

Senate Bill No. 254—Senator Copening

CHAPTER.....

AN ACT relating to common-interest communities; revising procedures for alternative dispute resolution of certain claims relating to common-interest communities; revising provisions governing the review of certain books, papers and records of an association; revising provisions governing the confidentiality of certain documents and information obtained by the Real Estate Division of the Department of Business and Industry; revising the penalties for filing frivolous, false or fraudulent claims; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1, 2 and 6-21 of this bill revise the procedures for: (1) the alternative dispute resolution of civil actions which relate to any governing documents or covenants, conditions or restrictions applicable to residential property; and (2) administrative proceedings which relate to a violation of existing law governing common-interest communities and condominium hotels. **Sections 10 and 18** require a person to include in a written claim filed with the Real Estate Division of the Department of Business and Industry all claims which: (1) allege a violation of the governing documents or covenants, conditions or restrictions; and (2) allege a violation of existing law governing common-interest communities and condominium hotels. Under **sections 1 and 15**, the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels must refer all claims to a mediator, and the Commission for Common-Interest Communities and Condominium Hotels shall adopt regulations establishing the maximum amount, not to exceed \$500, of the fees and costs of the mediation and governing the manner in which such fees and costs are paid. If the mediation does not result in a settlement of the claim, **sections 1 and 15** require the mediator to refer the claim: (1) to arbitration if the claim relates to the governing documents or covenants, conditions or restrictions applicable to the property; and (2) to the Division if the claim relates to a violation of a provision of existing law governing common-interest communities. If the claim is referred to an arbitrator, the arbitration is conducted in accordance with: (1) the rules of the American Arbitration Association or other comparable rules for speedy arbitration approved by the Division or the Commission; and (2) existing law governing the arbitration of such claims. If the claim is referred to the Division, **section 11** requires the Division to determine whether good cause exists to proceed with a hearing on the alleged violation and, if good cause exists, to refer the claim to the Ombudsman or file a complaint with the Commission. If the claim is referred to the Ombudsman, the parties do not resolve the alleged violation with the assistance of the Ombudsman and the Division, after investigation, makes certain findings, the Administrator of the Division must file a formal complaint with the Commission.

Sections 5, 10 and 18 of this bill revise the penalties which may be imposed against a person who files with the Division a frivolous, false or fraudulent claim or response and provide for penalties against a person who files a claim with the Division for the purpose of delay or harassment.



Existing law authorizes an association of a common-interest community to foreclose a lien by sale of a unit and prescribes the procedures for such a foreclosure. (NRS 116.31162-116.31168) **Section 3.5** of this bill revises provisions governing foreclosures by prohibiting an association from foreclosing a lien by sale during the pendency of any mediation or arbitration if the issue in dispute is the basis for the foreclosure.

Section 4 of this bill provides that, unless and until a complaint is filed by the Real Estate Administrator, the executive board is not required to make available certain confidential documents and information relating to certain claims filed with the Division.

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

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Not later than 5 business days after receipt of a written response filed with the Division pursuant to subsection 5 of NRS 116.760, the Division shall provide:

(a) To the claimant, a copy of the response.

(b) To the parties, the list of mediators maintained by the Division pursuant to NRS 38.340.

2. The parties may select a mediator from the list of mediators provided pursuant to subsection 1. If the parties fail to agree upon a mediator, the Ombudsman shall appoint a mediator from the list of mediators maintained by the Division within 5 business days. Any mediator selected by the parties or appointed by the Ombudsman must be available within the geographic area, unless such a requirement is determined by the parties or the Ombudsman to be unreasonable. Upon appointing a mediator, the Ombudsman shall provide the name of the mediator to the parties.

3. Not later than 5 business days after his or her selection or appointment pursuant to subsection 2, the mediator shall provide to the parties an informational statement relating to a mediation conducted pursuant to this section. The written informational statement:

(a) Must be in a form approved by the Commission;

(b) Must be written in plain English;

(c) Must explain the procedures and applicable law relating to a mediation conducted pursuant to this section, including, without limitation, the confidentiality of the mediation, the nature of the mediation process, the enforceability of a settlement obtained



through mediation and the procedures for resolution of the claim if the parties fail to reach a settlement through mediation; and

(d) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement and agrees to comply with the provisions of law governing the confidentiality of the mediation, which must be returned to the mediator by the party not later than 10 days after receipt of the informational statement.

4. Unless otherwise provided by an agreement of the parties, a mediation conducted pursuant to this section must be completed within 60 days after the selection or appointment of the mediator.

5. Upon the conclusion of the settlement discussions, any agreement obtained through mediation conducted pursuant to this section must be reduced to writing by the mediator and signed by the parties. The mediator shall provide a copy of the written agreement signed by the parties to each party and to the Division. Any written agreement received by the Division pursuant to this subsection is confidential. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section and subject to any regulations adopted by the Commission, the parties are responsible for the payment of all fees and costs of mediation in the manner provided by the mediator. The Commission shall adopt regulations governing the maximum amount, not to exceed \$500 per mediation, that may be charged for fees and costs of mediation and the manner in which such fees and costs of mediation are paid.

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

(a) The Commission approves the payment; and

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

7. If either party fails to participate in the mediation or if, within 60 days after the selection or appointment of the mediator or any longer period agreed to by the parties, the parties are unable with the assistance of the mediator to resolve any of the disputes included in the written claim, the mediator shall, not later than 5 business days after the conclusion of the mediation:

(a) Certify to the Ombudsman that the mediation was unsuccessful; and

(b) Recommend that the claim be referred:

(1) To arbitration pursuant to NRS 38.330, if the claim relates to any governing documents or covenants, conditions or



restrictions applicable to the real estate which is the subject of the claim; or

(2) To the Division for proceedings pursuant to this section and NRS 116.745 to 116.795, inclusive, if the claim relates to an alleged violation of a provision of this chapter or any regulation adopted pursuant thereto.

↪ The mediator may not provide any other information relating to the mediation to the Division, and the Division, the Commission and a hearing panel may not request from the mediator any other information relating to the mediation.

8. If any party fails to participate in the mediation in good faith, the party is liable for all fees and costs associated with the mediation.

9. No admission, representation or statement made during a mediation conducted pursuant to this section, not otherwise discoverable or obtainable, is admissible as evidence or subject to discovery in a civil action or administrative proceeding.

10. As used in this section, "geographic area" has the meaning ascribed to it in NRS 38.330.

Sec. 2. NRS 116.085 is hereby amended to read as follows:

116.085 "Respondent" means a person against whom:

1. ~~[An affidavit]~~ **A claim** has been filed pursuant to NRS **38.320 or** 116.760.

2. A complaint has been filed pursuant to NRS 116.765.

Sec. 3. (Deleted by amendment.)

Sec. 3.5. NRS 116.31162 is hereby amended to read as follows:

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

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



(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

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

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

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

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

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

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

4. The association may not foreclose a lien by sale ~~based~~:

(a) Based on a fine or penalty for a violation of the governing documents of the association unless:

~~(a)~~ (1) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

~~(b)~~ (2) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

(b) During the pendency of any mediation or arbitration conducted pursuant to NRS 38.300 to 38.360, inclusive, and section 15 of this act and 116.745 to 116.795, inclusive, and



section 1 of this act, if the issue in dispute is the basis for instituting the foreclosure.

Sec. 4. NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review at the business office of the association or a designated business location not to exceed 60 miles from the physical location of the common-interest community and during the regular working hours of the association, including, without limitation, all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

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

(b) The records of the association relating to another unit's owner, including, without limitation, any architectural plan or specification submitted by a unit's owner to the association during an approval process required by the governing documents, except for those records described in subsection 2; ~~[and]~~

(c) Any document, including, without limitation, minutes of an executive board meeting, a reserve study and a budget, if the document:

(1) Is in the process of being developed for final consideration by the executive board; and

(2) Has not been placed on an agenda for final approval by the executive board ~~[.];~~ *and*

(d) Except as otherwise provided by law, any document or information which is:

(1) Submitted to the Division in response to a claim filed with the Division pursuant to NRS 38.320 or 116.760;

(2) Received from the Division as a result of the filing of a claim pursuant to NRS 38.320 or 116.760 or an investigation of that claim; or

(3) Otherwise required to be kept confidential by the Division pursuant to subsection 1 of NRS 116.757,

↪ unless and until the Administrator files a formal complaint with the Commission.

2. The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an



assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:

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

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

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

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

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

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

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

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

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

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

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

7. If an official publication contains or will contain the views or opinions of the association, the executive board, a community manager or an officer, employee or agent of an association



concerning an issue of official interest, the official publication must, upon request and without charge, provide equal space to opposing views and opinions of a unit's owner, tenant or resident of the common-interest community.

8. The association and its officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to subsection 6 or 7.

9. As used in this section:

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

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

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

(b) "Official publication" means:

(1) An official website;

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

(3) An official bulletin board that is available to each unit's owner,

↳ which is published or maintained at the cost of an association and by an association, an executive board, a member of an executive board, a community manager or an officer, employee or agent of an association.

Sec. 5. NRS 116.675 is hereby amended to read as follows:

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

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

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

4. A final order of a hearing panel:



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

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

5. If the Commission finds that an appeal from a final order of a hearing panel is filed in bad faith or without reasonable cause for the purpose of delay or harassment, the Commission may impose any of the sanctions set forth in subsection 9 of NRS 116.760 against the person who filed the appeal.

Sec. 6. NRS 116.745 is hereby amended to read as follows:

116.745 As used in NRS 116.745 to 116.795, inclusive, *and section 1 of this act*, unless the context otherwise requires, "violation" means a violation of any provision of this chapter, any regulation adopted pursuant thereto or any order of the Commission or a hearing panel.

Sec. 7. NRS 116.750 is hereby amended to read as follows:

116.750 1. In carrying out the provisions of NRS 116.745 to 116.795, inclusive, *and section 1 of this act*, the Division and the Ombudsman have jurisdiction to investigate and the Commission and each hearing panel has jurisdiction to take appropriate action against any person who commits a violation, including, without limitation:

(a) Any association and any officer, employee or agent of an association.

(b) Any member of an executive board.

(c) Any community manager who holds a certificate and any other community manager.

(d) Any person who is registered as a reserve study specialist, or who conducts a study of reserves, pursuant to chapter 116A of NRS.

(e) Any declarant or affiliate of a declarant.

(f) Any unit's owner.

(g) Any tenant of a unit's owner if the tenant has entered into an agreement with the unit's owner to abide by the governing documents of the association and the provisions of this chapter and any regulations adopted pursuant thereto.

2. The jurisdiction set forth in subsection 1 applies to any officer, employee or agent of an association or any member of an executive board who commits a violation and who:



(a) Currently holds his or her office, employment, agency or position or who held the office, employment, agency or position at the commencement of proceedings against him or her.

(b) Resigns his or her office, employment, agency or position:

(1) After the commencement of proceedings against him or her; or

(2) Within 1 year after the violation is discovered or reasonably should have been discovered.

Sec. 8. NRS 116.755 is hereby amended to read as follows:

116.755 1. The rights, remedies and penalties provided by NRS 116.745 to 116.795, inclusive, *and section 1 of this act* are cumulative and do not abrogate and are in addition to any other rights, remedies and penalties that may exist at law or in equity.

2. If the Commission, a hearing panel or another agency or officer elects to take a particular action or pursue a particular remedy or penalty authorized by NRS 116.745 to 116.795, inclusive, *and section 1 of this act* or another specific statute, that election is not exclusive and does not preclude the Commission, the hearing panel or another agency or officer from taking any other actions or pursuing any other remedies or penalties authorized by NRS 116.745 to 116.795, inclusive, *and section 1 of this act* or another specific statute.

3. In carrying out the provisions of NRS 116.745 to 116.795, inclusive, *and section 1 of this act*, the Commission or a hearing panel shall not intervene in any internal activities of an association except to the extent necessary to prevent or remedy a violation.

Sec. 9. NRS 116.757 is hereby amended to read as follows:

116.757 1. Except as otherwise provided in this section and NRS 239.0115, a ~~written affidavit~~ *claim and a response* filed with the Division pursuant to NRS ~~38.320 or~~ 116.760, all documents and other information filed with the ~~written affidavit~~ *claim or response* and all documents and other information compiled as a result of an investigation conducted to determine whether to file a formal complaint with the Commission are confidential. ~~The~~ *Except as otherwise provided in this section, the* Division shall not disclose any information that is confidential pursuant to this subsection, in whole or in part, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection ~~2~~ 3 and the disclosure is required pursuant to subsection ~~2~~ 3.

2. *The Division may disclose a claim and response filed with the Division pursuant to NRS 38.320 or 116.760 and any*



documents or other information filed with the claim or response to:

(a) The parties to the claim, as required by NRS 38.320 or 116.760 or section 1 or 15 of this act;

(b) The mediator selected or appointed pursuant to section 1 or 15 of this act; and

(c) An arbitrator selected or appointed pursuant to NRS 38.330.

3. A formal complaint filed by the Administrator with the Commission and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline or take other administrative action pursuant to NRS 116.745 to 116.795, inclusive, *and section 1 of this act* are public records.

Sec. 10. NRS 116.760 is hereby amended to read as follows:

116.760 1. Except as otherwise provided in this section, a person who is aggrieved by an alleged violation may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file with the Division a written ~~[affidavit that sets forth the facts constituting the alleged violation. The affidavit may allege any actual damages suffered by the aggrieved person as a result of the alleged violation.]~~ *claim pursuant to this section.*

2. An aggrieved person may not file ~~[such an affidavit]~~ *a claim pursuant to this section* unless *all administrative procedures specified in the governing documents have been exhausted and* the aggrieved person has provided the respondent by certified mail, return receipt requested, with written notice of the alleged violation set forth in the ~~[affidavit.]~~ *claim.* The notice must:

(a) Be mailed to the respondent's last known address.

(b) Specify, in reasonable detail, the alleged violation, any actual damages suffered by the aggrieved person as a result of the alleged violation, and any corrective action proposed by the aggrieved person.

3. A ~~[written affidavit]~~ *claim* filed with the Division pursuant to this section *or NRS 38.320* must be ~~[-~~

~~—(a) On] on~~ a form ~~[prescribed]~~ *approved* by the ~~[Division.]~~

~~—(b) Be accompanied by evidence that:~~

~~—(1)]~~ *Commission and must include:*

(a) The complete names, addresses and telephone numbers of all parties to the claim.

(b) A statement of whether all administrative procedures specified in the governing documents have been exhausted.



(c) A specific statement of the nature of the claim, including, without limitation, a description, in reasonable detail, of:

(1) The alleged violation of the provisions of this chapter or any regulation adopted pursuant thereto or an alleged violation of the governing documents;

(2) Any alleged damages suffered by the aggrieved person as a result of the actions underlying the claim; and

(3) Any corrective action proposed by the claimant.

(d) A statement that:

(1) The claimant has given the respondent written notice of the claim;

(2) The respondent has been given a reasonable opportunity after receiving the written notice to correct the alleged violation ~~of~~ of the provisions of this chapter or any regulation adopted pursuant thereto or an alleged violation of the governing documents; and

~~[(2)]~~ *(3) Reasonable efforts to resolve the alleged violation have failed.*

(e) All claims of which the claimant is aware or reasonably should be aware, including, without limitation, any claims that relate to a violation of the governing documents applicable to the real estate which is the subject of the claim.

(f) Such other information as the Division may require by regulation.

4. ~~[(The)]~~ Upon the filing of a claim that satisfies the requirements of this section, the Division shall serve a copy of the claim on the respondent by certified mail, return receipt requested, to his or her last known address.

5. Upon being served pursuant to subsection 4, the person upon whom a copy of the claim was served shall, not later than 30 days after the date of service, file a written response with the Division. The response must:

(a) Contain an admission or a denial of the allegations contained in the claim and any defenses upon which the respondent will rely; and

(b) Be delivered personally to the Division or mailed to the Division by certified mail, return receipt requested.

6. Except for good cause shown, if a person fails to file a written response pursuant to subsection 5, the claim may be deemed substantiated upon the filing of an affidavit with the Division.



7. *The Division may consolidate multiple claims involving the same parties for the purposes of a mediation conducted pursuant to section 1 of this act.*

8. *By filing a claim or response with the Division pursuant to this section, a person is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances:*

(a) *The claim or response is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of proceedings before the Division or the Commission; and*

(b) *The allegations and other factual contentions in the claim or response have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.*

9. *If a person files a claim or response pursuant to this section or NRS 38.320 which the person knows is false or fraudulent or if a person files such a claim or response in bad faith or without reasonable cause for the purpose of harassment, the Commission or a hearing panel may ~~impose~~:*

(a) *~~Impose~~ an administrative fine of not more than \$1,000 against ~~[any]~~ the person who ~~[knowingly files a false or fraudulent affidavit with the Division.]~~ filed the claim or response;*

(b) *Issue an order directing the person who filed the claim or response to pay the costs incurred by the Division as a result of that filing, including, without limitation, the costs incurred by the Division in investigating the allegations in the claim or response; or*

(c) *Take any combination of the actions set forth in paragraphs (a) and (b).*

Sec. 11. NRS 116.765 is hereby amended to read as follows:

116.765 1. Upon ~~[receipt of an affidavit that complies with the provisions of NRS 116.760,]~~ referral of a claim to the Division pursuant to subsection 7 of section 1 of this act or subsection 7 of section 15 of this act, the Division shall ~~[refer]~~ determine whether good cause exists to proceed with a hearing on the alleged violation. If, after investigating the alleged violation, the Division determines that the allegations in the claim are not frivolous, false or fraudulent and that good cause exists to proceed with a hearing on the alleged violation, the Administrator shall:

(a) *File a formal complaint with the Commission, with the Division as complainant, and schedule a hearing on the complaint before the Commission or a hearing panel; or*



(b) Refer the ~~[affidavit]~~ *claim* to the Ombudsman.

2. ~~[The]~~ *If the Administrator refers a claim to the Ombudsman pursuant to subsection 1, the* Ombudsman shall give such guidance to the parties as the Ombudsman deems necessary to assist the parties to resolve the alleged violation. ~~{~~

~~—3.]~~ If the parties are unable to resolve the alleged violation with the assistance of the Ombudsman, the Ombudsman shall provide to the Division a report concerning the alleged violation and *, except as otherwise provided in subsection 4,* any information collected by the Ombudsman during his or her efforts to assist the parties to resolve the alleged violation.

~~[4.]~~ 3. Upon receipt of the report from the Ombudsman ~~{}~~ *pursuant to subsection 2,* the Division shall conduct an investigation to determine whether good cause exists to proceed with a hearing on the alleged violation. ~~{~~

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

4. *No admission, representation or statement made in the course of the Ombudsman's efforts to assist the parties to resolve the alleged violation, not otherwise discoverable or obtainable, is admissible as evidence or subject to discovery in a civil action or administrative proceeding.*

Sec. 12. NRS 116.770 is hereby amended to read as follows:

116.770 1. Except as otherwise provided in subsection 2, if the Administrator files a formal complaint with the Commission, the Commission or a hearing panel shall hold a hearing on the complaint not later than 90 days after the date that the complaint is filed.

2. The Commission or the hearing panel may continue the hearing upon its own motion or upon the written request of a party to the complaint, for good cause shown, including, without limitation, the existence of proceedings for mediation or arbitration or a civil action involving the facts that constitute the basis of the complaint.

3. The Division shall give the respondent *and, if the Division is not a party to the hearing, the claimant* written notice of the date, time and place of the hearing ~~[on the complaint]~~ at least 30 days before the date of the hearing. The notice must be:



(a) Delivered personally to the *claimant and* respondent or mailed to the *claimant and* respondent by certified mail, return receipt requested, to ~~his or her~~ *their* last known ~~address~~ *addresses*.

(b) Accompanied by:

(1) A copy of the complaint; and

(2) Copies of all communications, reports, affidavits and depositions in the possession of the Division that are relevant to the complaint.

4. At any hearing ~~on the complaint~~ *held pursuant to this section*, the Division may not present evidence that was obtained after the notice was given to the respondent pursuant to this section, unless the Division proves to the satisfaction of the Commission or the hearing panel that:

(a) The evidence was not available, after diligent investigation by the Division, before such notice was given to the respondent; and

(b) The evidence was given or communicated to the respondent immediately after it was obtained by the Division.

5. ~~The~~ *If the Administrator files a formal complaint, the* respondent must file an answer not later than 30 days after the date that notice of the complaint is delivered or mailed by the Division. The answer must:

(a) Contain an admission or a denial of the allegations contained in the complaint and any defenses upon which the respondent will rely; and

(b) Be delivered personally to the Division or mailed to the Division by certified mail, return receipt requested.

6. If the *Administrator files a formal complaint and the* respondent does not file an answer within the time required by subsection 5, the Division may, after giving the respondent written notice of the default, request the Commission or the hearing panel to enter a finding of default against the respondent. The notice of the default must be delivered personally to the respondent or mailed to the respondent by certified mail, return receipt requested, to his or her last known address.

Sec. 13. NRS 116.775 is hereby amended to read as follows:

116.775 ~~Any~~ *If the Administrator files a formal complaint with the Commission, any* party to the complaint may be represented by an attorney at any hearing on the complaint.

Sec. 14. NRS 116.780 is hereby amended to read as follows:

116.780 1. After conducting its hearings on ~~the~~ *a* complaint ~~filed by the Administrator or a claim referred by the Administrator~~, the Commission or the hearing panel shall render a



final decision on the merits of the complaint *or claim* not later than 20 days after the date of the final hearing.

2. The Commission or the hearing panel shall notify all parties to the complaint *or claim* of its decision in writing by certified mail, return receipt requested, not later than 60 days after the date of the final hearing. The written decision must include findings of fact and conclusions of law.

Sec. 15. Chapter 38 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Not later than 5 business days after receipt of a written response filed with the Division pursuant to subsection 6 of NRS 38.320, the Division shall provide:

(a) To the claimant, a copy of the response.

(b) To the parties, the list of mediators maintained by the Division pursuant to NRS 38.340.

2. The parties may select a mediator from the list of mediators provided pursuant to subsection 1. If the parties fail to agree upon a mediator, the Ombudsman shall appoint a mediator from the list of mediators maintained by the Division within 5 business days. Any mediator selected by the parties or appointed by the Ombudsman must be available within the geographic area, unless such a requirement is determined by the parties or the Ombudsman to be unreasonable. Upon appointing a mediator, the Ombudsman shall provide the name of the mediator to the parties.

3. Not later than 5 business days after his or her selection or appointment pursuant to subsection 2, the mediator shall provide to the parties an informational statement relating to a mediation conducted pursuant to this section. The informational statement:

(a) Must be in a form approved by the Commission;

(b) Must be written in plain English;

(c) Must explain the procedures and applicable law relating to a mediation conducted pursuant to this section, including, without limitation, the confidentiality of the mediation, the nature of the mediation process, the enforceability of a settlement obtained through mediation and the procedures for resolution of the claim if the parties fail to reach a settlement through mediation; and

(d) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement and agrees to comply with the provisions of law governing the confidentiality of the mediation, which must be returned to the mediator by the party not later than 10 days after receipt of the informational statement.



4. Unless otherwise provided by an agreement of the parties, a mediation conducted pursuant to this section must be completed within 60 days after the selection or appointment of the mediator.

5. Upon the conclusion of the settlement discussions, any agreement obtained through mediation conducted pursuant to this section must be reduced to writing by the mediator and signed by the parties. The mediator shall provide a copy of the written agreement signed by the parties to each party and the Division. Any written agreement received by the Division pursuant to this subsection is confidential. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section and subject to any regulations adopted by the Commission, the parties are responsible for the payment of all fees and costs of mediation in the manner provided by the mediator. The Commission shall adopt regulations governing the maximum amount, not to exceed \$500 per mediation, that may be charged for fees and costs of mediation and the manner in which such fees and costs of mediation are paid.

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

(a) The Commission approves the payment; and

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

7. If either party fails to participate in the mediation or if, within 60 days after the selection or appointment of the mediator or any longer period agreed to by the parties, the parties are unable with the assistance of the mediator to resolve any of the disputes included in the claim, the mediator shall, not later than 5 business days after the conclusion of the mediation:

(a) Certify to the Ombudsman that the mediation was unsuccessful; and

(b) Recommend that the claim be referred:

(1) To arbitration pursuant to NRS 38.330, if the claim relates to any governing documents or covenants, conditions or restrictions applicable to the real estate which is the subject of the claim; or

(2) To the Division for proceedings pursuant to NRS 116.745 to 116.795, inclusive, and section 1 of this act, if the claim relates to an alleged violation of a provision of chapter 116 of NRS or any regulation adopted pursuant thereto.

↳ The mediator may not provide any other information relating to the mediation to the Division, and the Division, the Commission



and a hearing panel may not request from the mediator any other information relating to the mediation.

8. If either party fails to participate in the mediation in good faith, the party is liable for all fees and costs associated with the mediation.

9. No admission, representation or statement made during a mediation conducted pursuant to this section, not otherwise discoverable or obtainable, is admissible as evidence or subject to discovery in a civil action or administrative proceeding.

10. As used in this section, "geographic area" has the meaning ascribed to in NRS 38.330.

Sec. 16. NRS 38.300 is hereby amended to read as follows:

38.300 As used in NRS 38.300 to 38.360, inclusive, and section 15 of this act, unless the context otherwise requires:

1. ~~["Assessments" means:~~

~~—(a) Any charge which an association may impose against an owner of residential property pursuant to a declaration of covenants, conditions and restrictions, including any late charges, interest and costs of collecting the charges; and~~

~~—(b) Any penalties, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 or subsections 10, 11 and 12 of NRS 116B.420.~~

~~—2.] "Association" has the meaning ascribed to it in NRS 116.011 or 116B.030.~~

~~[3.] 2. "Charges" means:~~

(a) Any charge which an association may impose against an owner of residential property pursuant to the governing documents of an association or a declaration of covenants, conditions and restrictions, including, without limitation, any assessments, penalties and fines and any late charges, interest and costs of collecting the charges; and

(b) Any penalties, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102, subsection 4 of NRS 116.310312 or subsections 10, 11 and 12 of NRS 116B.420.

3. "Civil action" includes an action for money damages or equitable relief. The term does not include an action in equity solely for the purpose of seeking or obtaining interim or provisional relief of any kind, including, without limitation, injunctive relief ~~[in which]~~, where there is an immediate threat of irreparable harm, or an action relating to the ownership of title to residential property. As used in this subsection, "irreparable harm" means harm or an



injury for which the remedy of damages or monetary compensation is inadequate and does not exist solely because a claim involves real estate.

4. *“Commission” means the Commission for Common-Interest Communities and Condominium Hotels created by NRS 116.600.*

5. *“Division” means the Real Estate Division of the Department of Business and Industry.*

~~[5.]~~ 6. *“Governing documents” has the meaning ascribed to it in NRS 116.049 or 116B.110.*

7. *“Residential property” includes, but is not limited to, real estate within a ~~[planned community]~~ common-interest community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS. The term does not include commercial property if no portion thereof contains property which is used for residential purposes.*

Sec. 17. NRS 38.310 is hereby amended to read as follows:

38.310 1. No civil action based upon a claim relating to:

(a) The interpretation, application, ~~[or]~~ enforcement *or violation* of any *governing documents or* covenants, conditions or restrictions applicable to residential property ~~[or any bylaws, rules or regulations adopted by an association;]~~ or

(b) The procedures used for increasing, decreasing or imposing ~~[additional assessments]~~ *charges* upon residential property,

↳ may be commenced in any court in this State unless the action has been submitted to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and ~~[, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.]~~ *section 15 of this act.*

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

Sec. 18. NRS 38.320 is hereby amended to read as follows:

38.320 1. Any civil action described in NRS 38.310 must be submitted for mediation or arbitration by filing a written claim with the Division ~~[. The claim]~~ *pursuant to this section.*

2. *A claim may not be filed with the Division pursuant to this section unless:*



(a) The claimant has provided the respondent by certified mail, return receipt requested, at his or her last known address, with written notice of the claim which specifies, in reasonable detail:

(1) The nature of the claim;
(2) Any actual damages suffered by the claimant as a result of the actions underlying the claim; and

(3) Any corrective action proposed by the claimant; and

(b) If the claim concerns real estate within a common-interest community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in the governing documents applicable to the property or in any bylaws, rules and regulations of the association have been exhausted.

3. A claim filed with the Division pursuant to subsection 1 must be on a form approved by the Commission and must include:

(a) The complete names, addresses and telephone numbers of all parties to the claim . [3]

(b) If the claim concerns real estate within a common-interest community subject to the provisions of chapter 116 of NRS, a statement of whether all administrative procedures specified in the governing documents have been exhausted.

(c) A specific statement of the nature of the claim [3];

~~*—(c) A statement of whether the person wishes to have the claim submitted to a mediator or to an arbitrator and, if the person wishes to have the claim submitted to an arbitrator, whether the person agrees to binding arbitration; and*~~

~~*—(d) , including, without limitation, a description, in reasonable detail, of:*~~

~~*(1) Any alleged violation of the governing documents or conditions, covenants or restrictions applicable to the real estate that is the subject of the claim;*~~

~~*(2) Any alleged damages suffered by the claimant as a result of the actions underlying the claim; and*~~

~~*(3) Any corrective action proposed by the claimant.*~~

~~*(d) A statement that:*~~

~~*(1) The respondent has been given written notice of the claim;*~~

~~*(2) The respondent has been given a reasonable opportunity after receiving the written notice to correct or remedy the claim; and*~~

~~*(3) Reasonable efforts to resolve the claim have failed.*~~



(e) *All claims of which the claimant is aware or reasonably should be aware, including, without limitation, any claims which relate to a violation of a provision of chapter 116 of NRS, any regulation adopted pursuant thereto or an order of the Commission or a hearing panel issued pursuant thereto.*

(f) Such other information as the Division may require ~~[-2-]~~ *by regulation.*

4. The ~~[written]~~ claim must be accompanied by a reasonable fee as determined by the Division.

~~[3-]~~ 5. Upon the filing of ~~[the written]~~ a claim ~~[-]~~ *that satisfies the requirements of this section*, the claimant shall serve a copy of the claim ~~[in the manner prescribed in Rule 4 of the Nevada Rules of Civil Procedure for the service of a summons and complaint.] on the respondent by certified mail, return receipt requested, to his or her last known address.~~ The claim so served must be accompanied by a statement ~~[explaining]~~ *prepared by the Division which explains* the procedures for mediation and arbitration set forth in NRS 38.300 to 38.360, inclusive ~~[-4-]~~ *, and section 15 of this act.*

6. Upon being served pursuant to subsection ~~[3-]~~ 5, the person upon whom a copy of the ~~[written]~~ claim was served shall, within 30 days after the date of service, file a written ~~[answer]~~ *response* with the Division. The ~~[answer]~~ *response* must ~~[be]~~ :

(a) *Contain an admission or a denial of the allegations contained in the claim and any defenses upon which the respondent will rely;*

(b) *Be delivered personally to the Division or mailed to the Division by certified mail, return receipt requested; and*

(c) *Be accompanied by a reasonable fee as determined by the Division.*

7. *Except for good cause shown, if a person fails to file a written response pursuant to subsection 6, the claim may be deemed substantiated upon the filing of an affidavit with the Division.*

8. *The Division may consolidate multiple claims involving the same parties for the purposes of a mediation conducted pursuant to section 15 of this act.*

9. *By filing a claim or response with the Division pursuant to this section, a person is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances:*

(a) *The claim or response is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or*



needless increase in the cost of proceedings before the Division or the Commission; and

(b) The allegations and other factual contentions in the claim or response have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

10. If a person files a claim or response pursuant to this section which the person knows is false or fraudulent or if a person files such a claim or response in bad faith or without reasonable cause for the purpose of harassment, or if the claim or response is frivolous, the Commission or a hearing panel may impose the penalties set forth in subsection 9 of NRS 116.760.

Sec. 19. 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 by an agreement of the parties, mediation must be completed within 60 days after the parties agree to mediation. Any agreement obtained through mediation conducted pursuant to this section must, within 20 days after the conclusion of mediation, be reduced to writing by the mediator and a copy thereof provided to each party. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section, the parties are responsible for all costs of mediation conducted pursuant to this section.~~

~~2. If all the parties named in the claim do not agree to mediation, the parties shall select an arbitrator from] , pursuant to subsection 7 of section 1 of this act or subsection 7 of section 15 of this act, a mediator recommends that a claim be referred to arbitration, the Division shall, not later than 10 days after receipt of the referral, provide to the parties~~ the list of arbitrators maintained by the Division pursuant to NRS 38.340. ~~[Any arbitrator selected must be available within the geographic area.]~~ *The parties may select an arbitrator from that list.* If the parties fail to agree upon an arbitrator, the Division shall appoint an arbitrator from the list maintained by the Division. Any arbitrator *selected by the parties or* appointed *by the Division* must be available within the



geographic area. Upon appointing an arbitrator, the Division shall provide the name of the arbitrator to each party.

2. An arbitrator *selected or appointed pursuant to subsection 1* shall, not later than 5 days after the arbitrator's selection or appointment, ~~[pursuant to this subsection,]~~ provide to the parties an informational statement relating to the arbitration of a claim pursuant to this section. The ~~[written]~~ informational statement:

(a) *Must be in a form approved by the Commission;*

(b) Must be written in plain English;

~~[(b)]~~ (c) Must explain the procedures and applicable law relating to the arbitration of a claim conducted pursuant to this section, including, without limitation, the procedures, timelines and applicable law relating to confirmation of an award pursuant to NRS 38.239, vacation of an award pursuant to NRS 38.241, judgment on an award pursuant to NRS 38.243, and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and

~~[(e)]~~ (d) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement, which must be returned to the arbitrator by the party not later than 10 days after receipt of the informational statement.

3. *Arbitration conducted pursuant to this section must be nonbinding arbitration, unless all the parties agree in writing to binding arbitration.*

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

(a) The Commission ~~[for Common-Interest Communities and Condominium Hotels]~~ approves the payment; and

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

~~[(4-)]~~ 5. *The Division may adopt regulations governing:*

(a) *The maximum amount that may be charged for arbitration;*

(b) *The procedures for conducting arbitration; and*

(c) *Reasonable limitations on excessive arbitration related activities, including, without limitation, site visits, charges for travel time, pre-arbitration costs and charges for excessive or unnecessary correspondence.*

6. *The fees for an arbitrator selected or appointed pursuant to this section must not exceed \$1,000, unless a greater fee is authorized for good cause shown. Except as otherwise provided in*



subsection 4, each party to the arbitration must pay an equal percentage of the fees for the arbitration.

7. Unless all the parties to the arbitration otherwise agree in writing, the arbitration of a claim pursuant to this section must be conducted in accordance with:

(a) The rules of the American Arbitration Association or its successor organization concerning the manner in which to provide speedy arbitration; or

(b) Other comparable rules for speedy arbitration approved by the Commission or the Division.

8. Except as otherwise provided in this section and except where inconsistent with the provisions of NRS 38.300 to 38.360, inclusive, *and section 15 of this act*, the arbitration of a claim pursuant to this section must be conducted in accordance with the provisions of NRS 38.231, 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At any time during the arbitration of a claim relating to the interpretation, application, ~~{or}~~ enforcement *or violation* of any *governing documents or* covenants, conditions or restrictions applicable to residential property, ~~{for any bylaws, rules or regulations adopted by an association,}~~ the arbitrator may issue an order prohibiting the action upon which the claim is based. An award must be made within 30 days after the conclusion of arbitration, unless a shorter period is agreed upon by the parties to the arbitration.

~~{5-}~~ *9. The arbitrator shall provide a copy of a final arbitration award to the Division.*

10. Except as otherwise provided in subsection 4 and subject to subsection 6 and any regulations adopted by the Commission, the parties to an arbitration conducted pursuant to this section are responsible for the payment of all fees and costs of arbitration in the manner provided by the arbitrator.

11. If ~~{all the parties have agreed to}~~ an arbitration conducted pursuant to this section is nonbinding arbitration, any party to the nonbinding arbitration may, within 30 days after a decision and award have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the provisions of NRS 38.300 to 38.360, inclusive ~~{-}~~, and section 15 of this act. If such an action is not commenced within that period, any party to the arbitration may, within 1 year after the service of the award, apply



to the proper court for a confirmation of the award pursuant to NRS 38.239.

~~[6.]~~ **12.** If all the parties agree in writing to ~~[binding]~~ arbitration, the arbitration must be conducted in accordance with the provisions of this chapter. An award procured pursuant to such binding arbitration may be vacated and a rehearing granted upon application of a party pursuant to the provisions of NRS 38.241.

~~[7.]~~ **13.** If, after the conclusion of binding arbitration, a party:

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

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

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

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

~~—9.]~~ **14.** As used in this section, “geographic area” means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to NRS 38.320.

Sec. 20. NRS 38.340 is hereby amended to read as follows:

38.340 **1.** For the purposes of NRS 38.300 to 38.360, inclusive, *and section 15 of this act and 116.745 to 116.795, inclusive, and section 1 of this act*, the Division shall establish and maintain:

~~[1.]~~ **(a)** A list of mediators and arbitrators who are available for mediation and arbitration of claims. The list must include mediators and arbitrators who, as determined by the Division, have received training and experience in mediation or arbitration and in the resolution of disputes concerning associations, including, without limitation, the interpretation, application and enforcement of *governing documents*, covenants, conditions and restrictions pertaining to residential property and the articles of incorporation, bylaws, rules and regulations of an association. In establishing and maintaining the list, the Division may use lists of qualified persons maintained by any organization which provides mediation or arbitration services. Before including a mediator or arbitrator on a list established and maintained pursuant to this ~~[section,]~~



subsection, the Division may require the mediator or arbitrator to present proof satisfactory to the Division that the mediator or arbitrator has received the training and experience required for mediators or arbitrators pursuant to this ~~section~~.

~~2.)~~ *subsection.*

(b) A document which contains a written explanation of the procedures for mediating and arbitrating claims pursuant to NRS 38.300 to 38.360, inclusive, ~~15~~, and section 15 of this act and 116.745 to 116.795, inclusive, and section 1 of this act.

(c) A record of each final arbitration award of an arbitration conducted pursuant to NRS 38.330 which is indexed by topic and made available to the public through any means deemed appropriate by the Division.

2. Upon the request of a party to a mediation or arbitration conducted pursuant to NRS 38.300 to 38.360, inclusive, and section 15 of this act and 116.745 to 116.795, inclusive, and section 1 of this act, the Division shall provide a statement to the party indicating the amount of the fees for a mediator selected or appointed pursuant to section 1 or 15 of this act or an arbitrator selected or appointed pursuant to NRS 38.330.

Sec. 21. NRS 38.350 is hereby amended to read as follows:

38.350 Any statute of limitations applicable to a claim described in *subsection 1 of* NRS 38.310 is tolled from the time the claim is submitted for mediation or arbitration pursuant to NRS 38.320 , *38.330 or 116.760, as applicable*, until the conclusion of mediation or arbitration of the claim and the period for vacating the award has expired.

