 116.31105. If the
38 removal of a member of the executive board is conducted by secret
39 written ballot:

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



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1 in connection with real estate subject to developmental rights. No
2 other unit's owner and no other portion of the common-interest
3 community is subject to a claim for payment of those expenses.
4 Unless the declaration provides otherwise, any income or proceeds
5 from real estate subject to developmental rights inures to the
6 declarant.

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

12 **Sec. 16.** NRS 116.3108 is hereby amended to read as follows:

13 116.3108 1. A meeting of the units' owners must be held at
14 least once each year. If the governing documents do not designate
15 an annual meeting date of the units' owners, a meeting of the units'
16 owners must be held 1 year after the date of the last meeting of the
17 units' owners. If the units' owners have not held a meeting for 1
18 year, a meeting of the units' owners must be held on the following
19 March 1.

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

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

41 (b) The voting rights of the units' owners will be exercised
42 through the use of secret written ballots pursuant to NRS 116.31036,
43 the secret written ballots for the removal election must be sent in the
44 manner required by NRS 116.31036 not less than 15 days or more
45 than 60 days after the date on which the petition is received, and the



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1 executive board shall set the date for the meeting to open and count
2 the secret written ballots so that the meeting is held not more than
3 15 days after the deadline for returning the secret written ballots.

4 *↪ The association shall not adopt any rule or regulation which*
5 *prevents or unreasonably interferes with the collection of the*
6 *required percentage of signatures for a petition pursuant to this*
7 *subsection.*

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

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

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

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

28 (a) A clear and complete statement of the topics scheduled to be
29 considered during the meeting, including, without limitation, any
30 proposed amendment to the declaration or bylaws, any fees or
31 assessments to be imposed or increased by the association, any
32 budgetary changes and any proposal to remove an officer of the
33 association or member of the executive board.

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

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

43 5. If the association adopts a policy imposing fines for any
44 violations of the governing documents of the association, the
45 secretary or other officer specified in the bylaws shall prepare and



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1 cause to be hand-delivered or sent prepaid by United States mail to
2 the mailing address of each unit or to any other mailing address
3 designated in writing by the unit's owner, a schedule of the fines
4 that may be imposed for those violations.

5 6. The secretary or other officer specified in the bylaws shall
6 cause minutes to be recorded or otherwise taken at each meeting of
7 the units' owners. Not more than 30 days after each such meeting,
8 the secretary or other officer specified in the bylaws shall cause the
9 minutes or a summary of the minutes of the meeting to be made
10 available to the units' owners. A copy of the minutes or a summary
11 of the minutes must be provided to any unit's owner upon request
12 and, if required by the executive board, upon payment to the
13 association of the cost of providing the copy to the unit's owner.

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

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

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

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

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

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

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

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

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

41 (a) Could not have been reasonably foreseen;

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

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



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(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]~~ A period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for *both* the beginning *and the end* of each meeting. *During the period devoted*



1 *to comments by the units' owners and discussion of those*
2 *comments at the beginning of each meeting, comments by the*
3 *units' owners and discussion of those comments must be limited to*
4 *items listed on the agenda.* In an emergency, the executive board
5 may take action on an item which is not listed on the agenda as an
6 item on which action may be taken.

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

11 (a) A current year-to-date financial statement of the association;

12 (b) A current year-to-date schedule of revenues and expenses for
13 the operating account and the reserve account, compared to the
14 budget for those accounts;

15 (c) A current reconciliation of the operating account of the
16 association;

17 (d) A current reconciliation of the reserve account of the
18 association;

19 (e) The latest account statements prepared by the financial
20 institutions in which the accounts of the association are maintained;
21 and

22 (f) The current status of any civil action or claim submitted to
23 arbitration or mediation in which the association is a party.

24 7. The secretary or other officer specified in the bylaws shall
25 cause *each meeting of the executive board to be audio recorded*
26 *and the* minutes to be recorded or otherwise taken at each meeting
27 of the executive board ~~[]~~, *but if the executive board is meeting in*
28 *executive session, the meeting must not be audio recorded.* Not
29 more than 30 days after each such meeting, the secretary or other
30 officer specified in the bylaws shall cause the *audio recording of*
31 *the meeting, the* minutes ~~[or]~~ *of the meeting and* a summary of the
32 minutes of the ~~[meetings]~~ *meeting* to be made available to the units'
33 owners. A copy of the *audio recording, the* minutes or a summary
34 of the minutes must be provided to any unit's owner upon request
35 and, if required by the executive board, upon payment to the
36 association of the cost of providing the copy to the unit's owner.

37 8. Except as otherwise provided in subsection 9 and NRS
38 116.31085, the minutes of each meeting of the executive board must
39 include:

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

41 (b) Those members of the executive board who were present and
42 those members who were absent at the meeting;

43 (c) The substance of all matters proposed, discussed or decided
44 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.

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

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

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

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

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



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

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

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

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

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

(b) *Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; and*

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

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

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

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

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

116.31087 1. If an executive board receives a written complaint from a unit's owner alleging that the executive board has



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1 violated any provision of this chapter or any provision of the
2 governing documents of the association, the executive board shall ~~if~~
3 ~~if action is required by the executive board,]~~ , upon the written
4 request of the unit's owner, place the subject of the complaint on
5 the agenda of the next regularly scheduled meeting of the executive
6 board.

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

16 **Sec. 20.** (Deleted by amendment.)

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

18 116.3115 1. Until the association makes an assessment for
19 common expenses, the declarant shall pay all common expenses.
20 After an assessment has been made by the association, assessments
21 must be made at least annually, based on a budget adopted at least
22 annually by the association in accordance with the requirements set
23 forth in NRS 116.31151. Unless the declaration imposes more
24 stringent standards, the budget must include a budget for the daily
25 operation of the association and a budget for the reserves required
26 by paragraph (b) of subsection 2.

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

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

32 (b) The association shall establish adequate reserves, funded on
33 a reasonable basis, for the repair, replacement and restoration of the
34 major components of the common elements. The reserves may be
35 used only for those purposes, including, without limitation,
36 repairing, replacing and restoring roofs, roads and sidewalks, and
37 must not be used for daily maintenance. The association may
38 comply with the provisions of this paragraph through a funding plan
39 that is designed to allocate the costs for the repair, replacement and
40 restoration of the major components of the common elements over a
41 period of years if the funding plan is designed in an actuarially
42 sound manner which will ensure that sufficient money is available
43 when the repair, replacement and restoration of the major
44 components of the common elements are necessary.
45 *Notwithstanding any provision of the governing documents to the*



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1 *contrary, to establish adequate reserves pursuant to this*
2 *paragraph, including, without limitation, to establish or carry out*
3 *a funding plan, the executive board may, without seeking or*
4 *obtaining the approval of the units' owners, impose any necessary*
5 *and reasonable assessments against the units in the common-*
6 *interest community. Any such assessments imposed by the*
7 *executive board must be based on the study of the reserves of the*
8 *association conducted pursuant to NRS 116.31152.*

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

12 4. To the extent required by the declaration:

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

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

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

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

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

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

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

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

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

44 116.31155 1. Except as otherwise provided in subsection 2,
45 an association shall:



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(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. (Deleted by amendment.)

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

116.31183 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. Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

2. Recommended the selection or replacement of an attorney, community manager or vendor; or

~~[2-]~~ 3. Requested in good faith to review the books, records or other papers of the association.

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:



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

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

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

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

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

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

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

18 116.325 1. The executive board shall not and the governing
19 documents must not prohibit a unit's owner or an occupant of a unit
20 from exhibiting ~~{a political sign}~~ *one or more political signs* within
21 such physical portion of the common-interest community as that
22 owner or occupant has a right to occupy and use exclusively ~~{if the~~
23 ~~political sign is}~~, *subject to the following conditions:*

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

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

29 (c) *All political signs exhibited are subject to any applicable*
30 *provisions of law governing the posting of political signs.*

31 (d) *A unit's owner or an occupant of a unit may exhibit as*
32 *many political signs as desired, but may not exhibit more than one*
33 *political sign for each candidate, political party or ballot question.*

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

41 3. As used in this section, "political sign" means a sign that
42 expresses support for or opposition to a candidate, political party or
43 ballot question ~~{}~~ *in any federal, state or local election or any*
44 *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, *community manager* or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to



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1 comply ~~[has a claim]~~ *may bring a civil action* for *damages or other*
2 appropriate relief.

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

8 (a) By the association against:

9 (1) A declarant; ~~[or]~~

10 (2) *A community manager; or*

11 (3) A unit's owner.

12 (b) By a unit's owner against:

13 (1) The association;

14 (2) A declarant; or

15 (3) Another unit's owner of the association.

16 (c) *By a class of units' owners constituting at least 10 percent*
17 *of the total number of voting members of the association against a*
18 *community manager.*

19 3. ~~[Punitive]~~ *Except as otherwise provided in NRS 116.31036,*
20 *punitive* damages may be awarded for a willful and material failure
21 to comply with *any provision of* this chapter if the failure is
22 established by clear and convincing evidence.

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

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

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

28 116.600 1. The Commission for Common-Interest
29 Communities and Condominium Hotels is hereby created.

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

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

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

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

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

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

44 ~~[(e)]~~ (f) One member who is an attorney licensed to practice in
45 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



1 penalties and take other disciplinary action authorized by the
2 provisions of this chapter.

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

7 4. A final order of a hearing panel:

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

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

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

18 116.757 1. Except as otherwise provided in this section and
19 NRS 239.0115, a written affidavit filed with the Division pursuant
20 to NRS 116.760, all documents and other information filed with the
21 written affidavit and all documents and other information compiled
22 as a result of an investigation conducted to determine whether to file
23 a formal complaint with the Commission are confidential. *The*
24 *Division shall not disclose any information that is confidential*
25 *pursuant to this subsection, in whole or in part, to any person,*
26 *including, without limitation, a person who is the subject of an*
27 *investigation or complaint, unless and until a formal complaint is*
28 *filed pursuant to subsection 2 and the disclosure is required*
29 *pursuant to subsection 2.*

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

35 **Sec. 34.** (Deleted by amendment.)

36 **Sec. 35.** (Deleted by amendment.)

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

38 116.790 1. If the Commission or a hearing panel, after notice
39 and hearing, finds that the executive board or any person acting on
40 behalf of the association has committed a violation, the Commission
41 or the hearing panel may take any or all of the following actions:

42 (a) Order an audit of the association ~~§~~, *at the expense of the*
43 *association.*

44 (b) Require the executive board to hire a community manager
45 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.



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

2 116A.270 1. Except as otherwise provided in this section and
3 NRS 239.0115, a complaint filed with the Division alleging a
4 violation of this chapter or chapter 116 or 116B of NRS, all
5 documents and other information filed with the complaint and all
6 documents and other information compiled as a result of an
7 investigation conducted to determine whether to initiate disciplinary
8 action are confidential. ~~[and may be disclosed]~~

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

20 ~~[2-]~~ 3. The *formal* complaint or other charging documents filed
21 *by the Administrator* with the Commission to initiate disciplinary
22 action and all documents and other information considered by the
23 Commission or a hearing panel when determining whether to
24 impose discipline are public records.

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

26 116A.300 1. The Commission may appoint one or more
27 hearing panels. Each hearing panel must consist of one or more
28 independent hearing officers. *An independent hearing officer may*
29 *be, without limitation, a member of the Commission or an*
30 *employee of the Commission.*

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

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

40 4. A final order of a hearing panel:

41 (a) May be appealed to the Commission if, not later than 20
42 days after the date that the final order is issued by the hearing panel,
43 any party aggrieved by the final order files a written notice of appeal
44 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. 39. NRS 116A.410 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

38.330 1. If all parties named in a written claim filed pursuant to NRS 38.320 agree to have the claim submitted for mediation, the parties shall reduce the agreement to writing and shall select a mediator from the list of mediators maintained by the Division pursuant to NRS 38.340. Any mediator selected must be available within the geographic area. If the parties fail to agree upon a mediator, the Division shall appoint a mediator from the list of mediators maintained by the Division. Any mediator appointed must be available within the geographic area. Unless otherwise provided



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1 by an agreement of the parties, mediation must be completed within
2 60 days after the parties agree to mediation. Any agreement
3 obtained through mediation conducted pursuant to this section must,
4 within 20 days after the conclusion of mediation, be reduced to
5 writing by the mediator and a copy thereof provided to each party.
6 The agreement may be enforced as any other written agreement.
7 Except as otherwise provided in this section, the parties are
8 responsible for all costs of mediation conducted pursuant to this
9 section.

10 2. If all the parties named in the claim do not agree to
11 mediation, the parties shall select an arbitrator from the list of
12 arbitrators maintained by the Division pursuant to NRS 38.340. Any
13 arbitrator selected must be available within the geographic area. If
14 the parties fail to agree upon an arbitrator, the Division shall appoint
15 an arbitrator from the list maintained by the Division. Any arbitrator
16 appointed must be available within the geographic area. Upon
17 appointing an arbitrator, the Division shall provide the name of the
18 arbitrator to each party. *An arbitrator shall, not later than 5 days*
19 *after his selection or appointment pursuant to this subsection,*
20 *provide to the parties an informational statement relating to the*
21 *arbitration of a claim pursuant to this section. The written*
22 *informational statement:*

23 (a) *Must be written in plain English;*

24 (b) *Must explain the procedures and applicable law relating to*
25 *the arbitration of a claim conducted pursuant to this section,*
26 *including, without limitation, the procedures, timelines and*
27 *applicable law relating to confirmation of an award pursuant to*
28 *NRS 38.239, vacation of an award pursuant to NRS 38.241,*
29 *judgment on an award pursuant to NRS 38.243, and any*
30 *applicable statute or court rule governing the award of attorney's*
31 *fees or costs to any party; and*

32 (c) *Must be accompanied by a separate form acknowledging*
33 *that the party has received and read the informational statement,*
34 *which must be returned to the arbitrator by the party not later than*
35 *10 days after receipt of the informational statement.*

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

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

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

43 4. Except as otherwise provided in this section and except
44 where inconsistent with the provisions of NRS 38.300 to 38.360,
45 inclusive, the arbitration of a claim pursuant to this section must be



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1 conducted in accordance with the provisions of NRS 38.231,
2 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At
3 any time during the arbitration of a claim relating to the
4 interpretation, application or enforcement of any covenants,
5 conditions or restrictions applicable to residential property or any
6 bylaws, rules or regulations adopted by an association, the arbitrator
7 may issue an order prohibiting the action upon which the claim is
8 based. An award must be made within 30 days after the conclusion
9 of arbitration, unless a shorter period is agreed upon by the parties to
10 the arbitration.

11 5. If all the parties have agreed to nonbinding arbitration, any
12 party to the **nonbinding** arbitration may, within 30 days after a
13 decision and award have been served upon the parties, commence a
14 civil action in the proper court concerning the claim which was
15 submitted for arbitration. Any complaint filed in such an action must
16 contain a sworn statement indicating that the issues addressed in the
17 complaint have been arbitrated pursuant to the provisions of NRS
18 38.300 to 38.360, inclusive. If such an action is not commenced
19 within that period, any party to the arbitration may, within 1 year
20 after the service of the award, apply to the proper court for a
21 confirmation of the award pursuant to NRS 38.239.

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

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

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

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

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

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

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



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

4 1. One member who is a unit's owner residing in this State
5 whose term begins on October 1, 2009, and expires on October 1,
6 2010; and

7 2. One member who is a unit's owner residing in this State
8 whose term begins on October 1, 2009, and expires on October 1,
9 2011.

10 **Sec. 42.** The manual described in subsection 2 of NRS
11 116.605, as amended by section 31 of this act, must be prepared and
12 made available by October 1, 2010.

