

SENATE BILL NO. 261—SENATOR CARE

MARCH 16, 2009

Referred to Committee on Judiciary

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

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

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

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

Legislative Counsel's Digest:

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

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

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

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

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



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

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

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

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

(a) This entire chapter applies to the condominium;

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

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

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

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

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

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

2. *An agreement between an association and the owner of real estate that is not part of a common-interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in the agreement, does not create a separate common-interest community. However, the assessments against the units in*



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1 *the common-interest community required by the agreement must*
2 *be included in the periodic budget for the common-interest*
3 *community, and the agreement must be disclosed in all public*
4 *offering statements and resale certificates required by this chapter.*

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

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

15 **Sec. 5. 1.** *The declaration for a common-interest*
16 *community may state that it is a master-planned community if the*
17 *declarant has reserved the development right to create at least*
18 *1,000 units that may be used for residential purposes and, at the*
19 *time of the reservation, that the declarant owns or controls more*
20 *than 500 acres on which the units may be built.*

21 2. *If the requirements of subsection 1 are satisfied, the*
22 *declaration for the master-planned community need not state a*
23 *maximum number of units and need not contain any of the*
24 *information required pursuant to paragraphs (c) to (m), inclusive,*
25 *of subsection 1 of NRS 116.2105, until the declaration is amended*
26 *pursuant to subsection 3.*

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

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

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

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

41 5. *If the public offering statement conspicuously identifies*
42 *the fact that the community is a master-planned community, the*
43 *disclosure requirements contained in NRS 116.4101 to 116.412,*
44 *inclusive, apply only with respect to units that have been declared*



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1 *or are being offered for sale in connection with the public offering*
2 *statement and to the real estate described pursuant to subsection 3.*

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

5 *7. The period of declarant control of the association for a*
6 *master-planned community terminates in accordance with any*
7 *conditions specified in the declaration or otherwise at the time the*
8 *declarant, in a recorded instrument and after giving written notice*
9 *in a record to all the units' owners, voluntarily surrenders all*
10 *rights to control the activities of the association.*

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

12 116.003 As used in this chapter and in the declaration and
13 bylaws of an association, unless the context otherwise requires, the
14 words and terms defined in NRS 116.005 to 116.095, inclusive, *and*
15 *section 2 of this act* have the meanings ascribed to them in those
16 sections.

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

18 116.021 *1. "Common-interest community" means real estate*
19 *described in a declaration* with respect to which a person, by virtue
20 of ~~his~~ *the person's* ownership of a unit, is obligated to pay for *a*
21 *share of* real estate *taxes, insurance premiums, maintenance or*
22 *improvement of, or services or other expenses related to, common*
23 *elements, other units or other* ~~[than that unit. "Ownership"]~~ *real*
24 *estate described in that declaration.*

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

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

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

31 116.089 "Special declarant's rights" means rights reserved for
32 the benefit of a declarant to:

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

37 2. Exercise any developmental right (NRS 116.211);

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

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



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

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

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

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

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

2. This chapter does not apply to:

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

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

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

(3) Shall comply with the provisions of:

(I) NRS 116.31038, 116.31083 and 116.31152; and

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

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

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

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

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



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

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

3. The provisions of this chapter do not:

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

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

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

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

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

5. The Commission shall establish, by regulation:

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

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

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

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

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

(2) Facilities for flood control; or

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

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

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

116.1206 1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter shall be deemed to conform



1 with those provisions by operation of law, and any such declaration,
2 bylaw or other governing document is not required to be amended to
3 conform to those provisions.

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

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

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

14 3. An amendment to the declaration, bylaws or plats ~~[and~~
15 ~~plans]~~ authorized by this section to be made under this chapter must
16 be adopted in conformity with the applicable provisions of chapter
17 117 or 278A of NRS and with the procedures and requirements
18 specified by those instruments. If an amendment grants to any
19 person any rights, powers or privileges permitted by this chapter, all
20 correlative obligations, liabilities and restrictions in this chapter also
21 apply to that person.

22 **Sec. 11.** NRS 116.2105 is hereby amended to read as follows:
23 116.2105 1. The declaration must contain:

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

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

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

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

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

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



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

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

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

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

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

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

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

(l) Any restrictions:

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

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

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

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

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

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

116.2109 1. Plats ~~{and plans}~~ are a part of the declaration, and are required for all common-interest communities except cooperatives. Each plat ~~{and plan}~~ must be clear and legible and



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1 contain a certification that the plat ~~[or plan]~~ contains all information
2 required by this section.

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

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

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

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

10 (d) The location and dimensions of all easements having a
11 specific location and dimension which serve or burden any portion
12 of the common-interest community;

13 (e) The location and dimensions , *with reference to an*
14 *established datum*, of any vertical unit boundaries and that unit's
15 identifying number;

16 (f) The location with reference to an established datum of any
17 horizontal unit boundaries not shown or projected on ~~[plans]~~ *plats*
18 recorded pursuant to subsection ~~[4]~~ *3* and that unit's identifying
19 number; and

20 (g) The location and dimensions of limited common elements,
21 including porches, balconies and patios, other than parking spaces
22 and the other limited common elements described in subsections 2
23 and 4 of NRS 116.2102.

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

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

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

43 ~~—(a) The location and dimensions of all real estate not subject to~~
44 ~~developmental rights, or subject only to the developmental right to~~



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~~withdraw, and the location and dimensions of all existing improvements within that real estate;~~

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

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

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

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

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

116.211 1. To exercise any developmental right reserved under paragraph (h) of subsection 1 of NRS 116.2105, the declarant shall prepare, execute and record an amendment to the declaration (NRS 116.2117) and in a condominium or planned community comply with NRS 116.2109. The declarant is the owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection 2, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by NRS 116.2108.

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

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



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

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

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

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

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

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

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

2. The association:

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

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



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

116.2113 1. If the declaration expressly so permits, a unit may be subdivided into 2 or more units. Subject to the provisions of the declaration and other provisions of law, upon application of the unit's owner to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including in a condominium or planned community the plats , ~~{and-plans,}~~ subdividing that unit.

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

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

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

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

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

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



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

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

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

Sec. 18. 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 ~~for 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. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any



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

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

10 116.4103 1. Except as otherwise provided in NRS
11 116.41035, a public offering statement must set forth or fully and
12 accurately disclose each of the following:

13 (a) The name and principal address of the declarant and of the
14 common-interest community, and a statement that the common-
15 interest community is either a condominium, cooperative or planned
16 community.

17 (b) A general description of the common-interest community,
18 including to the extent possible, the types, number and declarant's
19 schedule of commencement and completion of construction of
20 buildings, and amenities that the declarant anticipates including in
21 the common-interest community.

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

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

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

32 (1) A statement of the amount included in the budget as
33 reserves for repairs, replacement and restoration pursuant to NRS
34 116.3115; and

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees



1 for preparing or furnishing the documents and certificate pursuant to
2 subsection 3.

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

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

20 **Sec. 21.** (Deleted by amendment.)

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

22 116B.225 "Special declarant's rights" means rights reserved
23 for the benefit of a declarant to:

24 1. Complete improvements indicated on plats ~~and plans~~ or in
25 the declaration;

26 2. Exercise any developmental right;

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

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

35 5. Merge or consolidate a condominium hotel with another
36 condominium hotel; or

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

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

41 116B.295 1. Any provision contained in a declaration, bylaw
42 or other governing document of a condominium hotel that violates
43 the provisions of this chapter shall be deemed to conform with those
44 provisions by operation of law, and any such declaration, bylaw or



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1 other governing document is not required to be amended to conform
2 to those provisions.

3 2. In the case of amendments to a declaration, bylaws or plats
4 ~~{and plans}~~ of any condominium hotel created before January 1,
5 2008:

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

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

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

14 116B.350 1. Plats ~~{and plans}~~ are a part of the declaration
15 and are required for all condominium hotels. Each plat ~~{and plan}~~
16 must be clear and legible and contain a certification that the plat ~~{or~~
17 ~~plan}~~ contains all information required by this section.

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

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

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

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

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

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

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

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

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

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

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

44 ~~—(a) The plat shows the location and dimensions of all buildings~~
45 ~~containing or comprising the units; and~~



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

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

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

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

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

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

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

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

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

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

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

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

(d) A current year-to-date statement of the shared expenses charged to the units and the projected budget for the shared



1 expenses, either within or as an exhibit to the public offering
2 statement. The budget must include, without limitation:

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

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

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

14 (f) A statement of any unsatisfied judgments or pending legal
15 actions against the association or the hotel unit owner which affect
16 the shared components and the status of any pending legal actions
17 relating to the condominium hotel of which the unit's owner has
18 actual knowledge.

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

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

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

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

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

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



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

3 (a) The residential unit owner or his authorized agent shall
4 include the documents and certificate in the resale package provided
5 to the purchaser, and neither the residential unit owner nor his
6 authorized agent is liable to the purchaser for any erroneous
7 information provided by the hotel unit owner and included in the
8 documents and certificate.

9 (b) The hotel unit owner may charge the residential unit owner a
10 reasonable fee to cover the cost of preparing the certificate furnished
11 pursuant to subsection 3. Such a fee must be based on the actual cost
12 the association incurs to fulfill the requirements of this section in
13 preparing the certificate. The Commission shall adopt regulations
14 establishing the maximum amount of the fee that the hotel unit
15 owner may charge for preparing the certificate.

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

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

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

29 6. Upon the request of a residential unit owner or his
30 authorized agent, or upon the request of a purchaser to whom the
31 hotel unit owner has provided a resale package pursuant to this
32 section or his authorized agent, the hotel unit owner shall make the
33 entire study of the reserves of the association or the shared
34 components reasonably available for the residential unit owner,
35 purchaser or authorized agent to inspect, examine, photocopy and
36 audit. The study must be made available at the business office of the
37 association or the hotel unit owner or some other suitable location
38 within the county where the condominium hotel is situated or, if it is
39 situated in more than one county, within one of those counties.

