

ASSEMBLY BILL NO. 34—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE REAL ESTATE DIVISION)

PREFILED DECEMBER 20, 2012

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to common-interest communities. (BDR 10-354)

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

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

AN ACT relating to common-interest communities; authorizing the executive board of an association to act without a meeting under certain circumstances; providing for the certification of voting monitors to administer and supervise votes of units' owners; authorizing the appointment of a referee to render a decision in certain disputes involving common-interest communities; authorizing the Administrator of the Real Estate Division of the Department of Business and Industry to issue subpoenas under certain circumstances; revising various provisions governing common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes various requirements for the conduct of meetings of the executive board of a homeowners' association, including, without limitation, the provision of notice of a meeting to homeowners. (NRS 116.31083) **Section 2** of this bill establishes a definition of the term "meeting" for the purposes of determining whether a congregation of the members of the executive board of a homeowners' association must comply with the provisions of existing law governing meetings of the executive board. **Section 4** of this bill authorizes the executive board to act without a meeting to perform a ministerial act or to implement an action taken by the executive board at a prior meeting.

Section 3 of this bill: (1) authorizes the Real Estate Division of the Department of Business and Industry to certify a person to act as a voting monitor to administer and supervise a vote of the homeowners; and (2) requires the Administrator of the Division to establish by regulation the qualifications and standards of voting



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monitors. **Sections 3 and 22** of this bill require a homeowners' association to hire a voting monitor under certain circumstances. **Sections 3, 10, 11 and 14** of this bill set forth certain actions which a voting monitor must take in administering and supervising a vote of the homeowners.

Sections 5, 15, 17 and 21 of this bill authorize the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels to appoint referees to render decisions in certain disputes involving common-interest communities. Under **section 5**: (1) the referee may not award to any party damages which exceed \$7,500 or attorney's fees; and (2) within a certain period after the decision and award of the referee, any party may commence a civil action in court or apply to a court to confirm the decision and award of the referee.

Existing law authorizes the Commission for Common-Interest Communities and Condominium Hotels or a member thereof to issue a subpoena under certain circumstances. (NRS 116.31175, 116.660, 116A.280, 116B.670, 116B.835) **Sections 16, 18 and 23-25** of this bill authorize the Administrator to issue a subpoena under those circumstances.

Section 7 of this bill requires a member of an executive board who has possession of any books, records or papers of a homeowners' association to provide those books, records or papers to another member of the executive board or the community manager upon the expiration of his or her final term as a member of the executive board.

Section 8 of this bill requires the imposition of a fine for a violation of the governing documents to be supported by evidence sufficient to support a reasonable belief that the unit's owner and, if different, the person against whom the fine will be imposed has committed the violation.

Existing law authorizes a homeowners' association to enter the grounds of a unit that is vacant or that is in the foreclosure process, whether vacant or not, to maintain the exterior of the unit or abate a public nuisance on the exterior of the unit if, after notice and a hearing, the unit's owner refuses or fails to do so. (NRS 116.310312) **Section 9** of this bill authorizes such an entrance to mitigate the intrusion of water into a unit. **Section 9** further requires a person who commences the foreclosure process on a unit to notify the homeowners' association of certain information after the sale of the unit through the foreclosure process.

Section 12 of this bill authorizes the executive board to meet by teleconference. **Section 12** further requires the executive board to review at certain meetings a current reconciliation of any association account containing funds arising from a claim to recover damages resulting from a constructional defect.

Existing law requires a homeowners' association to open and consider bids for an association project at a meeting of the executive board. (NRS 116.31086)

Section 13 of this bill requires the association to solicit at least three bids for an association project, if possible, and specifies that a contract renewal constitutes an association project.

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. "Meeting," with respect to a meeting of the executive board:

1. Except as otherwise provided in subsection 2, means:



1 (a) The congregation of a majority of the members of the
2 executive board at the same time and place to hear, discuss or
3 deliberate upon any matter that is within the authority of the
4 executive board.

5 (b) Any series of congregations of the members of the
6 executive board at which:

7 (1) Less than a majority of the members of the executive
8 board is present at any individual congregation;

9 (2) The members of the executive board attending one or
10 more of the congregations collectively constitute a majority of the
11 members of the executive board; and

12 (3) The series of congregations was held with the specific
13 intent to avoid the provisions of NRS 116.31083.

14 (c) A teleconference in which a majority of the members of the
15 executive board, in different locations, are connected by electronic
16 means, through audio or video or both.

17 2. Does not include a congregation or a series of
18 congregations of the members of the executive board, as described
19 in subsection 1, at which a majority of the members is actually or
20 collectively present:

21 (a) Which occurs at a social function if the members do not
22 deliberate toward a decision or take action on any matter that is
23 within the authority of the executive board.

24 (b) To inspect the common-interest community for violations
25 of the governing documents.

26 (c) To inspect an association project. As used in this
27 paragraph, "association project" has the meaning ascribed to it in
28 NRS 116.31086.

29 **Sec. 3. 1. The Division may certify a person to act as a**
30 **voting monitor to administer and supervise a vote of the units'**
31 **owners. The Administrator shall adopt regulations establishing the**
32 **qualifications to be certified as a voting monitor and the standards**
33 **of practice for voting monitors.**

34 2. An association must hire a voting monitor to administer
35 and supervise a vote of the units' owners if requested by the
36 president of the association, by a majority of the executive board
37 or by units' owners constituting at least 10 percent of the total
38 number of voting members of the association. To require the
39 association to hire a voting monitor, the units' owners must
40 submit a written petition which is signed by the required
41 percentage of the total number of voting members of the
42 association pursuant to this subsection and which is mailed by
43 certified mail, return receipt requested, served by a process server
44 or hand-delivered to a member of the executive board or the
45 community manager for the association. If the petition is



1 *hand-delivered, the person delivering the petition must obtain a*
2 *written receipt signed by a member of the executive board or the*
3 *community manager. Upon receipt of a petition from the units'*
4 *owners complying with this subsection, the executive board shall*
5 *solicit bids from at least three voting monitors and hold a meeting*
6 *of the executive board at which the bids are opened and*
7 *considered and a voting monitor is selected.*

8 3. *A voting monitor may not act as the voting monitor for an*
9 *association if the voting monitor is:*

10 (a) *A member of the executive board of the association;*

11 (b) *An officer of the association; or*

12 (c) *The community manager of the association.*

13 4. *A voting monitor hired by an association to administer and*
14 *supervise a vote of the units' owners shall:*

15 (a) *Obtain from the association a list of the names and*
16 *addresses of the units' owners who are entitled to vote on the*
17 *matter.*

18 (b) *Compile all ballots and materials to be sent to the units'*
19 *owners for the vote.*

20 (c) *Deliver the ballot and all other materials compiled for the*
21 *vote to every unit's owner entitled to vote on the matter.*

22 (d) *Collect all returned ballots and make a record of each*
23 *returned ballot.*

24 5. *If a voting monitor administers and supervises a vote*
25 *conducted by secret written ballot, the voting monitor must:*

26 (a) *Mail to each unit's owner entitled to vote an envelope*
27 *which is addressed to the unit's owner and which contains two*
28 *additional envelopes. The larger of the additional envelopes must*
29 *be a self-addressed envelope and include the return address of the*
30 *unit's owner. The smaller of the additional envelopes must state*
31 *"Ballot" on the outside.*

32 (b) *Provide to each unit's owner written instructions for*
33 *returning the ballot which state that the unit's owner must return*
34 *his or her ballot by placing the ballot in the envelope marked*
35 *"Ballot," sealing that envelope and returning that envelope to the*
36 *voting monitor using the self-addressed envelope. The voting*
37 *monitor may count only ballots sealed in the envelope marked*
38 *"Ballot" to determine the outcome of the vote.*

39 (c) *Maintain possession of the returned ballots and take the*
40 *returned ballots to the meeting of the association at which the*
41 *voting monitor will open and count the ballots.*

42 (d) *Record the results of the vote and provide to the association*
43 *the ballots and envelopes returned to the voting monitor.*

44 (e) *Maintain a record of the units' owners to whom ballots*
45 *were mailed, the units' owners who returned ballots to the voting*



1 *monitor and the outcome of the vote for a period of 10 years after*
2 *the date of the meeting of the association at which the ballots were*
3 *counted.*

4 **Sec. 4.** 1. *After the declarant's control of the association is*
5 *terminated pursuant to NRS 116.31032, the executive board of the*
6 *association may act without a meeting to perform any ministerial*
7 *act or to implement an action taken at a prior meeting of the*
8 *executive board if the members of the executive board*
9 *unanimously consent to the action and make a record of the*
10 *action which is authenticated by each member of the executive*
11 *board. For the purposes of this subsection, a ministerial action is*
12 *any action which is required by law and performed without any*
13 *individual discretion.*

14 2. *If the executive board acts without a meeting pursuant to*
15 *this section, the secretary of the association must promptly notify*
16 *all units' owners of the action taken by the executive board.*

17 **Sec. 5.** 1. *The Ombudsman may, to the extent that money is*
18 *available in the Account for Common-Interest Communities and*
19 *Condominium Hotels for that purpose, appoint a referee to render*
20 *a decision on the merits of a claim filed with the Division pursuant*
21 *to paragraph (a) of subsection 3 of NRS 116.765.*

22 2. *A referee appointed pursuant to subsection 1 must be*
23 *qualified by training and experience in the laws of this State*
24 *governing real property and common-interest communities.*

25 3. *A referee appointed pursuant to subsection 1 must review*
26 *the claim and the answer filed pursuant to paragraph (a) of*
27 *subsection 3 of NRS 116.765 and, unless the parties agree to waive*
28 *a hearing, conduct a hearing on the claim. After reviewing the*
29 *claim and the answer and, if required, conducting a hearing on*
30 *the claim, the referee shall issue a written decision and award and*
31 *provide a copy of the written decision and award to the parties and*
32 *to the Ombudsman. The referee may not award to either party:*

33 (a) *Damages in an amount which exceeds \$7,500.*

34 (b) *Attorney's fees.*

35 4. *For the purposes of NRS 38.300 to 38.360, inclusive, a*
36 *written decision and award of a referee appointed pursuant to this*
37 *section is deemed to be the decision and award in a claim*
38 *submitted to nonbinding arbitration. Any party may, within 30*
39 *days after receiving the written decision and award of the referee,*
40 *commence a civil action in the proper court concerning the claim*
41 *which was referred to the referee. Any complaint filed in such an*
42 *action must contain a sworn statement indicating that the issues*
43 *addressed in the complaint were referred to a referee pursuant to*
44 *this section and NRS 116.765. If such an action is not commenced*
45 *within that period, any party may, within 1 year after receiving the*



1 *written decision and award, apply to the proper court for a*
2 *confirmation of the written decision and award pursuant to*
3 *NRS 38.239.*

4 *5. Any statute of limitations applicable to a claim referred to*
5 *a referee pursuant to this section and NRS 116.765 is tolled from*
6 *the time the affidavit setting forth the facts constituting the claim*
7 *was filed with the Division pursuant to NRS 116.760 until the*
8 *issuance of the written decision and award by the referee.*

9 *6. The Administrator may adopt such regulations as are*
10 *necessary to carry out the provisions of this section.*

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, the words and terms defined in NRS
14 116.005 to 116.095, inclusive, *and section 2 of this act* have the
15 meanings ascribed to them in those sections.

16 **Sec. 7.** NRS 116.3103 is hereby amended to read as follows:

17 116.3103 1. Except as otherwise provided in the declaration,
18 the bylaws, this section or other provisions of this chapter, the
19 executive board acts on behalf of the association. In the performance
20 of their duties, the officers and members of the executive board are
21 fiduciaries and shall act on an informed basis, in good faith and in
22 the honest belief that their actions are in the best interest of the
23 association. Officers and members of the executive board:

24 (a) Are required to exercise the ordinary and reasonable care of
25 officers and directors of a nonprofit corporation, subject to the
26 business-judgment rule; and

27 (b) Are subject to conflict of interest rules governing the officers
28 and directors of a nonprofit corporation organized under the law of
29 this State.

30 2. The executive board may not act to:

31 (a) Amend the declaration.

32 (b) Terminate the common-interest community.

33 (c) Elect members of the executive board, but unless the
34 governing documents provide that a vacancy on the executive board
35 must be filled by a vote of the membership of the association, the
36 executive board may fill vacancies in its membership for the
37 unexpired portion of any term or until the next regularly scheduled
38 election of executive board members, whichever is earlier. Any
39 executive board member elected to a previously vacant position
40 which was temporarily filled by board appointment may only be
41 elected to fulfill the remainder of the unexpired portion of the term.

42 (d) Determine the qualifications, powers, duties or terms of
43 office of members of the executive board.

44 3. The executive board shall adopt budgets as provided in
45 NRS 116.31151.



1 4. *Upon the expiration of his or her term, a member of the*
2 *executive board who is the custodian of records of the association*
3 *or who otherwise has possession of any books, records or papers*
4 *of the association shall:*

5 (a) *Provide all books, records and papers of the association in*
6 *his or her possession to another member of the executive board or*
7 *to the community manager of the association; and*

8 (b) *Obtain a receipt for the books, records and papers which is*
9 *signed by the member of the executive board or the community*
10 *manager to whom the books, records and papers are provided,*
11 *↪ unless the member has been elected to another term as a*
12 *member of the executive board.*

13 **Sec. 8.** NRS 116.31031 is hereby amended to read as follows:

14 116.31031 1. Except as otherwise provided in this section, if
15 a unit's owner or a tenant or an invitee of a unit's owner or a tenant
16 violates any provision of the governing documents of an association,
17 the executive board may, if the governing documents so provide:

18 (a) Prohibit, for a reasonable time, the unit's owner or the tenant
19 or the invitee of the unit's owner or the tenant from:

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

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

27 (b) Impose a fine against the unit's owner or the tenant or the
28 invitee of the unit's owner or the tenant for each violation, except
29 that:

30 (1) A fine may not be imposed for a violation that is the
31 subject of a construction penalty pursuant to NRS 116.310305; and

32 (2) A fine may not be imposed against a unit's owner or a
33 tenant or invitee of a unit's owner or a tenant for a violation of the
34 governing documents which involves a vehicle and which is
35 committed by a person who is delivering goods to, or performing
36 services for, the unit's owner or tenant or invitee of the unit's owner
37 or the tenant.

38 ↪ If the violation poses an imminent threat of causing a substantial
39 adverse effect on the health, safety or welfare of the units' owners or
40 residents of the common-interest community, the amount of the fine
41 must be commensurate with the severity of the violation and must
42 be determined by the executive board in accordance with the
43 governing documents. If the violation does not pose an imminent
44 threat of causing a substantial adverse effect on the health, safety or
45 welfare of the units' owners or residents of the common-interest



community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. The limitations on the amount of the fine do not apply to any charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

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

(a) Participated in or authorized the violation;

(b) Had prior notice of the violation; or

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

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

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

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

~~and~~ (b) Within a reasonable time after the discovery of the violation, the unit's owner and, if different, the person against whom the fine will be imposed has been provided with:

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

(2) A reasonable opportunity to contest the violation at the hearing ~~and~~; and

(c) There is evidence sufficient to support a reasonable belief that the unit's owner and, if different, the person against whom the fine will be imposed has committed the violation.

➤ For the purposes of this subsection, a unit's owner shall not be deemed to have received written notice unless written notice is mailed to the address of the unit and, if different, to a mailing address specified by the unit's owner.

5. The executive board must schedule the date, time and location for the hearing on the violation so that the unit's owner and,



1 if different, the person against whom the fine will be imposed is
2 provided with a reasonable opportunity to prepare for the hearing
3 and to be present at the hearing.

4 6. The executive board must hold a hearing before it may
5 impose the fine, unless the fine is paid before the hearing or unless
6 the unit's owner and, if different, the person against whom the fine
7 will be imposed:

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

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

11 7. If a fine is imposed pursuant to subsection 1 and the
12 violation is not cured within 14 days, or within any longer period
13 that may be established by the executive board, the violation shall
14 be deemed a continuing violation. Thereafter, the executive board
15 may impose an additional fine for the violation for each 7-day
16 period or portion thereof that the violation is not cured. Any
17 additional fine may be imposed without notice and an opportunity to
18 be heard.

19 8. If the governing documents so provide, the executive board
20 may appoint a committee, with not less than three members, to
21 conduct hearings on violations and to impose fines pursuant to this
22 section. While acting on behalf of the executive board for those
23 limited purposes, the committee and its members are entitled to all
24 privileges and immunities and are subject to all duties and
25 requirements of the executive board and its members.

26 9. A member of the executive board shall not participate in any
27 hearing or cast any vote relating to a fine imposed pursuant to
28 subsection 1 if the member has not paid all assessments which are
29 due to the association by the member. If a member of the executive
30 board:

31 (a) Participates in a hearing in violation of this subsection, any
32 action taken at the hearing is void.

33 (b) Casts a vote in violation of this subsection, the vote is void.

34 10. The provisions of this section establish the minimum
35 procedural requirements that the executive board must follow before
36 it may impose a fine. The provisions of this section do not preempt
37 any provisions of the governing documents that provide greater
38 procedural protections.

39 11. Any past due fine must not bear interest, but may include
40 any costs incurred by the association during a civil action to enforce
41 the payment of the past due fine.

42 12. If requested by a person upon whom a fine was imposed,
43 not later than 60 days after receiving any payment of a fine, an
44 association shall provide to the person upon whom the fine was
45 imposed a statement of the remaining balance owed.



1 **Sec. 9.** NRS 116.310312 is hereby amended to read as
2 follows:

3 116.310312 1. A person who holds a security interest in a
4 unit must provide the association with the person's contact
5 information as soon as reasonably practicable, but not later than 30
6 days after the person:

7 (a) Files an action for recovery of a debt or enforcement of any
8 right secured by the unit pursuant to NRS 40.430; or

9 (b) Records or has recorded on his or her behalf a notice of a
10 breach of obligation secured by the unit and the election to sell or
11 have the unit sold pursuant to NRS 107.080.

12 2. *If an action or notice described in subsection 1 has been*
13 *filed or recorded regarding a unit and the action or notice results*
14 *in the foreclosure sale of the unit pursuant to NRS 40.430 or a*
15 *trustee's sale of the unit pursuant to NRS 107.080, the person who*
16 *filed the action or recorded the notice or had the notice recorded*
17 *on his or her behalf must notify the association of the results of*
18 *the sale, including, without limitation, the name and address of*
19 *the new unit's owner, as soon as reasonably practicable, but not*
20 *later than 30 days, after the sale.*

21 3. If an action or notice described in subsection 1 has been
22 filed or recorded regarding a unit and the association has provided
23 the unit's owner with notice and an opportunity for a hearing in the
24 manner provided in NRS 116.31031, the association, including its
25 employees, agents and community manager, may, but is not
26 required to, enter the grounds of the unit, whether or not the unit is
27 vacant, to take any of the following actions if the unit's owner
28 refuses or fails to take any action or comply with any requirement
29 imposed on the unit's owner within the time specified by the
30 association as a result of the hearing:

31 (a) Maintain the exterior of the unit in accordance with the
32 standards set forth in the governing documents, including, without
33 limitation, any provisions governing maintenance, standing water or
34 snow removal.

35 (b) Remove or abate a public nuisance on the exterior of the unit
36 which:

37 (1) Is visible from any common area of the community or
38 public streets;

39 (2) Threatens the health or safety of the residents of the
40 common-interest community;

41 (3) Results in blighting or deterioration of the unit or
42 surrounding area; and

43 (4) Adversely affects the use and enjoyment of nearby units.

44 ~~13-1~~ (c) *Mitigate any intrusion of water into the unit.*



1 4. If a unit is vacant and the association has provided the unit's
2 owner with notice and an opportunity for a hearing in the manner
3 provided in NRS 116.31031, the association, including its
4 employees, agents and community manager, may enter the grounds
5 of the unit to maintain the exterior of the unit, ~~to~~ abate a public
6 nuisance *or mitigate any intrusion of water into the unit* as
7 described in subsection ~~2~~ 3 if the unit's owner refuses or fails to do
8 so.

9 ~~4~~ 5. The association may order that the costs of any
10 maintenance, ~~to~~ abatement *or mitigation of water intrusion*
11 conducted pursuant to subsection ~~2~~ 3 or ~~3~~ 4, including, without
12 limitation, reasonable inspection fees, notification and collection
13 costs and interest, be charged against the unit. The association shall
14 keep a record of such costs and interest charged against the unit and
15 has a lien on the unit for any unpaid amount of the charges. The lien
16 may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

17 ~~5~~ 6. A lien described in subsection ~~4~~ 5 bears interest from
18 the date that the charges become due at a rate determined pursuant
19 to NRS 17.130 until the charges, including all interest due, are paid.

20 ~~6~~ 7. Except as otherwise provided in this subsection, a lien
21 described in subsection ~~4~~ 5 is prior and superior to all liens,
22 claims, encumbrances and titles other than the liens described in
23 paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the
24 federal regulations of the Federal Home Loan Mortgage Corporation
25 or the Federal National Mortgage Association require a shorter
26 period of priority for the lien, the period during which the lien is
27 prior and superior to other security interests shall be determined in
28 accordance with those federal regulations. Notwithstanding the
29 federal regulations, the period of priority of the lien must not be less
30 than the 6 months immediately preceding the institution of an action
31 to enforce the lien.

32 ~~7~~ 8. A person who purchases or acquires a unit at a
33 foreclosure sale pursuant to NRS 40.430 or a trustee's sale pursuant
34 to NRS 107.080 is bound by the governing documents of the
35 association and shall maintain the exterior of the unit in accordance
36 with the governing documents of the association. Such a unit may
37 only be removed from a common-interest community in accordance
38 with the governing documents pursuant to this chapter.

39 ~~8~~ 9. Notwithstanding any other provision of law, an
40 association, its directors or members of the executive board,
41 employees, agents or community manager who enter the grounds of
42 a unit pursuant to this section are not liable for trespass.

43 ~~9~~ 10. As used in this section:



(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

(b) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

(2) On which the owner has failed to maintain the exterior to the standards set forth in the governing documents the association; and

(3) On which the owner has failed to pay assessments for more than 60 days.

Sec. 10. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, all of whom must be units' owners. The executive board shall elect the officers of the association. Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners. The members of the executive board and the officers of the association shall take office upon election.

2. The term of office of a member of the executive board may not exceed 3 years, except for members who are appointed by the declarant. Unless the governing documents provide otherwise, there is no limitation on the number of terms that a person may serve as a member of the executive board.

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

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

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

4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in the bylaws of the association shall cause notice to be given to each unit's owner of the unit's owner's eligibility to serve as a member of the executive board. Each unit's owner who is qualified to serve as a member of the executive board may have his or her name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association.



5. Before the secretary or other officer specified in the bylaws of the association causes notice to be given to each unit's owner of his or her eligibility to serve as a member of the executive board pursuant to subsection 4, the executive board may determine that if, at the closing of the prescribed period for nominations for membership on the executive board, the number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected to the executive board at the election, then the secretary or other officer specified in the bylaws of the association will cause notice to be given to each unit's owner informing each unit's owner that:

(a) The association will not prepare or mail any ballots to units' owners pursuant to this section and the nominated candidates shall be deemed to be duly elected to the executive board unless:

(1) A unit's owner who is qualified to serve on the executive board nominates himself or herself for membership on the executive board by submitting a nomination to the executive board within 30 days after the notice provided by this subsection; and

(2) The number of units' owners who submit such a nomination causes the number of candidates nominated for membership on the executive board to be greater than the number of members to be elected to the executive board.

(b) Each unit's owner who is qualified to serve as a member of the executive board may nominate himself or herself for membership on the executive board by submitting a nomination to the executive board within 30 days after the notice provided by this subsection.

6. If the notice described in subsection 5 is given and if, at the closing of the prescribed period for nominations for membership on the executive board described in subsection 5, the number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected to the executive board, then:

(a) The association will not prepare or mail any ballots to units' owners pursuant to this section;

(b) The nominated candidates shall be deemed to be duly elected to the executive board not later than 30 days after the date of the closing of the period for nominations described in subsection 5; and

(c) The association shall send to each unit's owner notification that the candidates nominated have been elected to the executive board.

7. If the notice described in subsection 5 is given and if, at the closing of the prescribed period for nominations for membership on the executive board described in subsection 5, the number of candidates nominated for membership on the executive board is



greater than the number of members to be elected to the executive board, then the association shall:

(a) Prepare and mail ballots to the units' owners pursuant to this section; and

(b) Conduct an election for membership on the executive board pursuant to this section.

8. Each person who is nominated as a candidate for membership on the executive board pursuant to subsection 4 or 5 must:

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

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

➔ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his or her candidacy information. Except as otherwise provided in this subsection, the association shall distribute the disclosures, on behalf of the candidate, to each member of the association with the ballot or, in the event ballots are not prepared and mailed pursuant to subsection 6, in the next regular mailing of the association. The association is not obligated to distribute any disclosure pursuant to this subsection if the disclosure contains information that is believed to be defamatory, libelous or profane.

9. Unless a person is appointed by the declarant:

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

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

(1) That master association; or

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

10. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or



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1 manager of a limited-liability company that owns a unit, and a
2 fiduciary of an estate that owns a unit may be an officer of the
3 association or a member of the executive board. In all events where
4 the person serving or offering to serve as an officer of the
5 association or a member of the executive board is not the record
6 owner, the person shall file proof in the records of the association
7 that:

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

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

13 11. Except as otherwise provided in subsection 6 or NRS
14 116.31105, *or section 3 of this act*, the election of any member of
15 the executive board must be conducted by secret written ballot in the
16 following manner:

17 (a) The secretary or other officer specified in the bylaws of the
18 association shall cause a secret ballot and a return envelope to be
19 sent, prepaid by United States mail, to the mailing address of each
20 unit within the common-interest community or to any other mailing
21 address designated in writing by the unit's owner.

22 (b) Each unit's owner must be provided with at least 15 days
23 after the date the secret written ballot is mailed to the unit's owner
24 to return the secret written ballot to the association.

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

27 (d) Only the secret written ballots that are returned to the
28 association may be counted to determine the outcome of the
29 election.

30 (e) The secret written ballots must be opened and counted at a
31 meeting of the association. A quorum is not required to be present
32 when the secret written ballots are opened and counted at the
33 meeting.

34 (f) The incumbent members of the executive board and each
35 person whose name is placed on the ballot as a candidate for
36 membership on the executive board may not possess, be given
37 access to or participate in the opening or counting of the secret
38 written ballots that are returned to the association before those secret
39 written ballots have been opened and counted at a meeting of the
40 association.

41 12. An association shall not adopt any rule or regulation that
42 has the effect of prohibiting or unreasonably interfering with a
43 candidate in the candidate's campaign for election as a member of
44 the executive board, except that the candidate's campaign may be



1 limited to 90 days before the date that ballots are required to be
2 returned to the association.

3 13. A candidate who has submitted a nomination form for
4 election as a member of the executive board may request that the
5 association or its agent either:

6 (a) Send before the date of the election and at the association's
7 expense, to the mailing address of each unit within the common-
8 interest community or to any other mailing address designated in
9 writing by the unit's owner a candidate informational statement. The
10 candidate informational statement:

11 (1) Must be no longer than a single, typed page;

12 (2) Must not contain any defamatory, libelous or profane
13 information; and

14 (3) May be sent with the secret ballot mailed pursuant to
15 subsection 11 or in a separate mailing; or

16 (b) To allow the candidate to communicate campaign material
17 directly to the units' owners, provide to the candidate, in paper
18 format at a cost not to exceed 25 cents per page for the first 10 pages
19 and 10 cents per page thereafter, in the format of a compact disc at a
20 cost of not more than \$5 or by electronic mail at no cost:

21 (1) A list of the mailing address of each unit, which must not
22 include the names of the units' owners or the name of any tenant of
23 a unit's owner; or

24 (2) If the members of the association are owners of time
25 shares within a time share plan created pursuant to chapter 119A of
26 NRS and:

27 (I) The voting rights of those owners are exercised by
28 delegates or representatives pursuant to NRS 116.31105, the mailing
29 address of the delegates or representatives.

30 (II) The voting rights of those owners are not exercised by
31 delegates or representatives, the mailing address of the association
32 established pursuant to NRS 119A.520. If the mailing address of the
33 association is provided to the candidate pursuant to this sub-
34 subparagraph, the association must send to each owner of a time
35 share within the time share plan the campaign material provided by
36 the candidate. If the campaign material will be sent by mail, the
37 candidate who provides the campaign material must provide to the
38 association a separate copy of the campaign material for each owner
39 and must pay the actual costs of mailing before the campaign
40 material is mailed. If the campaign material will be sent by
41 electronic transmission, the candidate must provide to the
42 association one copy of the campaign material in an electronic
43 format.

44 ➡ The information provided pursuant to this paragraph must not
45 include the name of any unit's owner or any tenant of a unit's



owner. If a candidate who makes a request for the information described in this paragraph fails or refuses to provide a written statement signed by the candidate which states that the candidate is making the request to allow the candidate to communicate campaign material directly to units' owners and that the candidate will not use the information for any other purpose, the association or its agent may refuse the request.

14. An association and its directors, 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 13.

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

Sec. 11. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section, the number of votes cast in favor of removal constitutes:

(a) At least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election.

2. A removal election may be called by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. To call a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this subsection and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If a removal election is called pursuant to this subsection and:

(a) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to this section:



(1) The secret written ballots for the removal election must be sent in the manner required by this section not less than 15 days or more than 60 days after the date on which the petition is received; and

(2) The executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots and not later than 90 days after the date on which the petition was received.

(b) The voting rights of the owners of time shares will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 90 days after the date on which the petition is received.

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

3. Except as otherwise provided in NRS 116.31105, *and section 3 of this act*, the removal of any member of the executive board must be conducted by secret written ballot in the following manner:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.



1 **Sec. 12.** NRS 116.31083 is hereby amended to read as
2 follows:

3 116.31083 1. A meeting of the executive board must be held
4 at least once every quarter, and not less than once every 100 days
5 and must be held at a time other than during standard business hours
6 at least twice annually. *A meeting of the executive board may be*
7 *held by teleconference in which a majority of the members of the*
8 *executive board, in different locations, are connected by electronic*
9 *means, through audio or video or both. A meeting of the executive*
10 *board held by teleconference must be conducted in accordance*
11 *with this chapter, and the notice of such a meeting must identify at*
12 *least one physical location at which units' owners may attend the*
13 *meeting and at which at least one member of the executive board*
14 *will be physically present. Members of the executive board are*
15 *deemed to be present at a meeting held by teleconference if all the*
16 *members of the executive board participating in the meeting are*
17 *able to hear one another and any units' owners who are speaking*
18 *to the executive board.*

19 2. Except in an emergency or unless the bylaws of an
20 association require a longer period of notice, the secretary or other
21 officer specified in the bylaws of the association shall, not less than
22 10 days before the date of a meeting of the executive board, cause
23 notice of the meeting to be given to the units' owners. Such notice
24 must be:

25 (a) Given to the units' owners in the manner set forth in NRS
26 116.31068; or

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

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

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

42 (a) Have a copy of the audio recording, the minutes or a
43 summary of the minutes of the meeting provided to the unit's owner
44 upon request, in electronic format at no charge to the unit's owner
45 or, if the association is unable to provide the copy or summary in



1 electronic format, in paper format at a cost not to exceed 25 cents
2 per page for the first 10 pages, and 10 cents per page thereafter.

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

5 5. The agenda of the meeting of the executive board must
6 comply with the provisions of subsection 4 of NRS 116.3108. A
7 period required to be devoted to comments by the units' owners and
8 discussion of those comments must be scheduled for both the
9 beginning and the end of each meeting. During the period devoted
10 to comments by the units' owners and discussion of those comments
11 at the beginning of each meeting, comments by the units' owners
12 and discussion of those comments must be limited to items listed on
13 the agenda. In an emergency, the executive board may take action
14 on an item which is not listed on the agenda as an item on which
15 action may be taken.

16 6. At least once every quarter, and not less than once every 100
17 days, unless the declaration or bylaws of the association impose
18 more stringent standards, the executive board shall review, at a
19 minimum, the following financial information at one of its
20 meetings:

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

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

25 (c) A current reconciliation of the operating account of the
26 association;

27 (d) A current reconciliation of the reserve account of the
28 association;

29 (e) *A current reconciliation of any account of the association*
30 *which contains money arising from a claim to recover damages*
31 *resulting from a constructional defect, as that term is defined in*
32 *NRS 40.615;*

33 (f) The latest account statements prepared by the financial
34 institutions in which the accounts of the association are maintained;
35 and

36 ~~(f)(g)~~ (g) The current status of any civil action or claim
37 submitted to arbitration or mediation in which the association is a
38 party.

39 7. The secretary or other officer specified in the bylaws shall
40 cause each meeting of the executive board to be audio recorded and
41 the minutes to be recorded or otherwise taken at each meeting of the
42 executive board, but if the executive board is meeting in executive
43 session, the meeting must not be audio recorded. Not more than 30
44 days after each such meeting, the secretary or other officer specified
45 in the bylaws shall cause the audio recording of the meeting, the



1 minutes of the meeting and a summary of the minutes of the
2 meeting to be made available to the units' owners. Except as
3 otherwise provided in this subsection, a copy of the audio recording,
4 the minutes or a summary of the minutes must be provided to any
5 unit's owner upon request, in electronic format at no charge to the
6 unit's owner or, if the association is unable to provide the copy or
7 summary in electronic format, in paper format at a cost not to
8 exceed 25 cents per page for the first 10 pages, and 10 cents per
9 page thereafter.

10 8. Except as otherwise provided in subsection 9 and NRS
11 116.31085, the minutes of each meeting of the executive board must
12 include:

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

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

16 (c) The substance of all matters proposed, discussed or decided
17 at the meeting;

18 (d) A record of each member's vote on any matter decided by
19 vote at the meeting; and

20 (e) The substance of remarks made by any unit's owner who
21 addresses the executive board at the meeting if the unit's owner
22 requests that the minutes reflect his or her remarks or, if the unit's
23 owner has prepared written remarks, a copy of his or her prepared
24 remarks if the unit's owner submits a copy for inclusion.

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

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

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

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

40 (a) Could not have been reasonably foreseen;

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

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



(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 13. NRS 116.31086 is hereby amended to read as follows:

116.31086 1. ~~### Whenever possible,~~ an association ~~[solicits]~~ *shall solicit at least three* bids for an association project. ~~[the]~~ *The* bids *for an association project* must be opened during a meeting of the executive board.

2. As used in this section, "association project" includes, without limitation ~~[a]~~:

(a) A project that involves the *construction*, maintenance, repair, replacement or restoration of any part of the common elements or which involves the provision of services to the association.

(b) *The renewal of any contract for such a project.*

Sec. 14. NRS 116.311 is hereby amended to read as follows:

116.311 1. Unless prohibited or limited by the declaration or bylaws and except as otherwise provided in this section, units' owners may vote at a meeting in person, by absentee ballot pursuant to paragraph (d) of subsection 2, by a proxy pursuant to subsections 3 to 8, inclusive, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection 9.

2. At a meeting of units' owners, the following requirements apply:

(a) Units' owners who are present in person may vote by voice vote, show of hands, standing or any other method for determining the votes of units' owners, as designated by the person presiding at the meeting.

(b) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners cast the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(c) Unless a greater number or fraction of the votes in the association is required by this chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(d) Subject to subsection 1, a unit's owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner who requests it if the request is made at least 3 days before the scheduled meeting.



1 Votes cast by absentee ballot must be included in the tally of a vote
2 taken at that meeting.

3 (e) When a unit's owner votes by absentee ballot, the
4 association must be able to verify that the ballot is cast by the unit's
5 owner having the right to do so.

6 3. Except as otherwise provided in this section, votes allocated
7 to a unit may be cast pursuant to a proxy executed by a unit's owner.
8 A unit's owner may give a proxy only to a member of his or her
9 immediate family, a tenant of the unit's owner who resides in the
10 common-interest community, another unit's owner who resides in
11 the common-interest community, or a delegate or representative
12 when authorized pursuant to NRS 116.31105. If a unit is owned by
13 more than one person, each owner of the unit may vote or register
14 protest to the casting of votes by the other owners of the unit
15 through an executed proxy. A unit's owner may revoke a proxy
16 given pursuant to this section only by actual notice of revocation to
17 the person presiding over a meeting of the association.

18 4. Before a vote may be cast pursuant to a proxy:

19 (a) The proxy must be dated.

20 (b) The proxy must not purport to be revocable without notice.

21 (c) The proxy must designate the meeting for which it is
22 executed, and such a designation includes any recessed session of
23 that meeting.

24 (d) The proxy must designate each specific item on the agenda
25 of the meeting for which the unit's owner has executed the proxy,
26 except that the unit's owner may execute the proxy without
27 designating any specific items on the agenda of the meeting if the
28 proxy is to be used solely for determining whether a quorum is
29 present for the meeting. If the proxy designates one or more specific
30 items on the agenda of the meeting for which the unit's owner has
31 executed the proxy, the proxy must indicate, for each specific item
32 designated in the proxy, whether the holder of the proxy must cast a
33 vote in the affirmative or the negative on behalf of the unit's owner.
34 If the proxy does not indicate whether the holder of the proxy must
35 cast a vote in the affirmative or the negative for a particular item on
36 the agenda of the meeting, the proxy must be treated, with regard to
37 that particular item, as if the unit's owner were present but not
38 voting on that particular item.

39 (e) The holder of the proxy must disclose at the beginning of the
40 meeting for which the proxy is executed and any recessed session of
41 that meeting the number of proxies pursuant to which the holder will
42 be casting votes.

43 5. A proxy terminates immediately after the conclusion of the
44 meeting, and any recessed sessions of the meeting, for which it is
45 executed.



6. Except as otherwise provided in this subsection, a vote may not be cast pursuant to a proxy for the election or removal of a member of the executive board of an association. A vote may be cast pursuant to a proxy for the election or removal of a member of the executive board of a master association which governs a time-share plan created pursuant to chapter 119A of NRS if the proxy is exercised through a delegate or representative authorized pursuant to NRS 116.31105.

7. The holder of a proxy may not cast a vote on behalf of the unit's owner who executed the proxy in a manner that is contrary to the proxy.

8. A proxy is void if the proxy or the holder of the proxy violates any provision of subsections 3 to 7, inclusive.

9. Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. Except as otherwise provided in NRS 116.31034 and 116.31036, *and section 3 of this act*, if an association conducts a vote without a meeting, the following requirements apply:

(a) The association shall notify the units' owners that the vote will be taken by ballot.

(b) The association shall deliver a paper or electronic ballot to every unit's owner entitled to vote on the matter.

(c) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(d) When the association delivers the ballots, it shall also:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of votes necessary to approve each matter other than election of directors;

(3) Specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than 3 days after the date the association delivers the ballot; and

(4) Describe the time, date and manner by which units' owners wishing to deliver information to all units' owners regarding the subject of the vote may do so.

(e) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability of or attempted revocation by the person who cast that vote.

(f) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

10. If the declaration requires that votes on specified matters affecting the common-interest community must be cast by the



1 lessees of leased units rather than the units' owners who have leased
2 the units:

3 (a) This section applies to the lessees as if they were the units'
4 owners;

5 (b) The units' owners who have leased their units to the lessees
6 may not cast votes on those specified matters;

7 (c) The lessees are entitled to notice of meetings, access to
8 records and other rights respecting those matters as if they were the
9 units' owners; and

10 (d) The units' owners must be given notice, in the manner
11 provided in NRS 116.3108, of all meetings at which the lessees are
12 entitled to vote.

13 11. If any votes are allocated to a unit that is owned by the
14 association, those votes may not be cast, by proxy or otherwise, for
15 any purpose.

16 **Sec. 15.** NRS 116.31158 is hereby amended to read as
17 follows:

18 116.31158 1. Each association shall, at the time it pays the
19 fee required by NRS 116.31155, register with the Ombudsman on a
20 form prescribed by the Ombudsman.

21 2. The form for registration must include, without limitation,
22 the information required to be maintained pursuant to paragraph
23 ~~(e)~~ (f) of subsection 4 of NRS 116.625.

24 **Sec. 16.** NRS 116.31175 is hereby amended to read as
25 follows:

26 116.31175 1. Except as otherwise provided in subsection 4,
27 the executive board of an association shall, upon the written request
28 of a unit's owner, make available the books, records and other
29 papers of the association for review at the business office of the
30 association or a designated business location not to exceed 60 miles
31 from the physical location of the common-interest community and
32 during the regular working hours of the association, including,
33 without limitation:

34 (a) The financial statement of the association;

35 (b) The budgets of the association required to be prepared
36 pursuant to NRS 116.31151;

37 (c) The study of the reserves of the association required to be
38 conducted pursuant to NRS 116.31152; and

39 (d) All contracts to which the association is a party and all
40 records filed with a court relating to a civil or criminal action to
41 which the association is a party.

42 2. The executive board shall provide a copy of any of the
43 records described in paragraphs (a), (b) and (c) of subsection 1 to a
44 unit's owner or the Ombudsman within 21 days after receiving a
45 written request therefor. Such records must be provided in electronic



1 format at no charge to the unit's owner or, if the association is
2 unable to provide the records in electronic format, the executive
3 board may charge a fee to cover the actual costs of preparing a copy,
4 but the fee may not exceed 25 cents per page for the first 10 pages,
5 and 10 cents per page thereafter.

6 3. If the executive board fails to provide a copy of any of the
7 records pursuant to subsection 2 within 21 days, the executive board
8 must pay a penalty of \$25 for each day the executive board fails to
9 provide the records.

10 4. The provisions of subsection 1 do not apply to:

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

14 (b) The records of the association relating to another unit's
15 owner, including, without limitation, any architectural plan or
16 specification submitted by a unit's owner to the association during
17 an approval process required by the governing documents, except
18 for those records described in subsection 5; and

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

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

24 (2) Has not been placed on an agenda for final approval by
25 the executive board.

26 5. The executive board of an association shall maintain a
27 general record concerning each violation of the governing
28 documents, other than a violation involving a failure to pay an
29 assessment, for which the executive board has imposed a fine, a
30 construction penalty or any other sanction. The general record:

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

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

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

43 6. If the executive board refuses to allow a unit's owner to
44 review the books, records or other papers of the association, the
45 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 *Administrator or the* Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production.

7. 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.

8. 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 subsection 1.

Sec. 17. NRS 116.625 is hereby amended to read as follows:

116.625 1. The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels is hereby created within the Division.

2. The Administrator shall appoint the Ombudsman. The Ombudsman is in the unclassified service of the State.

3. The Ombudsman must be qualified by training and experience to perform the duties and functions of office.

4. In addition to any other duties set forth in this chapter, the Ombudsman shall:

(a) Assist in processing claims submitted to mediation or arbitration pursuant to NRS 38.300 to 38.360, inclusive;

(b) Assist owners in common-interest communities and condominium hotels to understand their rights and responsibilities as set forth in this chapter and chapter 116B of NRS and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities;

(c) Assist members of executive boards and officers of associations to carry out their duties;

(d) When appropriate, investigate disputes involving the provisions of this chapter or chapter 116B of NRS or the governing documents of an association and assist in resolving such disputes;

~~and~~

(e) *Administer the referee program set forth in section 5 of this act; and*



(f) Compile and maintain a registration of each association organized within the State which includes, without limitation, the following information:

(1) The name, address and telephone number of the association;

(2) The name of each community manager for the common-interest community or the association of a condominium hotel and the name of any other person who is authorized to manage the property at the site of the common-interest community or condominium hotel;

(3) The names, mailing addresses and telephone numbers of the members of the executive board of the association;

(4) The name of the declarant;

(5) The number of units in the common-interest community or condominium hotel;

(6) The total annual assessment made by the association;

(7) The number of foreclosures which were completed on units within the common-interest community or condominium hotel and which were based on liens for the failure of the unit's owner to pay any assessments levied against the unit or any fines imposed against the unit's owner; and

(8) Whether the study of the reserves of the association has been conducted pursuant to NRS 116.31152 or 116B.605 and, if so, the date on which it was completed.

Sec. 18. NRS 116.660 is hereby amended to read as follows:

116.660 1. To carry out the purposes of this chapter, the *Administrator or the* Commission, or any member thereof acting on behalf of the Commission or acting on behalf of a hearing panel, may issue subpoenas to compel the attendance of witnesses and the production of books, records and other papers.

2. If any person fails to comply with a subpoena issued by the *Administrator or the* Commission or any member thereof pursuant to this section within 20 days after the date of service of the subpoena, the *Administrator, if the subpoena was issued by the Administrator, or the* Commission, *if the subpoena was issued by the Commission or any member thereof*, may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 20 days after the date of service of the order, and show cause why the person has not complied with the subpoena. A certified copy must be served upon the person subpoenaed.



4. If it appears to the court that the subpoena was regularly issued by the *Administrator or the* Commission or any member thereof pursuant to this section, the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order the person shall be dealt with as for contempt of court.

Sec. 19. NRS 116.745 is hereby amended to read as follows:

116.745 As used in NRS 116.745 to 116.795, inclusive, unless the context otherwise requires ~~it~~, *“violation”*:

1. *“Breach” means a breach of the governing documents.*

2. *“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. 20. 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 *or breach* may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation ~~it~~ *or breach*, file with the Division a written affidavit that sets forth the facts constituting the alleged violation ~~it~~ *or breach*. The affidavit may allege any actual damages suffered by the aggrieved person as a result of the alleged violation ~~it~~ *or breach*.

2. An aggrieved person may not file such an affidavit unless the aggrieved person has provided the respondent by certified mail, return receipt requested, with written notice of the alleged violation *or breach* set forth in the affidavit. The notice must:

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

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

3. A written affidavit filed with the Division pursuant to this section must be:

(a) On a form prescribed by the Division.

(b) Be accompanied by evidence that:

(1) The respondent has been given a reasonable opportunity after receiving the written notice to ~~it~~ *correct* *resolve* the alleged violation ~~it~~ *or breach*; and

(2) Reasonable efforts to resolve the alleged violation *or breach* have failed.

4. The Commission or a hearing panel may impose an administrative fine of not more than \$1,000 against any person who knowingly files a false or fraudulent affidavit with the Division.



1 **Sec. 21.** NRS 116.765 is hereby amended to read as follows:

2 116.765 1. Upon receipt of an affidavit that complies with
3 the provisions of NRS 116.760, the Division shall refer the affidavit
4 to the Ombudsman.

5 2. The Ombudsman shall give such guidance to the parties as
6 the Ombudsman deems necessary to assist the parties to resolve the
7 alleged violation ~~H~~ *or breach.*

8 3. If the parties are unable to resolve the alleged violation *or*
9 *breach* with the assistance of the Ombudsman, the Ombudsman
10 ~~shall~~ :

11 *(a) May refer the parties to a referee appointed pursuant to*
12 *section 5 of this act. The aggrieved person who filed the affidavit*
13 *must file with the Ombudsman a written claim which includes the*
14 *information requested by the Ombudsman and the fee prescribed*
15 *pursuant to subsection 2 of NRS 38.320. The claimant must serve*
16 *a copy of the claim in accordance with subsection 3 of NRS 38.320*
17 *and the person upon whom a copy of the claim is served must*
18 *comply with subsection 4 of NRS 38.320. All fees collected by the*
19 *Ombudsman pursuant to the provisions of this paragraph must be*
20 *accounted for separately and may only be used by the Division to*
21 *administer the provisions of NRS 38.300 to 38.360, inclusive, and*
22 *section 5 of this act.*

23 *(b) Shall, for an alleged violation,* provide to the Division a
24 report concerning the alleged violation and any information
25 collected by the Ombudsman during his or her efforts to assist the
26 parties to resolve the alleged violation.

27 ~~H~~ Upon receipt of the report from the Ombudsman, the
28 Division shall conduct an investigation to determine whether good
29 cause exists to proceed with a hearing on the alleged violation.

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

36 **Sec. 22.** NRS 116.790 is hereby amended to read as follows:

37 116.790 1. If the Commission or a hearing panel, after notice
38 and hearing, finds that the executive board or any person acting on
39 behalf of the association has committed a violation, the Commission
40 or the hearing panel may take any or all of the following actions:

41 (a) Order an audit of the association, at the expense of the
42 association.

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



(c) Require the executive board to hire a voting monitor pursuant to section 3 of this act.

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

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

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

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

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

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

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

6. Any receiver appointed pursuant to this section has, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided in NRS 78.635, 78.640 and 78.645, whether or not the association is insolvent. Such powers include, without limitation, the powers to:

(a) Take charge of the estate and effects of the association;

(b) Appoint an agent or agents;

(c) Collect any debts and property due and belonging to the association and prosecute and defend, in the name of the association, or otherwise, any civil action as may be necessary or proper for the purposes of collecting debts and property;

(d) Perform any other act in accordance with the governing documents of the association and this chapter that may be necessary for the association to carry out its obligations; and



(e) By injunction, restrain the association from exercising any of its powers or doing business in any way except by and through a receiver appointed by the court.

Sec. 23. NRS 116A.280 is hereby amended to read as follows:

116A.280 1. To carry out the purposes of this chapter, the *Administrator or the* Commission, or any member thereof acting on behalf of the Commission or acting on behalf of a hearing panel, may issue subpoenas to compel the attendance of witnesses and the production of books, records and other papers.

2. If any person fails to comply with a subpoena issued by the *Administrator or the* Commission or any member thereof pursuant to this section within 20 days after the date of service of the subpoena, the *Administrator, if the subpoena was issued by the Administrator, or the* Commission, *if the subpoena was issued by the Commission or a member thereof*, may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 20 days after the date of service of the order, and show cause why the person has not complied with the subpoena. A certified copy of the order must be served upon the person subpoenaed.

4. If it appears to the court that the subpoena was regularly issued by the *Administrator or the* Commission or any member thereof pursuant to this section, the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order the person must be dealt with as for contempt of court.

Sec. 24. NRS 116B.670 is hereby amended to read as follows:

116B.670 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 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, except for those records described in subsection 2; and

(c) A contract between the association and an attorney.

2. The executive board of an association shall maintain a general record concerning each violation of the governing



1 documents, other than a violation involving a failure to pay an
2 assessment, for which the executive board has imposed a fine, or
3 any other sanction. The general record:

4 (a) Must contain a general description of the nature of the
5 violation and the type of the sanction imposed. If the sanction
6 imposed was a fine, the general record must specify the amount of
7 the fine.

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

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

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

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

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

26 4. The books, records and other papers of an association must
27 be maintained for at least 10 years.

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

32 **Sec. 25.** NRS 116B.835 is hereby amended to read as follows:

33 116B.835 1. To carry out the purposes of this chapter, the
34 *Administrator or the* Commission, or any member thereof acting on
35 behalf of the Commission or acting on behalf of a hearing panel,
36 may issue subpoenas to compel the attendance of witnesses and the
37 production of books, records and other papers.

38 2. If any person fails to comply with a subpoena issued by the
39 *Administrator or the* Commission or any member thereof pursuant
40 to this section within 20 days after the date of service of the
41 subpoena, the *Administrator, if the subpoena was issued by the*
42 *Administrator, or the* Commission , *if the subpoena was issued by*
43 *the Commission or a member thereof*, may petition the district
44 court for an order of the court compelling compliance with the
45 subpoena.



1 3. Upon such a petition, the court shall enter an order directing
2 the person subpoenaed to appear before the court at a time and place
3 to be fixed by the court in its order, the time to be not more than 20
4 days after the date of service of the order, and show cause why the
5 person has not complied with the subpoena. A certified copy must
6 be served upon the person subpoenaed.

7 4. If it appears to the court that the subpoena was regularly
8 issued by the *Administrator or the* Commission or any member
9 thereof pursuant to this section, the court shall enter an order
10 compelling compliance with the subpoena, and upon failure to obey
11 the order the person shall be dealt with as for contempt of court.

12 **Sec. 26.** This act becomes effective on July 1, 2013.

