

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL No. 1.

NRS CHAPTER 40 "CLEAN UP" PROVISIONS

Brief Narrative:

NRS 40.430 through 40.512 address the enforcement of loans secured by deeds of trust or mortgages, including certain rights of guarantors. These statutes are subdivided by LCB into the following sections:

NRS 40.430 – 40.450	Actions for Foreclosure of Real Mortgages
NRS 40.451 – 40.463	Foreclosure Sales and Deficiency Judgments
NRS 40.4631 – 40.4639	Actions by Holders of Junior Real Mortgages after Foreclosure Sales
NRS 40. 464	Maintenance of Property Acquired at Foreclosure Sale
NRS 40. 465 – 40.495	Rights of Guarantor, Surety or Obligor in Real Property
NRS 40.501 – 40, 512	Environmental Impairment of Real Collateral of Secured Lender

Additions and amendments to statutes in this area in recent years have resulted in some inconsistencies in terminology and duplicative provisions. The purpose of this legislative proposal is to eliminate duplicate provisions and make this area of NRS internally inconsistent. An explanation of each change precedes the proposed amendment.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. This was not introduced in prior sessions.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

Sec. 1. Amend NRS 40.437 to read as follows:

Explanation: This 2013 statute refers to an action under NRS 40.430 as "a civil action for a foreclosure sale." NRS 40.430 simply refers to the procedure as "an action." In 2009, with the enactment of NRS 107.086, foreclosure mediation became mandatory for non-judicial residential foreclosures. Since then the number of judicial foreclosures has greatly increased. NRS 40.437, modeled after NRS 107.086, was added in 2013 to also require foreclosure mediation in judicial foreclosures. In 2013 NRS 107.086 was also amended to make foreclosure mediation an "opt out" process rather than "opt in." As adopted NRS 40.437 retained the original opt in requirement. In addition to other technical changes, the following amendments are intended to conform NRS 40.437 to the 2013 changes to NRS 107.086, providing for opting out of foreclosure mediation rather than opting in.

NRS 40.437 Additional requirements for action affecting owner-occupied housing: Notice; form; election [of] to waive mediation; adoption of rules concerning mediation; applicability.

1. If *an* ~~[a civil]~~-action ~~[for a foreclosure sale]~~ pursuant to NRS 40.430 affecting owner-occupied housing is commenced in a court of competent jurisdiction:

(a) The copy of the complaint served on the mortgagor must include a separate document containing:

(1) Contact information which the mortgagor may use to reach a person with authority to negotiate a loan modification on behalf of the plaintiff;

(2) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(3) A notice provided by the Mediation Administrator indicating that the mortgagor ~~[has the right]~~ *will be enrolled* to ~~[seek]~~ *participate in* mediation pursuant to this section *if he or she*

pays to the Mediation Administrator his or her share of the fee established pursuant to subsection 11 of NRS 107.086; and

(4) A form upon which the mortgagor may indicate an election to enter into mediation or to waive mediation pursuant to this section and one envelope addressed to the plaintiff and one envelope addressed to the Mediation Administrator, which the mortgagor may use to comply with the provisions of subsection 2; and

(b) The plaintiff must submit a copy of the complaint to the Mediation Administrator.

2. ~~[The]~~ *If the mortgagor elects to waive mediation, he or she* shall, not later than the date on which an answer to the complaint is due, complete the form required by subparagraph (4) of paragraph (a) of subsection 1 and file the form with the court and return a copy of the form to the plaintiff by certified mail, return receipt requested. If the mortgagor ~~[indicates on the form an election to enter into mediation]~~, *does not elect to waive mediation, he or she shall, not later than the date on which an answer to the complaint is due, pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11 of NRS 107.086. Upon receipt of the share of the fee established pursuant to 11 of NRS 107.086 owed by mortgagor, (a) the Mediation Administrator (i) shall notify the plaintiff, by certified mail, return receipt requested, of the enrollment of the mortgagor to participate in the mediation pursuant to this section, and (ii) shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation, and (b) upon the plaintiff's receipt of such notice, the plaintiff shall notify any person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the election of the mortgagor to [enter into mediation and file the form with the Mediation Administrator, who shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for]* participate in

the mediation. The judicial foreclosure action must be stayed until the completion of the mediation. If the mortgagor indicates on the form ***required by subparagraph (4) of paragraph (a) of subsection 1*** an election to waive mediation or fails to ~~[file the form with the court and return a copy of the form to the plaintiff]~~ ***pay the Mediation Administrator his or her share of the fee established pursuant to subsection 11 of NRS 107.086,*** as required by this subsection, no mediation is required in the action ***and the action pursuant to NRS 40.430 must proceed.***

3. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 11 of NRS 107.086. The plaintiff or a representative, and the mortgagor or his or her representative, shall attend the mediation. If the plaintiff is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the plaintiff or have access at all times during the mediation to a person with such authority.

4. If the plaintiff or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not have the authority or access to a person with the authority required by subsection 3, the mediator shall prepare and submit to the Mediation Administrator and the court a petition and recommendation concerning the imposition of sanctions against the plaintiff or the representative. The court may issue an order imposing such sanctions against the plaintiff or the representative as the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

5. If the mortgagor ~~[elected to enter into]~~ ***is enrolled to participate in*** mediation ~~[and]~~ ***pursuant to this section but*** fails to attend the mediation, no mediation is required and the judicial foreclosure action must proceed as if the mortgagor had ~~[not]~~ elected to ~~[enter into]~~ ***wave*** mediation.

6. If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the court and the Mediation Administrator a recommendation that the mediation be terminated. The court may terminate the mediation and proceed with the judicial foreclosure action.

7. The rules adopted by the Supreme Court pursuant to subsection 11 of NRS 107.086 apply to a mediation conducted pursuant to this section, and the Supreme Court may adopt any additional rules necessary to carry out the provisions of this section.

8. Except as otherwise provided in subsection 10, the provisions of this section do not apply if:

(a) The mortgagor has surrendered the property, as evidenced by a letter confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust or the mortgagee, or an authorized agent thereof; or

(b) A petition in bankruptcy has been filed with respect to the defendant under 11 U.S.C. Chapter 7, 11, 12 or 13 and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

9. A noncommercial lender is not excluded from the application of this section.

10. The Mediation Administrator and each mediator who acts pursuant to this section in good faith and without gross negligence are immune from civil liability for those acts.

11. As used in this section:

(a) "Mediation Administrator" has the meaning ascribed to it in NRS 107.086.

(b) *"Mortgagor" includes the grantor of a deed of trust or the person who holds the title of record to the real property.*

(c) "Noncommercial lender" has the meaning ascribed to it in NRS 107.086.

[(e)](d) "Owner-occupied housing" has the meaning ascribed to it in NRS 107.086.

Sec. 2. Amend NRS 40.440 to read as follows:

Explanation: Disposition of "proceeds" from a foreclosure sale is governed by NRS 40.462. This amendment simplifies the statutory language governing surplus money, incorporating the same terminology as NRS 40.462 and taking advantage of the defined term "foreclosure sale."

NRS 40.440 Disposition of surplus money. *Following a foreclosure sale* ~~[If there is surplus money remaining after payment of the amount due on the mortgage or other lien, with costs,]~~ the court may cause *proceeds of the foreclosure sale* ~~[the same]~~ to be paid to the person entitled to it pursuant to NRS 40.462, and in the meantime may direct it to be deposited in court.

Sec. 3. Amend NRS 40.455 to read as follows:

Explanation. Foreclosure of a deed of trust or mortgage may occur through a trustee's sale under NRS 107.080 or a judicial foreclosure under NRS 40.430, both of which are commonly referred to simply as a "foreclosure sale." NRS 40.462(4) contains a definition to this effect. The purpose of this and several other amendments is to use the term "foreclosure sale" (as presently defined in NRS 40.462) exclusively throughout these sections rather than a combination of terms.

NRS 40.455 Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust; exceptions.

1. Except as otherwise provided in subsection 3, upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale ~~or the trustee's sale held pursuant to NRS 107.080, respectively~~, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the

deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

2. If the indebtedness is secured by more than one parcel of real property, more than one interest in the real property or more than one mortgage or deed of trust, the 6-month period begins to run after the date of the foreclosure sale [~~or trustee's sale~~] of the last parcel or other interest in the real property securing the indebtedness, but in no event may the application be filed more than 2 years after the initial foreclosure sale or trustee's sale.

3. If the judgment creditor or the beneficiary of the deed of trust is a financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust, even if there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust, if:

(a) The real property is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale [~~or trustee's sale~~];

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust; and

(d) The debtor or grantor did not refinance the mortgage or deed of trust after securing it.

4. As used in this section, "financial institution" has the meaning ascribed to it in NRS 363A.050.

Sec. 4. Amend NRS 40.457 to read as follows:

Explanation. Same as Sec.3: use the term "foreclosure sale' throughout.

NRS 40.457 Hearing before award of deficiency judgment; appraisal of property sold.

1. Before awarding a deficiency judgment under NRS 40.455, the court shall hold a hearing and shall take evidence presented by either party concerning the fair market value of the property sold as of the date of foreclosure sale [~~or trustee's sale~~]. Notice of such hearing shall be served upon all defendants who have appeared in the action and against whom a deficiency judgment is sought, or upon their attorneys of record, at least 15 days before the date set for hearing.

2. Upon application of any party made at least 10 days before the date set for the hearing the court shall, or upon its own motion the court may, appoint an appraiser to appraise the property sold as of the date of foreclosure sale [~~or trustee's sale~~]. Such appraiser shall file with the clerk the appraisal, which is admissible in evidence. The appraiser shall take an oath that the appraiser has truly, honestly and impartially appraised the property to the best of the appraiser's knowledge and ability. Any appraiser so appointed may be called and examined as a witness by any party or by the court. The court shall fix a reasonable compensation for the appraiser, but the appraiser's fee shall not exceed similar fees for similar services in the county where the encumbered land is situated.

Sec. 5. Amend NRS 40.462 to read as follows:

Explanation. Remove the definition of "foreclosure sale" from a subsection of NRS 40.462 in order to add a stand-alone definition of the term used throughout these provisions.

NRS 40.462 Distribution of proceeds of foreclosure sale.

1. Except as otherwise provided by specific statute, this section governs the distribution of the proceeds of a foreclosure sale. The provisions of NRS 40.455, 40.457 and 40.459 do not affect the right to receive those proceeds, which vests at the time of the foreclosure sale. The

purchase of any interest in the property at the foreclosure sale, and the subsequent disposition of the property, does not affect the right of the purchaser to the distribution of proceeds pursuant to paragraph (c) of subsection 2 of this section, or to obtain a deficiency judgment pursuant to NRS 40.455, 40.457 and 40.459.

2. The proceeds of a foreclosure sale must be distributed in the following order of priority:

(a) Payment of the reasonable expenses of taking possession, maintaining, protecting and leasing the property, the costs and fees of the foreclosure sale, including reasonable trustee's fees, applicable taxes and the cost of title insurance and, to the extent provided in the legally enforceable terms of the mortgage or lien, any advances, reasonable attorney's fees and other legal expenses incurred by the foreclosing creditor and the person conducting the foreclosure sale.

(b) Satisfaction of the obligation being enforced by the foreclosure sale.

(c) Satisfaction of obligations secured by any junior mortgages or liens on the property, in their order of priority.

(d) Payment of the balance of the proceeds, if any, to the debtor or the debtor's successor in interest.

➤ If there are conflicting claims to any portion of the proceeds, the person conducting the foreclosure sale is not required to distribute that portion of the proceeds until the validity of the conflicting claims is determined through interpleader or otherwise to the person's satisfaction.

3. A person who claims a right to receive the proceeds of a foreclosure sale pursuant to paragraph (c) of subsection 2 must, upon the written demand of the person conducting the foreclosure sale, provide:

(a) Proof of the obligation upon which the claimant claims a right to the proceeds; and

(b) Proof of the claimant's interest in the mortgage or lien, unless that proof appears in the official records of a county in which the property is located.

➤ Such a demand is effective upon personal delivery or upon mailing by registered or certified mail, return receipt requested, to the last known address of the claimant. Failure of a claimant to provide the required proof within 15 days after the effective date of the demand waives the claimant's right to receive those proceeds.

[~~4. As used in this section, "foreclosure sale" means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee's power of sale pursuant to NRS 107.080.~~]

Sec. 6 Add a new section to Chapter 40 to read as follows:

Explanation. The definition of "foreclosure sale" is moved out of NRS 40.462, without change, to a stand-alone section.

NRS 40. ____. *"Foreclosure sale defined." As used in NRS 40.430 through 40.495, "foreclosure sale" means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee's power of sale pursuant to NRS 107.080.*

Sec. 7. NRS 40.4631 through 40.4634, inclusive, are hereby repealed.

Explanation. The deleted statutes are definitions which are either unnecessary or should apply throughout this area of NRS: (1) NRS 4631 limits the defined terms to a particular area, but they are and should be used throughout the chapter; (2) the definition of "foreclosure sale" taken from NRS 40.462 and placed in a separate section means NRS 40.4632 is no longer necessary; (3) NRS 40.4633 defines "mortgage or other lien" but is not necessary because NRS 40.433 already

defines the term for use throughout the relevant statutes; (4) NRS 40.4634, the definition of "sale in lieu of a foreclosure sale" is used elsewhere and should be a stand-alone statute.

[~~NRS 40.4631 Definitions. As used in NRS 40.4631 to 40.4639, inclusive, unless the context otherwise requires, the words and terms defined in NRS 40.4632, 40.4633 and 40.4634 have the meanings ascribed to them in those sections.~~

~~—NRS 40.4632 “Foreclosure sale” defined. “Foreclosure sale” has the meaning ascribed to it in NRS 40.462.~~

~~—NRS 40.4633 “Mortgage or other lien” defined. “Mortgage or other lien” has the meaning ascribed to it in NRS 40.433.~~

~~—NRS 40.4634 “Sale in lieu of a foreclosure sale” defined. “Sale in lieu of a foreclosure sale” means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of a foreclosure sale.]~~

Sec. 8. Amend NRS Chapter 40 by adding a new provision to read as follows:

Explanation: The definition is taken from NRS 40.4634, but with a new lead in clause to make it applicable throughout the relevant portions of the chapter.

NRS 40. ____. "Sale in lieu of a foreclosure sale" defined. *As used in NRS 40.430 through NRS 40.495, "sale in lieu of a foreclosure sale" means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real*

property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of foreclosure.

Sec. 9. Amend NRS 40.464 to read as follows:

Explanation. NRS 40.464 was enacted in 2009 and is identical to NRS 107.110, other than the reference in this section to a judicial foreclosure and a reference in NRS 107.080 to a trustee's sale. Chapter 40 frequently refers to both types of foreclosure sale in one statute. There is no need to have duplicate statutes to address the same issue, namely, the maintenance of vacant property acquired at foreclosure sale, i.e., how the foreclosure occurred does not affect the obligation. Duplicate statutes increase the complexity of Nevada statutes and are unnecessary. Accordingly, this statute is amended to refer to either kind of sale and NRS 107.110 can be repealed.

NRS 40.464 Duty to maintain vacant residential property acquired at foreclosure sale; notice of violation; proceedings for enforcement; civil penalties.

1. Any vacant residential property purchased or acquired by a person at a foreclosure sale ~~[pursuant to NRS 40.430]~~ must be maintained by that person in accordance with subsection 2.

2. In addition to complying with any other ordinance or rule as required by the applicable governmental entity, the purchaser shall care for the exterior of the property, including, without limitation:

(a) Limiting the excessive growth of foliage which would otherwise diminish the value of that property or of the surrounding properties;

(b) Preventing trespassers from remaining on the property;

(c) Preventing mosquito larvae from growing in standing water; and

(d) Preventing any other condition that creates a public nuisance.

3. If a person violates subsection 2, the applicable governmental entity shall mail to the last known address of the person, by certified mail, a notice:

(a) Describing the violation;

(b) Informing the person that a civil penalty may be imposed pursuant to this section unless the person acts to correct the violation within 14 days after the date of receipt of the notice and completes the correction within 30 days after the date of receipt of the notice; and

(c) Informing the person that the person may contest the allegation pursuant to subsection 4.

4. If a person, within 5 days after a notice is mailed to the person pursuant to subsection 3, requests a hearing to contest the allegation of a violation of subsection 2, the applicable governmental entity shall apply for a hearing before a court of competent jurisdiction.

5. Except as otherwise provided in subsection 8, in addition to any other penalty, the applicable governmental entity may impose a civil penalty of not more than \$1,000 per day for a violation of subsection 2:

(a) Commencing on the day following the expiration of the period of time described in subsection 3; or

(b) If the person requested a hearing pursuant to subsection 4, commencing on the day following a determination by the court in favor of the applicable governmental entity.

6. The applicable governmental entity may waive or extend the period of time described in subsection 3 if:

(a) The person to whom a notice is sent pursuant to subsection 3 makes a good faith effort to correct the violation; and

(b) The violation cannot be corrected in the period of time described in subsection 3.

7. Any penalty collected by the applicable governmental entity pursuant to this section must be directed to local nuisance abatement programs.

8. The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by a local ordinance. This section shall not be deemed to preempt any local ordinance.

9. If the applicable governmental entity assesses any penalty pursuant to this section, any lien related thereto must be recorded in the office of the county recorder.

10. As used in this section, “applicable governmental entity” means:

(a) If the property is within the boundaries of a city, the governing body of the city; and

(b) If the property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.

Sec. 10. NRS 107.110 is hereby repealed.

Explanation. Duplicates NRS 40.464. See explanation in Sec. 9 above.

Sec. 11. Amend NRS 40.495 to read as follows:

Explanation. The statute contains a duplicate definition of "foreclosure sale" which is no longer necessary.

NRS 40.495 Waiver of rights; separate action to enforce obligation; limitation on amount of judgment; available defenses.

1. The provisions of NRS 40.475 and 40.485 may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection 5, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of NRS 40.430. If a guarantor, surety or other obligor waives the provisions of NRS 40.430, an action for the

enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

- (a) An action on the debt;
- (b) The exercise of any power of sale;
- (c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and
- (d) Any other proceeding against a mortgagor or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of NRS 40.451 to 40.4639, inclusive.

4. If, before a foreclosure sale of real property, the obligee commences an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon the real property:

- (a) The court must hold a hearing and take evidence presented by either party concerning the fair market value of the property as of the date of the commencement of the action. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing.

(b) After the hearing, if the court awards a money judgment against the guarantor, surety or other obligor who is personally liable for the debt, the court must not render judgment for more than:

(1) The amount by which the amount of the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action; or

(2) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured,

→ whichever is the lesser amount.

5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

(a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;

(b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;

(c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or

(d) Is secured by real property upon which:

(1) The owner maintains the owner's principal residence;

(2) There is not more than one residential structure; and

(3) Not more than four families reside.

~~[6. As used in this section, "foreclosure sale" has the meaning ascribed to it in NRS 40.462.]~~

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL No. 2.

NRS CHAPTER 40.455 DEFICIENCY “APPLICATION” PROVISIONS

Brief Narrative:

NRS 40.455 deals with the process by which a creditor obtains a judgment for the balance of a real estate secured debt (the “deficiency”) following a foreclosure sale. This process includes the requirement of an “application” to the court within 6 months after the foreclosure sale. The purpose of this proposal is to provide that a pre-foreclosure complaint/pleading against certain non-borrower obligors on the debt counts as an “application” for purposes of the NRS 40.455 process. This will remove a potential trap for unwary creditors, who, in exercising their rights under NRS 40.495 in a pre-foreclosure action, may not realize the need upon completion of foreclosure to file an additional “application” under NRS 40.455 (given that the party against whom relief is sought is already an adverse party in a pending court proceeding). An example of this pitfall in play can be seen in the situation described in the Nevada Supreme Court’s recent decision in Lavi v. Eighth Judicial Dist. Ct., No. 58968, 130 NEV., Advance Op. 38 (Nev. May 29, 2014). Removing this pitfall causes no apparent injury to any party, as the non-obligor borrowers no longer receiving additional “application notice” are already on notice pursuant to the pre-foreclosure complaint/pleading, while eliminating this trap would arguably add certainty and fairness to commercial dealings in Nevada, thereby improving commerce within our State.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. This was not introduced in prior sessions.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

NRS 40.455 Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust; exceptions.

1. Except as otherwise provided in subsection 3, upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee's sale held pursuant to NRS 107.080, respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

2. If the indebtedness is secured by more than one parcel of real property, more than one interest in the real property or more than one mortgage or deed of trust, the 6-month period begins to run after the date of the foreclosure sale or trustee's sale of the last parcel or other interest in the real property securing the indebtedness, but in no event may the application be filed more than 2 years after the initial foreclosure sale or trustee's sale.

3. If the judgment creditor or the beneficiary of the deed of trust is a financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust, even if there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust, if:

(a) The real property is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or trustee's sale;

- (b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;
- (c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust; and
- (d) The debtor or grantor did not refinance the mortgage or deed of trust after securing it.

4. As used in this section, "financial institution" has the meaning ascribed to it in NRS 363A.050.

5. For purposes of an action against a guarantor, surety or other obligor of the indebtedness allowed under NRS 40.495, the term "application" shall include, without limitation, a complaint or other pleading filed before the date and time of the foreclosure, unless a judgment has been entered in such action as provided in NRS 40.495(4)(b).

(Added to NRS by 1969, 573; A 1979, 450; 1985, 371; 1987, 1345; 2009, 1330)

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL No. 3.

NRS CHAPTER 116 UNIT OWNER PROXIES

Brief Narrative:

Other than in connection with permitted delegate voting, NRS 116.311 limits the persons to whom a unit owner may give a proxy to: members of the owner's immediate family, a tenant of the owner who resides in the common-interest community and another unit owner who resides in the community. The amendment would permit a unit owner to give his or her proxy to the holder of a lien on the unit or a receiver for the unit. As lenders seek to better protect their interests in common interest communities, a unit owner's proxy may be requested. Unlike the abuses countered by the original limitation on the persons to whom a proxy may be given, a lien holder and a receiver each has a very specific and tangible interest in the unit. NRS 116.3116(11) also permits an association to obtain a receiver for a unit.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. This was not introduced in prior sessions.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

Section 1. Amend NRS 116.311 to read as follows:

NRS 116.311 Voting by units' owners; use of absentee ballots and proxies; voting by lessees of leased units; association prohibited from voting as owner of unit; voting without a meeting.

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

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

3. Except as otherwise provided in this section, votes allocated to a unit may be cast pursuant to a proxy executed by a unit's owner. A unit's owner may give a proxy only to a member of his or her immediate family, a tenant of the unit's owner who resides in the common-interest community, another unit's owner who resides in the common-interest community, *the holder of a security interest in the unit, a receiver for a unit appointed pursuant to NRS 107A.260* or a delegate or representative when authorized pursuant to [NRS 116.31105](#). If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through an executed proxy. A unit's owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

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

(a) The proxy must be dated.

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

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

(d) The proxy must designate each specific item on the agenda of the meeting for which the unit's owner has executed the proxy, except that the unit's owner may execute the proxy without designating any specific items on the agenda of the meeting if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy designates one or more specific items on the agenda of the meeting for which the unit's owner has executed the proxy, the proxy must indicate, for each specific item designated in the proxy, whether the

holder of the proxy must cast a vote in the affirmative or the negative on behalf of the unit's owner. If the proxy does not indicate whether the holder of the proxy must cast a vote in the affirmative or the negative for a particular item on the agenda of the meeting, the proxy must be treated, with regard to that particular item, as if the unit's owner were present but not voting on that particular item.

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

5. A proxy terminates immediately after the conclusion of the meeting, and any recessed sessions of the meeting, for which it is 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](#), 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 lessees of leased units rather than the units' owners who have leased the units:

- (a) This section applies to the lessees as if they were the units' owners;
- (b) The units' owners who have leased their units to the lessees may not cast votes on those specified matters;
- (c) The lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were the units' owners; and
- (d) The units' owners must be given notice, in the manner provided in [NRS 116.3108](#), of all meetings at which the lessees are entitled to vote.

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

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL No. 4.

NRS CHAPTER 116 ASSOCIATION LIEN NOTICES

Brief Narrative:

NRS 116.3116 through 116.31168 govern the enforcement of an association's lien for unpaid assessments. The statutory procedures were largely borrowed from the trustee's sale procedures in NRS Chapter 107 governing deeds of trust. Concerns have been raised that the Chapter 116 notice provisions do not adequately provide for notice to all parties having an interest in the affected unit. The purpose of these amendments, each of which is discussed in greater detail below, is to clarify the Chapter 116 lien foreclosure notice provisions and make certain that all persons having an interest in a unit are notified of an association foreclosure. Since 1991, when Chapter 116 was originally enacted, there have been amendments to Chapter 107 that have not been incorporated into NRS Chapter 116. The following amendments update Chapter 116 to include the later Chapter 107 changes.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. This was not introduced in prior sessions.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

Section 1. Amend NRS 116.3116 to read as follows:

Explanation. Numerous cases in Nevada state and federal courts, including the Nevada Supreme Court, involve the relative priority of an association's assessment lien and a first mortgage. This issue is primarily governed by subsection 2 of NRS 116.3116 and is not limited

to Nevada. Beginning in 2012 a study committee working through the Uniform Law Commission (ULC) examined 3-116 of the Uniform Common Interest Ownership Act (UCIOA), which is the basis for NRS 116.3116. In June 2014, the Committee proposed changes to 3-116 which were approved by ULC. The Section does not propose to adopt the position of the ULC regarding the relative priority of the association's lien and the first mortgage, which is a policy issue. The Section proposes, however, to add a new subsection 12, suggested by the ULC, to make clear that a person having a junior interest in property subject to an association foreclosure who is not notified of the foreclosure is not affected by the foreclosure. The only change from the ULC proposed language is the addition of the last part of the subsection ("as of the date...") so that the determination of who is a "record holder of a subordinate interest" is made as of a date certain.

NRS 116.3116 Liens against units for assessments.

1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

➤ The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound

account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

4. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

5. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

6. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

7. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

8. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

9. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

10. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

(b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien:

(1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive;
or

(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

11. In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

12. Foreclosure of the lien under this section shall not terminate an interest that is subordinate to the lien to any extent unless the association shall provide notice of the foreclosure to each person that is the record holder of the subordinate interest as of the date

the notice of default and election to sell described in NRS 116.31162(1)(b) is recorded and the notice of sale described in NRS 116.311635 is mailed.

Section 2. Amend NRS 116.31162 to read as follows:

Explanation. NRS 107.086(10), as amended in 2013, requires a "unit's owner" (as defined in NRS 116.095) engaged in foreclosure mediation "to pay any obligation, other than any past due obligation." ("Obligation" is defined as amounts owed to the association.) A corresponding 2013 amendment to NRS 116.31162 prohibits an association from foreclosing its lien until the trustee under the deed of trust has received documentation permitting it to continue the trustee's sale proceedings. As written, this statute only addresses completion or termination of the foreclosure mediation, not the failure to pay current assessments. This amendment, together with a corresponding change to NRS 107.086 is intended to both improve the statutory language. For example, there is no need to include (i) a definition of owner occupied housing or (ii) a reference to the recordation of a notice of default and election to sell under the first mortgage because both must exist as conditions to foreclosure mediation.) The amendment would also permit the association to foreclose if the unit's owner fails to pay current amounts as required by NRS 107.086(10). The amendment to this statute anticipates a corresponding amendment to NRS 107.086 requiring that the association be notified of the foreclosure mediation, such notice is not presently provided for.

NRS 116.31162 Foreclosure of liens: Mailing of notice of delinquent assessment; recording of notice of default and election to sell; period during which unit's owner may pay lien to avoid foreclosure; limitations on type of lien that may be foreclosed.

1. Except as otherwise provided in subsection 5 or 6, 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. An association may not mail to a unit's owner or his or her successor in interest a letter of its intent to mail a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail the notice of delinquent assessment or take any other action to collect a past due obligation from a unit's owner or his or her successor in interest unless, not earlier than 60 days after the obligation becomes past due, the association mails to the address on file for the unit's owner:

(a) A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;

(b) A proposed repayment plan; and

(c) A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing.

5. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

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

6. The association may not foreclose a lien by sale if[~~;~~:

~~(a) The unit is owner-occupied housing encumbered by a deed of trust;~~

~~(b) The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee has recorded a notice of default and election to sell with respect to the unit pursuant to subsection 2 of NRS 107.080; and~~

~~(c) The trustee of record has not recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (d) of subsection 2 of NRS 107.086.~~

~~As used in this subsection, "owner-occupied housing" has the meaning ascribed to it in NRS 107.086~~ *the association has received notice pursuant to NRS 107.086, that the unit is subject to foreclosure mediation pursuant to that statute, unless:*

(1) the trustee of record has recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (d) of subsection 2 of NRS 107.086; or

(2) the unit's owner has failed to pay to the association any amounts of the type described in subsection 1 of NRS 116.3116 that become due during the pendency of the foreclosure mediation pursuant to NRS 107.086, other than past due obligations as permitted by NRS 107.086.

Section 3. Amend NRS 107.086 to read as follows:

Explanation: This amendment is consistent with the changes to NRS 116.31162 discussed in Section 2 above. The statute is also amended to require that the association, which is affected by the foreclosure mediation, be notified of the commencement of the mediation within a specific period. The amendment also corrects an error in the defined term "unit-owners' association."

NRS 107.086 Additional requirements for sale of owner-occupied housing: Notice; form; enrollment in mediation; election to waive mediation; adoption of rules concerning mediation; applicability. [Effective through June 30, 2017.]

1. Except as otherwise provided in this subsection, in addition to the requirements of NRS 107.085, the exercise of the power of sale pursuant to NRS 107.080 with respect to any trust agreement which concerns owner-occupied housing is subject to the provisions of this section. The provisions of this section do not apply to the exercise of the power of sale if the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 includes an affidavit and a certification indicating that, pursuant to NRS 107.130, an election has been made to use the expedited procedure for the exercise of the power of sale with respect to abandoned residential property.

2. The trustee shall not exercise a power of sale pursuant to NRS 107.080 unless the trustee:

(a) Includes with the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080:

(1) Contact information which the grantor or the person who holds the title of record may use to reach a person with authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust;

(2) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(3) A notice provided by the Mediation Administrator indicating that the grantor or the person who holds the title of record will be enrolled to participate in mediation pursuant to this section if he or she pays to the Mediation Administrator his or her share of the fee established pursuant to subsection 11; and

(4) A form upon which the grantor or the person who holds the title of record may indicate an election to waive mediation pursuant to this section and one envelope addressed to the trustee and one envelope addressed to the Mediation Administrator, which the grantor or the person who holds the title of record may use to comply with the provisions of subsection 3;

(b) In addition to including the information described in paragraph (a) with the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080, provides to the grantor or the person who holds the title of record the information described in paragraph (a) concurrently with, but separately from, the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080;

(c) Serves a copy of the notice upon the Mediation Administrator;

(d) *If the owner-occupied housing is located within a common-interest community, notifies the unit-owners' association of such community, within 10 days after the mailing of the notice of default and election to sell required by subsection 3 of NRS 107.080, that the exercise of the power of sale is subject to the provisions of this section;* and

(e) Causes to be recorded in the office of the recorder of the county in which the trust property, or some part thereof, is situated:

(1) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 4 or 7 which provides that no mediation is required in the matter;
or

(2) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 8 which provides that mediation has been completed in the matter.

3. If the grantor or the person who holds the title of record elects to waive mediation, he or she shall, not later than 30 days after service of the notice in the manner required by NRS 107.080, complete the form required by subparagraph (4) of paragraph (a) of subsection 2 and return the form to the trustee and the Mediation Administrator by certified mail, return receipt requested. If the grantor or the person who holds the title of record does not elect to waive mediation, he or she shall, not later than 30 days after the service of the notice in the manner required by NRS 107.080, pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11. Upon receipt of the share of the fee established pursuant to subsection 11 owed by the grantor or the person who holds title of record, the Mediation Administrator shall notify the trustee, by certified mail, return receipt requested, of the enrollment of the grantor or person who holds the title of record to participate in mediation pursuant to this section and shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. The trustee shall notify the beneficiary of the deed of trust and every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the enrollment of the grantor or the person who holds the title of record to participate in mediation. If the grantor or person who holds the title of record is

enrolled to participate in mediation pursuant to this section, no further action may be taken to exercise the power of sale until the completion of the mediation.

4. If the grantor or the person who holds the title of record indicates on the form described in subparagraph (4) of paragraph (a) of subsection 2 an election to waive mediation or fails to pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11, as required by subsection 3, the Mediation Administrator shall, not later than 60 days after the Mediation Administrator receives the form indicating an election to waive mediation or 90 days after the service of the notice in the manner required by NRS 107.080, whichever is earlier, provide to the trustee a certificate which provides that no mediation is required in the matter.

5. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 11. The beneficiary of the deed of trust or a representative shall attend the mediation. The grantor or his or her representative, or the person who holds the title of record or his or her representative, shall attend the mediation. The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note. If the beneficiary of the deed of trust is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority.

6. If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 5 or does not have the authority or access to a person with

the authority required by subsection 5, the mediator shall prepare and submit to the Mediation Administrator a petition and recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or the representative. The court may issue an order imposing such sanctions against the beneficiary of the deed of trust or the representative as the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

7. If the grantor or the person who holds the title of record is enrolled to participate in mediation pursuant to this section but fails to attend the mediation, the Mediation Administrator shall, not later than 30 days after the scheduled mediation, provide to the trustee a certificate which states that no mediation is required in the matter.

8. If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the Mediation Administrator a recommendation that the matter be terminated. The Mediation Administrator shall, not later than 30 days after submittal of the mediator's recommendation that the matter be terminated, provide to the trustee a certificate which provides that the mediation required by this section has been completed in the matter.

9. Upon receipt of the certificate provided to the trustee by the Mediation Administrator pursuant to subsection 4, 7 or 8, if the property is located within a common-interest community, the trustee shall, ***within 10 days after its receipt of the certificate***, notify the ~~[unit-owner's]~~ ***unit-owners'*** association organized under NRS 116.3101 of the existence of the certificate.

10. During the pendency of any mediation pursuant to this section, a unit's owner must continue to pay any obligation, other than any past due obligation.

11. The Supreme Court shall adopt rules necessary to carry out the provisions of this section. The rules must, without limitation, include provisions:

(a) Designating an entity to serve as the Mediation Administrator pursuant to this section. The entities that may be so designated include, without limitation, the Administrative Office of the Courts, the district court of the county in which the property is situated or any other judicial entity.

(b) Ensuring that mediations occur in an orderly and timely manner.

(c) Requiring each party to a mediation to provide such information as the mediator determines necessary.

(d) Establishing procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith.

(e) Establishing a total fee of not more than \$400 that may be charged and collected by the Mediation Administrator for mediation services pursuant to this section and providing that the responsibility for payment of the fee must be shared equally by the parties to the mediation.

12. Except as otherwise provided in subsection 14, the provisions of this section do not apply if:

(a) The grantor or the person who holds the title of record has surrendered the property, as evidenced by a letter confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust or the mortgagee, or an authorized agent thereof; or

(b) A petition in bankruptcy has been filed with respect to the grantor or the person who holds the title of record under chapter 7, 11, 12 or 13 of Title 11 of the United States Code

and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

13. A noncommercial lender is not excluded from the application of this section.

14. The Mediation Administrator and each mediator who acts pursuant to this section in good faith and without gross negligence are immune from civil liability for those acts.

15. As used in this section:

(a) “Common-interest community” has the meaning ascribed to it in NRS 116.021.

(b) “Mediation Administrator” means the entity so designated pursuant to subsection 11.

(c) “Noncommercial lender” means a lender which makes a loan secured by a deed of trust on owner-occupied housing and which is not a bank, financial institution or other entity regulated pursuant to title 55 or 56 of NRS.

(d) “Obligation” has the meaning ascribed to it in NRS 116.310313.

(e) “Owner-occupied housing” means housing that is occupied by an owner as the owner’s primary residence. The term does not include vacant land or any time share or other property regulated under chapter 119A of NRS.

(f) “Unit’s owner” has the meaning ascribed to it in NRS 116.095.

(g) *“Unit-owners’ association” has the meaning ascribed to it in NRS 116.011.*

Section 4. Amend NRS 116.31163 to read as follows:

Explanation. These amendments are intended to clarify the language requiring that the holder of a recorded security interest on a unit and a purchaser of that unit be notified of an association lien enforcement proceeding. Presently, Chapter 116 incorporates NRS 107.090 (governing deeds of trust) by reference and requires the holder of a security interest to have notified the

association of its lien. The Section believes the language of NRS 107.090 should, with appropriate amendments, be added directly into Chapter 116, rather than incorporated by reference; this is accomplished by amending NRS 116.31168, discussed in Section 7 below. An association is able to obtain a title report before it commences its lien enforcement, therefore it can identify the holders of recorded interest as of such date. The amendments also clarify the date as of which the association is required to determine who must be notified.

NRS 116.31163 Foreclosure of liens: Mailing of notice of default and election to sell to certain interested persons. The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to:

1. Each person who has requested notice pursuant to NRS ~~[107.090 or]~~ 116.31168;
2. Any holder of a ~~[recorded]~~ security interest encumbering the unit's owner's interest ~~[who has notified the association, 30 days]~~ *recorded* before the recordation of the notice of default~~[, of the existence of the security interest]~~; and
3. A purchaser of the unit~~[, if the unit's owner has notified the association, 30 days before the recordation of the notice, that the unit is the subject of a contract of sale and]~~ *to whom* the association has been requested, *prior to the recordation of the notice of default*, to furnish the certificate required by NRS 116.4109(3).

Section 5. Amend NRS 116.311635 to read as follows:

Explanation. Chapters 116 and 107 originally referenced execution sale procedures for notice requirements. NRS Chapter 107 now contains its own notice requirements. Likewise, this amendment is intended to place the Chapter 116 lien enforcement notice requirements in Chapter

116 rather than refer to NRS Chapter 21. Additional language changes are intended to make the notice procedures more certain.

NRS 116.311635 Foreclosure of liens: Providing notice of time and place of sale; service of notice of sale; contents of notice of sale; proof of service.

1. The association or other person conducting the sale shall also, after the expiration of the 90 days *described in NRS 116.31162(1)(c)* and before selling the unit, *give notice of the time and place of sale by recording the notice of sale by:*

(a) ~~[Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on the unit's owner as follows:]~~ *Posting a similar notice particularly describing the unit, for 20 days successively, in a public place in the county where the property is situated;*

(b) *Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the unit is situated;*

(c) *Notifying the unit's owner or his or her successor in interest as follows:*

(1) A copy of the notice of sale must be mailed, on or before the date of first publication or posting, 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 to the address of the unit; and

(2) A copy of the notice of sale must be served, on or before the date of first publication or posting, in the manner set forth in subsection 2; and

(d) ~~Mail Mailing~~, on or before the date of first publication or posting, a copy of the notice by certified or registered mail, return receipt requested, to:

(1) Each person entitled to receive a copy of the notice of default and election to sell notice under [NRS 116.31163](#);

(2) The holder of a ~~[recorded]~~ security interest ~~[or the purchaser of the unit, if either of them has notified the association,]~~ *recorded* before the mailing of the notice of sale~~[, of the existence of the security interest, lease or contract of sale, as applicable; and]~~

(3) *A purchaser of the unit to whom the association has been requested, prior to the mailing of the notice of sale, to furnish the certificate required by [NRS 116.4109](#)(3);*

(4) *The occupant of the unit; and*

(5) The Ombudsman.

2. In addition to the requirements set forth in subsection 1, a copy of the notice of sale must be served:

(a) By a person who is 18 years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the notice of sale to an occupant of the unit who is of suitable age; or

(b) By posting a copy of the notice of sale in a conspicuous place on the unit.

3. Any copy of the notice of sale required to be served pursuant to this section must include:

(a) The amount necessary to satisfy the lien as of the date of the proposed sale; and

(b) The following warning in 14-point bold type:

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.

4. Proof of service of any copy of the notice of sale required to be served pursuant to this section must consist of:

(a) A certificate of mailing which evidences that the notice was mailed through the United States Postal Service; or

(b) An affidavit of service signed by the person who served the notice stating:

(1) The time of service, manner of service and location of service; and

(2) The name of the person served or, if the notice was not served on a person, a description of the location where the notice was posted on the unit.

Section 6. Amend NRS 116.31164 to read as follows:

Explanation: NRS 116.31164 follows original Chapter 107 procedures addressing the location and postponements of the lien foreclosure sale. NRS Chapter 107 has been amended to limit the number of oral postponements and eliminate the ability to have a sale out of the county where the property is located. These amendments incorporate the Chapter 107 changes. NRS Chapters 40 and 107 also now make clear when an obligor may pay amounts due and prevent a

foreclosure. In this vein, a new subsection 3 has been added which expressly permits payment of the amounts due up until the sale and thus prevent the foreclosure.

NRS 116.31164 Foreclosure of liens: Procedure for conducting sale; purchase of unit by association; execution and delivery of deed; use of proceeds of sale.

1. The sale must be conducted in the county in which the common-interest community or part of it is situated, and may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State, except that the sale may be made at the office of the association if the notice of the sale so provided~~[, whether the unit is located within the same county as the office of the association or not]~~.

2. The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale, *however:*

(a) *If the sale is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location; and*

(b) *If such a sale has been postponed by oral proclamation three times, any new sale information must be provided by notice as provided in NRS 116.311635.*

3. *At any time before the date of sale, the amounts constituting the amount of the association's lien being foreclosed may be made good by payment of the such amounts, in which case, the sale may not occur.*

~~[2.]~~4. On the day of sale originally advertised or to which the sale is postponed, at the time and place specified in the notice or postponement, the person conducting the sale may sell

the unit at public auction to the highest cash bidder. Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. The association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.

[3] 5. After the sale, the person conducting the sale shall:

(a) Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit;

(b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his or her successor or assign; and

(c) Apply the proceeds of the sale for the following purposes in the following order:

(1) The reasonable expenses of sale;

(2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;

(3) Satisfaction of the association's lien;

(4) Satisfaction in the order of priority of any subordinate claim of record; and

(5) Remittance of any excess to the unit's owner.

Section 7. Amend NRS 116.31168 to read as follows:

Explanation: NRS 116.31168 is amended to eliminate the reference to NRS 107.090 and add the actual language of NRS 107.090 into Chapter 116 with appropriate changes in terminology.

Subsection 2 of existing NRS 116.31168 addresses the waiver of default and withdrawal of a notice of default or default proceedings. Because waiver and withdrawal of default proceedings are a different subject than who must be notified, the Section's amendment would place this subsection in its own section.

NRS 116.31168 Foreclosure of liens: Requests by interested persons for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclose.

1. ~~[The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common interest community.]~~ *As used in this section,*

(a) *"recorded instrument" means:*

(1) *a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or contract for retention of title intended as security for an obligation or otherwise constituting a security interest on a unit;*

(2) *a lease or other agreement providing for the occupancy of a unit;*

↪ which instrument or some memorandum thereof has been recorded in the office of the county recorder of the county in which any part of the unit is situated

(b) *"person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, a unit being foreclosed pursuant to NRS 116.31162.*

2. *A person with an interest or any other person who is or may be held liable for any amounts which are the subject of the association's lien pursuant to NRS 116.3116 desiring a copy of a notice of default or notice of sale of the association's lien may record in the office of the county recorder of the county in which any part of the unit is situated an acknowledged request for a copy of the notice of default or of sale. The request must:*

- (a) state the name and address of the person requesting copies of the notices;*
- (b) identify the recorded instrument by stating the names of the parties thereto, the date of recordation, and the recording information where it is recorded; and*
- (c) the names of the unit's owner and the common-interest community.*

3. *The association or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 116.31162, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:*

- (a) Each person who has recorded a request for a copy of the notice; and*
- (b) Each other person with an interest whose interest or claimed interest is subordinate to the association's lien.*

4. *The association or other person conducting the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person described in subsection 3.*

~~[2. — An association may, after recording a notice of default and election to sell, waive the default and withdraw the notice or any proceeding to foreclose. The association is~~

~~thereupon restored to its former position and has the same rights as though the notice had not been recorded.]~~

Section 8. Add the following new section to NRS Chapter 116:

Explanation. As noted in the explanation to Section 7, waiver or withdrawal of default is believed to be a subject different than notice requirements. Thus NRS 116.61168(2) is placed in its own separate section.

An association may, after recording a notice of default and election to sell, waive the default and withdraw the notice or any proceeding to foreclose. The association is thereupon restored to its former position and has the same rights as though the notice had not been recorded.

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REAL PROPERTY SECTION LEGISLATIVE PROPOSAL No. 5.

NRS CHAPTER 361 TAX LIEN NOTICES

Brief Narrative:

The purpose of this amendment is to allow an association the same rights to a reconveyance from the county treasurer of tax delinquent property as are afforded to beneficiaries under deeds of trust and others.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. This was not introduced in prior sessions.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

NRS 361.585 Execution and delivery of deeds to county treasurer as trustee after period of redemption; reconveyance of property.

1. When the time allowed by law for the redemption of a property described in a certificate has expired and no redemption has been made, the tax receiver who issued the certificate, or his or her successor in office, shall execute and deliver to the county treasurer a deed of the property in trust for the use and benefit of the State and county and any officers having fees due them.
2. The county treasurer and his or her successors in office, upon obtaining a deed of any property in trust under the provisions of this chapter, shall hold that property in trust until it is sold or otherwise disposed of pursuant to the provisions of this chapter.
3. Notwithstanding the provisions of NRS 361.595 or 361.603, at any time during the 90-day period specified in NRS 361.603, or not later than 5 p.m. on the third business day before the day of the sale by a county treasurer, as specified in the notice required by NRS 361.595, of any property held in trust by him or her by virtue of any deed made pursuant to the provisions of this chapter, any person specified in subsection 4 is entitled to have the property reconveyed upon the receipt by the county treasurer of payment by or on behalf of that person of an amount equal to the taxes accrued, together with any costs, penalties and interest legally chargeable against the property. A reconveyance may not be made after expiration of the 90-day period specified in NRS 361.603.
4. Property may be reconveyed pursuant to subsection 3 to one or more of the persons specified in the following categories, or to one or more persons within a particular category, as their interests may appear of record:
 - (a) The owner.

- (b) The beneficiary under a note and deed of trust.
- (c) The mortgagee under a mortgage.
- (d) The creditor under a judgment.
- (e) The person to whom the property was assessed.
- (f) The person holding a contract to purchase the property before its conveyance to the county treasurer.
- (g) The Director of the Department of Health and Human Services if the owner has received or is receiving any benefits from Medicaid.
- (h) An association (as defined in NRS 116.011) which has caused to be recorded pursuant to NRS 116.31162 a notice of default and election to sell which has not been rescinded.*
- ~~(h)~~(i) The successor in interest of any person specified in this subsection.

5. The provisions of this section apply to land held in trust by a county treasurer on or after April 17, 1971.

[Part 50:344:1953]—(NRS A 1957, 637; 1969, 260; 1971, 639; 1973, 1087; 1979, 465; 1999, 200; 2005, 1346; 2007, 2400, 2507; 2013, 301)

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL No. 6.

NRS CHAPTER 116B HOTEL CONDOMINIUMS

Brief Narrative:

The purpose of this proposal, as explained in the accompany table, is to update NRS 116B with changes that were made to NRS 116 in 2013 incorporating the 1994 and 2008 amendments to the Uniform Common Interest Ownership Act (UCIOA). NRS 116B is based on principles set out in NRS Chapter 116, which, in turn was based on the original 1982 version of UCIOA. The 2013 changes to NRS 116 were proposed by certain members of the Section's common interest ownership committee.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. This was not introduced in prior sessions.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

CHAPTER 116B - CONDOMINIUM HOTEL ACT

PROPOSED REVISIONS - 2015²

Sec. 1. NRS Chapter 116 is amended by adding the following new section [following NRS 116.31168]:

1. Every sale made under the provisions of NRS 116.31162 to 116.31168, inclusive, vests in the purchaser the title of the unit's owner and any successors in interest without equity or right of redemption.

2. A sale made pursuant to the provisions of NRS 116.31162 to 116.31168, inclusive, must be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The association or other person conducting the sale does not substantially comply with the provisions of NRS 116.31162 to 116.31168, inclusive;

(b) Except as otherwise provided in subsection 3, an action is commenced in the county where the sale took place within 90 days after the date of the sale; and

(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 30 days after commencement of the action.

3. If proper notice is not provided pursuant to NRS 116.31162 to 116.311635, inclusive, to the unit's owner or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 2 within 120 days after the date on which the person received actual notice of the sale.

Sec. 2. NRS Chapter 116B is amended by adding the following new section [following NRS 116B.660]:

1. Every sale made under the provisions of NRS 116B.635 to 116B.660, inclusive, vests in the purchaser the title of the residential unit owner and any successors in interest without equity or right of redemption.

2. A sale made pursuant to the provisions of NRS 116B.635 to 116B.660, inclusive, must be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The hotel unit owner, the association or other person conducting the sale does not substantially comply with the provisions of NRS 116B.635 to 116B.660, inclusive;

(b) Except as otherwise provided in subsection 3, an action is commenced in the county where the sale took place within 90 days after the date of the sale; and

(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 30 days after commencement of the action.

3. If proper notice is not provided pursuant to NRS 116B.635 to 116B.645, inclusive to the residential unit owner or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 2 within 120 days after the date on which the person received actual notice of the sale.

Sec. 3. NRS Chapter 116.411 is amended as follows:

NRS 116.411 Escrow of deposits; furnishing of bond in lieu of deposit.

1. Except as otherwise provided in subsections 2, 3 and 4, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of [NRS 116.4102](#) must be placed in escrow and held either in this State or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until:

(a) Delivered to the declarant at closing;

(b) Delivered to the declarant because of the purchaser's default under a contract to purchase the unit;

(c) Released to the declarant for an additional item, improvement, optional item or alteration, but the amount so released:

(1) Must not exceed the lesser of the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for the purpose; and

(2) Must be credited upon the purchase price; or

(d) Refunded to the purchaser.

2. A deposit or advance payment made for an additional item, improvement, optional item or alteration may be deposited in escrow or delivered directly to the declarant, as the parties may contract.

3. In lieu of placing a deposit in escrow pursuant to subsection 1, the declarant may furnish a bond executed by the declarant as principal and by a corporation qualified under the laws of this State as surety, payable to the State of Nevada, and conditioned upon the performance of the declarant's duties concerning the purchase or reservation of a unit. Each bond must be in a principal sum equal to the amount of the deposit sought to be bonded. The bond must be held until:

(a) A bond cancellation notice or a reduction rider reducing the amount of the bond is provided ~~Delivered~~ to the ~~payee by the~~ declarant or the bonding company after the # closing;

(b) A bond cancellation notice or a reduction rider reducing the amount of the bond is provided. ~~Delivered~~ to the payee by the declarant or the bonding company ~~because of~~ after the purchaser's default under a contract to purchase the unit;

(c) The bonded amount is released ~~is~~ to the declarant for an additional item, improvement, optional item or alteration, but the amount so released must not exceed the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for that purpose, whichever is less; or

(d) An amount equal to the bonded amount is refunded to the purchaser.

4. Pursuant to subsection 1, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of [NRS 116.4102](#) is deemed to be placed in escrow and held in this State when the escrow holder has:

(a) The legal right to conduct business in this State;

(b) A registered agent in this State pursuant to subsection 1 of [NRS 14.020](#); and

(c) Consented to the jurisdiction of the courts of this State by:

(1) Maintaining a physical presence in this State; or

(2) Executing a written instrument containing such consent, with respect to any suit or claim, whether brought by the declarant or purchaser, relating to or arising in connection with such sale or the escrow agreement related thereto.

Sec. 4 NRS 361.585 is hereby amended as follows:

Execution and delivery of deeds to county treasurer as trustee after period of redemption; reconveyance of property.

1. When the time allowed by law for the redemption of a property described in a certificate has expired and no redemption has been made, the tax receiver who issued the certificate, or his or her successor in office, shall execute and deliver to the county treasurer a deed of the property in trust for the use and benefit of the State and county and any officers having fees due them.

2. The county treasurer and his or her successors in office, upon obtaining a deed of any property in trust under the provisions of this chapter, shall hold that property in trust until it is sold or otherwise disposed of pursuant to the provisions of this chapter.

3. Notwithstanding the provisions of NRS 361.595 or 361.603, at any time during the 90-day period specified in NRS 361.603, or before the public notice of sale by a county treasurer, pursuant to NRS 361.595, of any property held in trust by him or her by virtue of any deed made pursuant to the provisions of this chapter, any person specified in subsection 4 is entitled to have the property reconveyed upon payment to the county treasurer of an amount equal to the taxes accrued, together with any costs, penalties and interest legally chargeable against the property. A reconveyance may not be made after expiration of the 90-day period specified in NRS 361.603 or after commencement of posting or publication of public notice pursuant to NRS 361.595.

4. Property may be reconveyed pursuant to subsection 3 to one or more of the persons specified in the following categories, or to one or more persons within a particular category, as their interests may appear of record:

(a) The owner.

(b) The beneficiary under a note and deed of trust.

(c) The mortgagee under a mortgage.

(d) The creditor under a judgment.

(e) The person to whom the property was assessed.

(f) The person holding a contract to purchase the property before its conveyance to the county treasurer.

(g) The Director of the Department of Health and Human Services if the owner has received or is receiving any benefits from Medicaid.

(h) The successor in interest of any person specified in this subsection.

(i) An association created pursuant to NRS Chapters 116 or 116B.

5. The provisions of this section apply to land held in trust by a county treasurer on or after April 17, 1971.

Section 5. NRS 40.433 is hereby amended as follows:

"Mortgage or other lien" defined. As used in NRS 40.430 to 40.459, inclusive, unless the context otherwise requires, a "mortgage or other lien" includes a deed of trust, but does not include a lien which arises pursuant to chapter 108 of NRS, pursuant to an assessment under chapter 116, [116B](#), 117, 119A or 278A of NRS or pursuant to a judgment or decree of any court of competent jurisdiction.

Section 56. Chapter 116B of the NRS is hereby amended by adding thereto the provisions set forth as sections 2 to , inclusive, of this act:

Sec. 2 Except as otherwise provided in subsection 3, an association or a hotel unit owner, as applicable shall deliver any notice required to be given by the association or the hotel unit owner under this chapter to any mailing or electronic mail address a unit's owner designates. Except as otherwise provided in subsection 3, if a unit's owner has not designated a mailing or electronic mail address to which a notice must be delivered, the association or hotel unit owner, as applicable, may deliver notices by:

- (a) Hand delivery to each unit's owner;
- (b) Hand delivery, United States mail, postage paid, or commercially reasonable delivery service to the mailing address of each unit;
- (c) Electronic means, if the unit's owner has given the association or the hotel unit owner, as applicable, an electronic mail address; or
- (d) Any other method reasonably calculated to provide notice to the unit's owner.

2. The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

3. The provisions of this section do not apply:

- (a) To a notice required to be given pursuant to NRS 116B.630 to 116B.665, inclusive; or
- (b) If any other provision of this chapter specifies the manner in which a notice must be given by an association or the hotel unit owner, as applicable.

Sec. 3. —This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. § 7003(b).

Section 67. NRS 116B.010 -Definitions. -As used in this chapter, ~~unless the context otherwise requires,~~ the words and terms defined in NRS 116B.015 to 116B.240, inclusive, have the meanings ascribed to them in those sections.

Section 78. NRS 116B.020 -“Affiliate of a declarant” defined.

~~1.~~ “Affiliate of a declarant” means any person who controls, is controlled by or is under common control with a declarant.

For the purposes of this section:

~~12.~~ -A person “controls” a declarant if the person:

- ~~(a)~~ Is a general partner, officer, director or employer of the declarant;
- ~~(b)~~ Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the declarant;
- ~~(c)~~ Controls in any manner the election of a majority of the directors of the declarant; or
- ~~(d)~~ Has contributed more than 20 percent of the capital of the declarant.

~~23.~~ -A person “is controlled by” a declarant if the declarant:

- ~~(a)~~ Is a general partner, officer, director or employer of the person;
- ~~(b)~~ Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the person;
- ~~(c)~~ Controls in any manner the election of a majority of the directors of the person; or
- ~~(d)~~ Has contributed more than 20 percent of the capital of the person.

~~34.~~ -Control does not exist if the powers described in this section are held solely as security for an obligation and are not exercised.

Section 89. NRS 116B.075 -“Declarant” defined. -“Declarant” means any person or group of persons acting in concert who, as part of a common promotional plan, offers to dispose of ~~his or her or its~~ the interest of the person or a group of persons in a unit not previously disposed of, or reserves or succeeds to any special declarant's rights.

Section 910. NRS 116B.085 -“Developmental rights” defined. -“Developmental rights” means any right or combination of rights reserved by a declarant in the declaration to:

- 1. -Add real estate to a condominium hotel;
- 2. -Create residential units, common elements, limited common elements, shared components or ~~a~~-hotel unit(s) within a condominium hotel;
- 3. -Subdivide residential units or convert residential units into common elements, shared components or part of a hotel unit;
- 4. -Subdivide a hotel unit or convert a hotel unit into residential units, common elements ~~into~~ shared components;
- 5. Subdivide shared components or convert shared components into residential units, common elements or part of a hotel unit; ~~or~~ _____
- ~~—5-6. Subdivide or convert common elements into residential units, shared components or part of a hotel unit; or~~
- 7. Withdraw real estate from a condominium hotel.

Section ~~1011~~. NRS 116B.100 -“Executive board” defined. -“Executive board” means the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association.

Section ~~1412~~. NRS 116B.190 -“Purchaser” defined. -“Purchaser” means a person, other than a declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than ~~a leasehold interest, including options to renew, of less than 20 years, or as security for an obligation~~:

- 1. —A leasehold interest, including options to renew, of less than 20 years; or
- ~~±~~2. As security for an obligation.

Section ~~1213~~. NRS 116B.195 -“Real estate” defined. -“Real estate” means any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests that by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. ~~“Real estate”~~The term includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

Section ~~1314~~. NRS 116B.260 -Supplemental general principles of law applicable. -The principles of law and equity, including the law of corporations, and any other form of organization authorized by the laws of this State, the law of unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

Section ~~1415~~. NRS 116B.285 -Remedies to be liberally administered.

- 1. -The remedies provided by this chapter must be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Consequential, special or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.
- ~~—2. Any right or obligation declared by this chapter is enforceable by judicial proceeding.~~

Section ~~1516~~. NRS 116B.320 -Construction and validity of declaration and bylaws.

- 1. -The inclusion in a governing document of a provision that violates any provision of this chapter does not render any other provisions of the governing document invalid or otherwise unenforceable if the other provisions can be given effect in accordance with their original intent and the provisions of this chapter.
- 2. -The rule against perpetuities and NRS 111.103 to 111.1039, inclusive, do not apply to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to NRS 116B.420.
- 3. ~~In the event of~~ If a conflict exists between the ~~provisions of~~ the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.
- 4. -Title to any portion of a condominium hotel is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

Section ~~1617~~. NRS 116B.330 -Contents of declaration.

- 1. -The declaration for a condominium hotel must contain:

Field Code Changed

- (a) The names of the condominium hotel and the association.
- (b) The name of every county in which any part of the condominium hotel is situated.
- (c) A legally sufficient description of the real estate included in the condominium hotel.
- (d) A statement of the maximum number of units that the declarant reserves the right to create.
- (e) A description of the boundaries of each residential unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit.
- (f) A description of the shared components, hotel unit and the common elements.
- (g) A description of any limited common elements.
- (h) A description of any developmental rights and other special declarant's rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised.
- (i) If any developmental right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:
 - (1) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each developmental right or a statement that no assurances are made in those regards; and
 - (2) A statement whether, if any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right must be exercised in all or in any other portion of the remainder of that real estate.
- (j) Any other conditions or limitations under which the rights described in paragraph (h) may be exercised or will lapse.
- (k) A description of any easements benefiting or burdening the units, including easements providing the residential unit owners with rights of ingress or egress through the common elements, hotel unit or shared components for the purpose of accessing their respective units.
- (l) An allocation to the units of the allocated interests as described in this chapter, and an allocation to the residential units of their respective liability for shared expenses and other charges of the hotel unit owner.
- (m) A description of any other payments, fees and charges that may be charged by the hotel unit owner in order to offset the increased burden placed on the shared components as the result of use of residential units as transient rentals.
- (n) Any restrictions:
 - (1) On use, occupancy and alienation of the units; and
 - (2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on sale, condemnation or casualty to the unit or to the condominium hotel, or on termination of the condominium hotel.
- (o) The file number and book or other information to show wherefor recorded easements and licenses are recorded appurtenant to or included in the condominium hotel or to which any portion of the condominium hotel is or may become subject by virtue of a reservation in the declaration.
- 2-3. The declaration may contain any other matters the declarant considers appropriate.

Section ~~17~~18, NRS 116B.335 -Leasehold condominium hotels.

- 1. -Any lease expiration or termination of which may terminate the condominium hotel or reduce its size must be recorded. Every lessor of such a lease in a condominium hotel shall sign the declaration. The declaration must state:
 - (a) The recording date data for the lease or a statement of where the ~~lease is~~ recorded lease may be inspected.
 - (b) The date on which the lease is scheduled to expire.
 - (c) A legally sufficient description of the real estate subject to the lease.
 - (d) Any right of the units' owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights.
 - (e) Any right of the units' owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights.
 - (f) Any rights of the units' owners to renew the lease and the conditions of any renewal, or a statement that such rights do not exist.
- 2. -After the declaration for a leasehold condominium hotel is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit's owner who makes timely payment of his or her

share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. The leasehold interest of a unit's owner in a condominium hotel is not affected by failure of any other person to pay rent or fulfill any other covenant.

—3. -Acquisition of the leasehold interest of any unit's owner by the owner of the reversion or remainder does not merge the leasehold and freehold interests unless the leasehold interests of all units' owners subject to that reversion or remainder are acquired.

—4. -If the expiration or termination of a lease decreases the number of units in a condominium hotel, the allocated interests must be reallocated in accordance with subsection 1 of NRS 116B.225 as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

Section ~~18~~19. NRS 116B.350 -Plats.

—1. -Plats are a part of the declaration and are required for all condominium hotels. Each plat must be clear and legible and contain a certification that the plat contains all information required by this section.

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

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

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

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

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

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

—(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plats recorded pursuant to subsection 4 and that unit's identifying number;

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

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

—3. -Each plat must be certified by a professional land surveyor.

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

—5. -Unless the declaration provides otherwise, when the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part, the elevations need not be depicted on the plats.

—6. -Upon exercising any developmental right, the declarant shall prepare, execute and record new or amended plats necessary to conform to the requirements of ~~this~~ subsection 2.

Section ~~19~~20. NRS 116B.375 -Subdivision of units.

—1. -If the declaration expressly so permits, a residential unit may be subdivided into two or more residential units upon receipt of consent from the hotel unit owner. Subject to the ~~provisions of the~~ declaration and law other ~~provisions of law than this chapter~~, upon receipt of consent from the hotel unit owner to subdivide a residential unit, the association shall prepare, execute and record an amendment to the declaration, including the plats, subdividing that residential unit.

—2. -The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each residential unit created, and reallocate the allocated interests and allocated liability for shared expenses formerly allocated to the subdivided residential unit to the new residential units in any reasonable manner prescribed by the owner of the subdivided ~~unit~~ unit or on any other basis the declaration requires.

Section ~~20~~21. NRS 116B.385 -Termination of condominium hotel.

—1. -Except in the case of a taking of the condominium hotel by eminent domain, termination of the condominium hotel or the declaration requires approval by:

—(a) The owners representing at least 80 percent of the votes in the association allocated to the residential unit owners; and

—(b) The hotel unit owner.

—2. -An agreement to terminate the condominium hotel or the declaration must be evidenced by the execution of an agreement to terminate in the same manner as a deed by the hotel unit owner and the requisite number of units'

owners. The agreement to terminate must specify a date after which the agreement will be void unless it is recorded before that date.

—3. -An agreement to terminate may provide that all of the common elements, shared components or units must be sold following termination. If, pursuant to the agreement, any real estate in the condominium hotel is to be sold following termination, the agreement must set forth the minimum terms of the sale.

—4. -The hotel unit owner, on behalf of the units' owners, may contract for the sale of real estate owned by the units' owners in a condominium hotel, but the contract is not binding on the units' owners and the declarant or hotel unit owner, as applicable, until approved pursuant to subsections 1 and 2. If any real estate owned by the units' owners is to be sold following termination, title to that real estate, upon termination, vests in the hotel unit owner as trustee for the holders of all interests in the units. Thereafter, the hotel unit owner has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the hotel unit owner continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to units' owners and lienholders as their interests may appear, in accordance with NRS 116B.390 and 116B.395. Unless otherwise specified in the agreement to terminate, as long as the unit's owner holds title to the real estate, each unit's owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted such unit's owner's unit. During the period of that occupancy, each unit's owner and his or her successors in interest remain liable for all assessments, shared expenses and other obligations imposed on units' owners by this chapter or the declaration.

—5. -If the real estate is not to be sold following termination, title to the common elements and residential units vests in the units' owners upon termination as tenants in common in proportion to their respective interests in the association as provided in NRS 116B.395, and liens on the units shift accordingly. While the tenancy in common exists, each unit's owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted such unit's owner's unit.

—6. -Following termination of the condominium hotel, the proceeds of ~~any~~ sale of real estate, together with the assets of the association, are held by the hotel unit owner as trustee for units' owners and holders of liens on the units as their interests may appear.

Section ~~2122~~ NRS 116B.415 -Organization of unit-owners' association.

—1. -A unit-owners' association must be organized not later than the date the first residential unit in the condominium hotel is conveyed.

—2. -The membership of the association at all times consists exclusively of all units' owners, including the hotel unit and any other units owned by the declarant or, following termination of the condominium hotel, of all owners of former units entitled to distributions of proceeds under the declaration, or their heirs, successors or assigns.

—3. -The association must:

—(a) Be organized as a profit or nonprofit corporation, association, limited-liability company, trust ~~or~~ partnership or any other form of organization authorized by the law of this State;

—(b) Include in its articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents of organization, or any amendment thereof, that the purpose of the corporation, association, limited-liability company, trust or partnership is to operate as an association pursuant to this chapter;

—(c) Contain in its name the words "community association," "homeowners' association" or "unit-owners' association"; and

—(d) Comply with the provisions of chapters 78, 81, 82, 86, 87, 87A, 88 and 88A of NRS when filing with the Secretary of State its articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents of organization, or any amendment thereof.

—4. -Unless otherwise provided in the declaration, the association shall not have any ownership or control over the hotel unit or the shared components.

Section ~~2223~~ NRS 116B.420 -Powers of unit-owners' association. -Subject to the provisions of the declaration, the association ~~do any or all of the following~~:

—1. ~~Adopt~~ Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws, ~~rules and may adopt and amend rules~~ and regulations pertaining to the common elements. Unless otherwise provided in the declaration,

bylaws, rules or regulations adopted by the association must not attempt to exercise any control over the hotel unit or the shared components.

—2. ~~Adopt~~Shall adopt and may amend budgets ~~for revenues, expenditures and reserves relating to~~in accordance with the common elements and requirements set forth in NRS 116B.600, may collect assessments for common expenses from the units' owners, and may invest funds of the association in accordance with the requirements set forth in Sec. below.

—3. ~~Hire~~May hire and discharge managing agents and other employees, agents and independent contractors of the association.

—4. ~~Institute~~May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the condominium hotel.

—5. ~~Make~~May make contracts and incur liabilities with regard to the common elements.

—6. ~~Regulate~~May regulate the use, maintenance, repair, replacement and modification of common elements.

—7. ~~Cause~~May cause additional improvements to be made as a part of the common elements.

—8. ~~Acquire~~May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to NRS 116B.560.

—9. ~~Grant~~May grant easements, leases, licenses and concessions through or over the common elements.

—10. ~~Impose~~May impose and receive any payments, fees or charges for the use, rental or operation of the common elements.

—11. ~~Impose~~May impose charges for late payment of assessments on common elements.

—12. ~~Impose~~May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116B.430.

—13. ~~Provide~~May provide for the indemnification of its officers and executive board and maintain ~~directors' directors~~ and ~~officers' officers~~ liability insurance.

—14. ~~Assign~~May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

—15. ~~Exercise~~May exercise any other powers conferred by the declaration or bylaws.

—16. ~~Exercise~~May exercise any other powers necessary and proper for the governance and operation of the association.

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The following section shall be added as Section 2424:

Funds of association to be deposited or invested at certain financial institutions.

1. Except as otherwise provided in subsection 2, an association, a member of the executive board, or a community manager shall deposit or invest all funds of the association at a financial institution which:

(a) Is located in this State;

(b) Is qualified to conduct business in this State; or

(c) Has consented to be subject to the jurisdiction, including the power to subpoena, of the courts of this State and the Division.

2. Except as otherwise provided by the governing documents, in addition to the requirements of subsection 1, an association shall deposit, maintain and invest all funds of the association:

(a) In a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation;

(b) With a private insurer approved pursuant to NRS 678.755; or

(c) In a government security backed by the full faith and credit of the Government of the United States.

3. The Commission shall adopt regulations prescribing the contents of the declaration to be executed and signed by a financial institution located outside of this State to submit to consent to the jurisdiction of the courts of this State and the Division.

Section 2425. NRS 116B.425 -Power of executive board to act on behalf of association; members and officers are fiduciaries; duty of care; application of business-judgment rule; limitations on power.

—1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board ~~may act~~acts in all instances on behalf of the association. In the performance of their duties, the

officers and members of the executive board are fiduciaries. ~~The Officers and~~ members of the executive board ~~are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule;~~

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

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

2. ~~The executive board may not act on behalf of the association to amend to:~~

~~(a) Amend the declaration, to terminate;~~

~~(b) Terminate the condominium hotel, or to elect;~~

~~(c) Elect members of the executive board or determine their qualifications, powers and duties or terms of office, but unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association, the executive board may fill vacancies in its membership for the unexpired portion of any term, or until the next regularly scheduled election of executive board members, whichever is earlier. Any executive board member elected to a previously vacant position which was temporarily filled by board appointment may only be elected to fulfill the remainder of the unexpired portion of the term.~~

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

3. The executive board shall adopt budgets as provided in NRS 116B.600.

Section ~~2526~~. NRS 116B.430 -Power of executive board to impose fines and other sanctions for violations of governing documents; procedural requirements; continuing violations; collection of past due fines.

—1. Except as otherwise provided in this section and unless the declaration provides otherwise, if a residential unit owner or the tenant or guest of a residential unit owner violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

—(a) Prohibit, for a reasonable time, the residential unit owner or the tenant or guest of the residential unit owner from:

—(1) Voting on matters related to the association.

—(2) Using the common elements. The provisions of this subparagraph do not prohibit the residential unit owner or the tenant or guest of the residential unit owner from using any portion of the common elements, if any, as is necessary for vehicular or pedestrian ingress or egress to or from the residential unit.

—(b) Impose a fine against the residential unit owner or the tenant or guest of the residential unit owner for each violation. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the residential unit owners or residents of the condominium hotel, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the residential unit owners or residents or guests of the condominium hotel, 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 interest, 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 unless:

—(a) Not less than 30 days before the violation, 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 association's discovery of the violation, 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.

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. —3—

- ~~4.~~ The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.
- ~~4-5.~~ The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:
- ~~—(a) Pays the fine;~~
 - ~~—(b) Executes a written waiver of the right to the hearing; or~~
 - ~~—(c) Fails to appear at the hearing after being provided with proper notice of the hearing.~~
- ~~5-6.~~ If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.
- ~~6-7.~~ If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.
- ~~7-8.~~ The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.
- ~~8-9.~~ Any past due fine:
- ~~—(a) Bears interest at the rate established by the association, not to exceed the legal rate per annum.~~
 - ~~—(b) May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the condominium hotel, the rate established by the association for the costs of collecting the past due fine:~~
 - ~~——(1) May not exceed \$20, if the outstanding balance is less than \$200.~~
 - ~~——(2) May not exceed \$50, if the outstanding balance is \$200 or more, but is less than \$500.~~
 - ~~——(3) May not exceed \$100, if the outstanding balance is \$500 or more, but is less than \$1,000.~~
 - ~~——(4) May not exceed \$250, if the outstanding balance is \$1,000 or more, but is less than \$5,000.~~
 - ~~——(5) May not exceed \$500, if the outstanding balance is \$5,000 or more.~~
 - ~~—(c) May include any costs incurred by the association during a civil action to enforce the payment of the past due fine.~~
- ~~10-9.~~ Unless the declaration provides otherwise, nothing in this section shall be construed as giving the association the power to sanction a unit's owner for matters related to the hotel unit or the shared components.
- ~~11-10.~~ As used in this section:
- ~~—(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.~~
 - ~~—(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any interest, charges for late payment or costs of collecting the past due fine are added.~~

Section ~~2627~~. NRS 116B.440 -Period of declarant's control of association; representation of units' owners on executive board.

- ~~1.~~ -Except as otherwise provided in this section, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by a declarant, may appoint and remove the officers of the association and members of the executive board. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period and, in that event, the declarant may require, for the duration of the period of declarant's control, that the specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Regardless of the period provided in the declaration, a period of declarant's control terminates not later than the earliest of:
- ~~—(a) Sixty days after conveyance of 75 percent of the residential units that may be created to residential unit owners other than a declarant;~~

—(b) Five years after all declarants have ceased to offer residential units for sale in the ordinary course of business; or

—(c) Five years after any right to add new residential units was last exercised,

↪ whichever occurs earlier, or

~~—2. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant's control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.~~

~~—3. (d) The day any declarant, after giving notice to units' owners, records an instrument voluntarily surrendering all rights to control activities of the association.~~

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~~2.~~ Not later than 60 days after conveyance of 25 percent of the residential units that may be created to units' owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by residential unit owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the residential units that may be created to residential unit owners other than a declarant, not less than ~~33 1/3 percent~~ one-third of the members of the executive board must be elected by residential unit owners other than the declarant.

Section ~~2728~~. NRS 116B.450 -Removal of member of executive board; indemnification and defense of member of executive board.

—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 or elected by the hotel unit owner, 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. 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 ballot 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 meeting to open and count 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.~~

~~3.4.~~ The removal of any member of the executive board must be conducted by secret written ballot as follows:

—(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 condominium hotel 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.

~~3. If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his or her role as a member of the board, the association shall indemnify the member for his or her losses or claims, and undertake all costs of defense, unless it is proven that the member acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against the association, but may be recovered from persons whose activity gave rise to the damages.~~

Section 2829. NRS 116B.490 -Bylaws.

- ~~1. The bylaws of the association must provide:~~
- ~~(a) Provide the The number of members of the executive board and the titles of the officers of the association;~~
- ~~(b) Provide for For election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;~~
- ~~(c) Specify the The qualifications, powers and duties, terms of office and manner of electing and removing officers of the association and members of the executive board and filling vacancies;~~
- ~~(d) Specify the Which powers, if any, that the executive board or the officers of the association may delegate to other persons, including a community manager;~~
- ~~(e) Specify Which of its officers who may prepare, execute, certify and record amendments to the declaration on behalf of the association;~~
- ~~(f) Provide procedural Procedural rules for conducting meetings of the association;~~
- ~~(g) A Specify a method for the unit owners' to amend the bylaws; and~~
- ~~(h) Provide P procedural rules for conducting elections;~~
- ~~(i) Contain any provision necessary to satisfy the requirements in this chapter or the declaration concerning meetings, voting, quorums and other activities of the association; and-~~
- ~~(j) Provide for any matter required by the law of this State other than this chapter to appear in the bylaws of the organizations of the same type as the association.~~
- ~~2. Except as otherwise provided in this chapter or in the declaration, the bylaws may provide for any other necessary or appropriate matters, including, without limitation, matters that could be adopted as rules. the association deems necessary and appropriate.~~
- ~~3. The bylaws must be written in plain English.~~
- ~~4. The bylaws must not attempt to exercise any control over the shared components or the hotel unit.~~

Section 2930. NRS 116B.505 -Limitation on power of hotel unit owner to impose sanctions for violations of rules; exception; procedural requirements.

- ~~1. A hotel unit owner may not prohibit use of the shared components pursuant to paragraph (d) of subsection 4 of NRS 116B.340 unless:~~
- ~~(a) Not less than 30 days before the violation, the residential unit owner against whom the prohibition will be imposed has been provided with written notice of the applicable provisions of the rules and regulations established by the hotel unit owner that form the basis of the violation; and~~
- ~~(b) Within 10 days after the discovery of the violation by the hotel unit owner, the residential unit owner against whom the prohibition will be imposed has been provided with:~~
 - ~~(1) Written notice specifying the details of the violation; and~~
 - ~~(2) A reasonable opportunity to contest the violation.~~
- ~~2. Within 10 days after receiving the written notice specifying the details of the violation, the residential unit owner may:~~
- ~~(a) Provide to the hotel unit owner any written information or any explanation relating to the violation; or~~
- ~~(b) Request a meeting with the hotel unit owner to present the information or explanation relating to the violation.~~
- ~~3. A meeting requested by a residential unit owner pursuant to subsection 2 must be held as soon as practicable, but not later than 30 days after the date on which the request for a meeting is received by the hotel unit owner. The meeting may be held in person, by telephone or by videoconferencing.~~
- ~~4. The provisions of this section establish the minimum procedural requirements that the hotel unit owner must follow before the hotel unit owner may prohibit use of the shared components by a residential unit owner. The provisions of this section do not preempt any provisions of the rules and regulations established by the hotel unit owner that provide greater procedural protections.~~

Field Code Changed

Section ~~3031~~ NRS 116B.520 -Meetings of units' owners of association; frequency of meetings; calling special meetings or removal elections; requirements concerning notice and agendas; dissemination of schedule of fines; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings; presentation of written report concerning budgets for shared expenses.

—1. -A meeting of the units' owners must be held:

—(a) As required by the declaration; and

—(b) At least once each year.

—2. -Special meetings of the units' owners may be called by the president, by a majority of the executive board or 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. The same number of units' owners may also call a removal election pursuant to NRS 116B.450. To call a special meeting or 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 section and which is mailed, return receipt requested, or served by a process server to the executive board for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received ~~received. If the petition calls for a removal election, the secret written ballots for the removal election must be sent in the manner required by~~ ~~HYPERLINK "http://leg.state.nv.us/NRS/NRS-116B.html" \ "NRS116BSec450" NRS 116B.450 not less than 15 days or more than 60 days after the date on which the petition is received, and 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.~~

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be ~~hand delivered, 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 or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner,~~ given to the unit owners in manner set forth in section 4 herein. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

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

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

—4. -The agenda for a meeting of the units' owners must consist of:

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

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

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

~~—5. 5 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.~~

~~—6.~~ The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon

request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

~~7.~~ 6. Except as otherwise provided in this subsection the minutes of each meeting of the units' owners must include:

- ~~(a)~~ The date, time and place of the meeting;
- ~~(b)~~ The substance of all matters proposed, discussed or decided at the meeting; and
- ~~(c)~~ The substance of remarks made by any unit's owner at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

~~8.~~ 7. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

~~9.~~ 8. The association shall maintain the minutes of each meeting of the units' owners until the condominium hotel is terminated.

~~10.~~ 9. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the other units' owners who are in attendance at the meeting.

~~10.~~ ~~11.~~ The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

~~11.~~ 12. The hotel unit owner or his or her designated agent shall attend the annual meeting of the units' owners to present a written report concerning the status of the current year's budget for the shared expenses and discuss any material issues that will affect the preparation of the next year's budget for shared expenses.

~~12.~~ 13. As used in this section, "emergency" means any occurrence or combination of occurrences that:

- ~~(a)~~ Could not have been reasonably foreseen;
- ~~(b)~~ Affects the health, welfare and safety of the units' owners or residents of the condominium hotel;
- ~~(c)~~ Requires the immediate attention of, and possible action by, the executive board; and
- ~~(d)~~ Makes it impracticable to comply with the provisions of subsection 3 or 4.

Section ~~34~~32. NRS 116B.525 -Meetings of executive board; frequency of meetings; requirements concerning notice and agendas; periodic review of certain financial and legal matters at meetings; requirements concerning minutes of meetings; right of units' owners to make audio recordings of certain meetings.

~~1.~~ -A meeting of the executive board must be held at least once a year.

~~2.~~ -Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 30 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

~~(a)~~ Sent prepaid by United States mail Given to the ~~mailing address~~ Unit Owners in accordance with section 11.1 of each unit within the condominium hotel ~~this fact~~; or to any

~~(b)~~ Published in a newsletter or other ~~mailing address designated in writing by the~~ similar publication circulated to each unit's owner; or

~~(b)~~ If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner.

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

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

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

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

- 5. -The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116B.520. The period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.
- 6. -At least once every year, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:
 - (a) A current year-to-date financial statement of the association;
 - (b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;
 - (c) A current reconciliation of the operating account of the association;
 - (d) A current reconciliation of the reserve account of the association;
 - (e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and
 - (f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.
- 7. -The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the executive board. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meetings to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.
- 8. -Except as otherwise provided in subsection 9 and NRS 116B.530, the minutes of each meeting of the executive board must include:
 - (a) The date, time and place of the meeting;
 - (b) The names of those members of the executive board who were present and of those members who were absent at the meeting;
 - (c) The substance of all matters proposed, discussed or decided at the meeting;
 - (d) A record of each member's vote on any matter decided by vote at the meeting; and
 - (e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.
- 9. -The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.
- 10. -The association shall maintain the minutes of each meeting of the executive board until the condominium hotel is terminated.
- 11. -A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.
- 12. -As used in this section, "emergency" means any occurrence or combination of occurrences that:
 - (a) Could not have been reasonably foreseen;
 - (b) Affects the health, welfare and safety of the units' owners or residents of the condominium hotel;
 - (c) Requires the immediate attention of, and possible action by, the executive board; and
 - (d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Section ~~3233~~. NRS 116B.545 -Quorum.

1. ~~—1-~~ Except as otherwise provided in this section and NRS 116B.445, and except when the governing documents provide otherwise, a quorum is present throughout any meeting of the ~~association~~ unit's owners if the number of members of the ~~association who are present in person or by proxy at the beginning of the meeting equals or exceeds~~ unit's owners if persons entitled to cast 20 percent of the ~~total number of voting members of votes in~~ the association:
 - ~~(a) —2-~~ Are present in person;
 - Are present by proxy;
 - Have cast absentee ballots in accordance with paragraph 2 of subsection (d) of NRS 116B.550; or

(d) Are present by any combination of paragraphs (a), (b) and (c).

2. If the governing documents of an association contain a quorum requirement for a meeting of the association that is greater than the 20 percent required by subsection 1 and, after proper notice has been given for a meeting, the members of the association who are present in person or by proxy at the meeting are unable to hold the meeting because a quorum is not present at the beginning of the meeting, the members who are present in person at the meeting may adjourn the meeting to a time that is not less than 48 hours or more than 30 days after the date of the meeting. At the subsequent meeting:

—(a) A quorum shall be deemed to be present if the number of members of the association who are present in person or by proxy at the beginning of the subsequent meeting equals or exceeds 20 percent of the total number of voting members of the association; and

—(b) If such a quorum is deemed to be present but the actual number of members who are present in person or by proxy at the beginning of the subsequent meeting is less than the number of members who are required for a quorum under the governing documents, the members who are present in person or by proxy at the subsequent meeting may take action only on those matters that were included as items on the agenda of the original meeting.

➔ The provisions of this subsection do not change the actual number of votes that are required under the governing documents for taking action on any particular matter.

—3. Unless the governing documents specify a larger ~~percentage~~number, a quorum of the executive board is deemed present throughout for the purposes of determining the validity of any action taken any action taken at a meeting of the executive board only if personsindividuals, entitled to cast 50 percenta majority of the votes on that board are present time a vote regarding that action is taken, the affirmative vote of a majority of the members present is the act of the executive board unless a greater vote is required by the declaration or the bylaws.at the beginning of the meeting.

—4. Meetings of the association must be conducted in accordance with the most recent edition of Robert's Rules of Order Revised, unless the bylaws or resolution of the executive board adopted before the meeting provide otherwise.

Section ~~2334~~. NRS 116B.550 -Voting by units' owners; use of proxies; voting by lessees of leased units; association prohibited from voting as owner of unit.

—1. If only one of several owners of a unit is present at a meeting of the association1. 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 that the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

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

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

3. Except as otherwise provided in this section, votes allocated to a unit may be cast pursuant to a proxy executed by a unit's owner. A unit's owner may give a proxy only to a member of his or her immediate family, a tenant of the unit's owner who resides in the condominium hotel, the hotel unit owner or another unit's owner who resides in the condominium hotel. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through an executed proxy. A unit's owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

- ~~3.~~ 4. Before a vote may be cast pursuant to a proxy:
 - ~~(a)~~ The proxy must be dated.
 - ~~(b)~~ The proxy must not purport to be revocable without notice.
 - ~~(c)~~ The proxy must designate the meeting for which it is executed and such a designation includes any recessed session of that meeting
 - ~~(d)~~ The proxy must designate each specific item on the agenda of the meeting for which the unit's owner has executed the proxy, except that the unit's owner may execute the proxy without designating any specific items on the agenda of the meeting if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy designates one or more specific items on the agenda of the meeting for which the unit's owner has executed the proxy, the proxy must indicate, for each specific item designated in the proxy, whether the holder of the proxy must cast a vote in the affirmative or the negative on behalf of the unit's owner. If the proxy does not indicate whether the holder of the proxy must cast a vote in the affirmative or the negative for a particular item on the agenda of the meeting, the proxy must be treated, with regard to that particular item, as if the unit's owner were present but not voting on that particular item.
 - ~~(e)~~ The holder of the proxy must disclose at the beginning of the meeting for which the proxy is executed and any recessed session of that meeting the number of proxies pursuant to which the holder will be casting votes.
- ~~4.~~ 5. A proxy terminates immediately after the conclusion of the meeting, and any rescission sessions of the meeting, for which it is executed.
- ~~5.~~ 6. 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.
- ~~6.~~ 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.
- ~~7.~~ 8. A proxy is void if the proxy or the holder of the proxy violates any provision of subsections ~~4~~ 3 to ~~6~~ 7, inclusive.
- ~~8.~~ 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 116B.445 and NRS 116B.450, 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.
- 810. If the declaration requires that votes on specified matters affecting the condominium hotel must be cast by the lessees of leased units rather than the units' owners who have leased the units:
 - ~~(a) The provisions of subsections 1 to 7, inclusive, apply~~ This section applies to the lessees as if they were the units' owners;
 - ~~(b)~~ The units' owners who have leased their units to the lessees may not cast votes on those specified matters;
 - ~~(c)~~ The lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were the units' owners; and
 - ~~(d)~~ The units' owners must be given notice, in the manner provided in this chapter, of all meetings at which the lessees are entitled to vote.
- ~~9.~~ 11. If any votes are allocated to a unit that is owned by the association, those votes may not be cast, by proxy or otherwise, for any purpose.

Section ~~34~~ 35. NRS 116B.555 -Tort and contract liability. -

1. A unit's owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the condition or use of the common elements, if any. Neither the association nor any unit's owner except the declarant or hotel unit owner, as applicable, is liable for that declarant's or hotel unit owner's torts in connection with any part of the condominium hotel which that declarant or hotel unit owner, as applicable, owns or has the responsibility to maintain. ~~Otherwise, an~~
2. An action alleging a wrong done by the association ~~must, including, without limitation, an action arising out of the condition or use of the common elements, may~~ be ~~brought~~ maintained only against the association and not against any unit's owner. If the wrong occurred during any period of declarant's control over the association and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit's owner for all tort losses not covered by insurance suffered by the association or that unit's owner, and all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association.
3. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant's control terminates. A unit's owner is not precluded from maintaining an action contemplated by this section because he or she is a unit's owner or a member or officer of the association. Liens resulting from judgments against the association are governed by NRS 116B.665.

Section ~~35~~36. NRS 116B.565 Insurance: General requirements.

- 1. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, and unless the declaration states otherwise, the association shall maintain, to the extent reasonably available, ~~both of the following and subject to reasonable deductibles:~~
- (a) Property insurance on the common elements, to the extent insurable, insuring against all risks of direct physical loss commonly insured against in an amount specified in the declaration.
- (b) ~~Liability~~ Commercial general liability insurance on the common elements, including insurance for medical payments, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements—

(c) Crime insurance which includes coverage for dishonest acts by members of the executive board and the officers, employees, agents, directors and volunteers of the association and which extends coverage to any business entity that acts as the community manager of the association and the employees of that entity. Such insurance may not contain a conviction requirement, and the minimum amount of the policy must be not less than an amount equal to 3 months of aggregate assessments on all units plus reserve funds or \$5,000,000, whichever is less.

~~And~~ 2. Commencing not later than the time of the first conveyance of a residential unit to a person other than the declarant, and unless the declaration states otherwise, the hotel unit owner shall maintain, to the extent reasonably available, the following:

- (a) Property and casualty insurance on the residential units, hotel unit and shared components insuring against all risks of direct physical loss commonly insured against in an amount specified in the declaration. An insurance policy issued to the hotel unit owner does not prevent a unit's owner from obtaining insurance for his or her own benefit.
- (b) Liability insurance on the residential units, hotel unit and shared components, including insurance for medical payments, in an amount set forth in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the residential units, shared components or the hotel unit.

Section ~~36~~37. NRS 116B.570 Insurance: Policies. Insurance policies carried pursuant to this chapter must provide to the extent reasonably available that:

- 1. Each unit's owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the association;

- 2. -The insurer waives its right to subrogation under the policy against any unit's owner or member of his or her household;
- 3. -No act or omission by any unit's owner, unless acting within the scope of his or her authority on behalf of the association, ~~will void voids~~ the policy or ~~be is~~ a condition to recovery under the policy; and
- 4. -If, at the time of a loss under the policy, there is other insurance in the name of a unit's owner covering the same risk covered by the policy, the association's policy or the hotel unit owners' policy, as applicable, provides primary insurance.

Section ~~3738~~. NRS 116B.590 -Assessments for common expenses; funding of adequate reserves; collection of interest on past due assessments; calculation of assessments for particular types of common expenses; notice of meetings regarding assessments for capital improvements.

- 1. -Until the association makes an assessment for common expenses for the common elements, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in this chapter. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.
- 2. -Except for assessments under subsections 4 to 7, inclusive, or as otherwise provided in this chapter:
 - (a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to NRS 116B.340.
 - (b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserves may be used only for those purposes and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements are necessary.
- 3. -Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.
- 4. -To the extent required by the declaration:
 - (a) Any common expense ~~or portion thereof~~ benefiting fewer than all of the units ~~must or their owners may~~ be assessed exclusively against the units or units' owners benefited; and
 - (b) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.
- 5. -Assessments to pay a judgment against the association may be made only against the units in the condominium hotel at the time the judgment was entered, in proportion to their liabilities for common expenses.
- 6. -If damage to a unit or other part of the common interest community condominium hotel, or if any other common expense is caused by the willful misconduct or gross negligence of any unit's owner, tenant or invitee, the association may assess that expense exclusively against his or her unit, even if the association maintains insurance with respect to that damage or common expense, unless the damage or other common expense is caused by a vehicle and is committed by a person who is delivering goods to, or performing services for, the unit's owner, tenant or invitee or the unit's owner or tenant.
- 7. -If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.
- 8. -The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Field Code Changed

Section ~~3839~~. NRS 116B.630 -Liens against units for assessments.

- 1. -The association or the hotel unit owner, as applicable, has a lien on a unit for any assessment or charge, including assessments for common expenses and charges for shared expenses or other charges of the hotel unit owner, authorized by this chapter that is levied against that unit or any fines imposed against the unit's owner from the time the assessment, charge or fine becomes due. If an assessment is payable in installments, the full amount of the assessment or charge is a lien from the time the first installment thereof becomes due.
- 2. -A lien under this section is prior to all other liens and encumbrances on a unit except:
 - (a) Liens and encumbrances recorded before the recordation of the declaration;

- (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and
- (c) Liens for real estate taxes and other governmental assessments or charges against the unit; and
- (d) ~~Mechanics' or materialmen's liens.~~

—This subsection (2) does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments or charges made by the association or the hotel unit owner.

3. -Unless the declaration otherwise provides, if the association and the hotel unit owner both have liens for assessments or charges created at any time on the same property, the priority of those liens is governed by Nevada law.

—4. -Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment or charge under this section is required.

—5. -A lien for unpaid assessments or charges is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments or charges become due.

—6. -This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association or the hotel unit owner, as applicable, from taking a deed in lieu of foreclosure.

—7. -A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

—8. -The association or the hotel unit owner, as applicable, upon written request, shall furnish to a residential unit owner a statement setting forth the amount of unpaid assessments or charges against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments or charges may be foreclosed under this chapter, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association or the declarant, as applicable, and every unit's owner.

—9. In an action by an association to collect assessments or by the hotel unit owner to collect shared expenses or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver: (i) to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116B.600; or (ii) to the hotel unit owner during pendency of the action to the extent of the hotel unit owner's shared expenses based on the periodic budget provided by the hotel unit owner pursuant to NRS 116B.595.

Section ~~2940~~. NRS 116B.635 -Foreclosure of liens: Mailing of notice of delinquent assessment; recording of notice of default and election to sell; period during which unit's owner may pay lien to avoid foreclosure; limitations on type of lien that may be foreclosed.

—1. -Except as otherwise provided in subsection 4, in a condominium hotel, the association or hotel unit owner, as applicable, may foreclose its lien by sale after all of the following occur:

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

—(b) Not less than 30 days after mailing the notice of delinquent assessment or charge pursuant to paragraph (a), the association or hotel unit owner, as applicable, has executed and caused to be recorded, with the county recorder of the county in which the condominium hotel or any part of it is situated, a notice of default and election to sell the residential 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, the declarant or hotel unit owner, as applicable, to enforce the lien by sale.
- (3) Contain, in 14-point bold type, the following warning:

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

- (c) The residential unit 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 or hotel unit owner, as applicable, for that purpose.
- 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 residential unit owner or his or her successor in interest at the residential unit owner's address, if known, and at the address of the residential unit,
↪ whichever date occurs later.
- 4. -The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:
 - (a) 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 condominium hotel; or
 - (b) The penalty is imposed for failure to adhere to a schedule of fines required pursuant to this chapter.

Section ~~4041~~. NRS 116B.645 -Foreclosure of liens: Providing notice of time and place of sale; service of notice of sale; contents of notice of sale; proof of service.

- 1. -The association or hotel unit owner, as applicable, shall also, after the expiration of the 90 days and before selling the unit:
 - (a) Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on the residential unit owner as follows:
 - (1) A copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the residential unit owner or his or her successor in interest at the residential unit owner's address, if known, and to the address of the residential unit; and
 - (2) A copy of the notice of sale must be served, on or before the date of first publication or posting, in the manner set forth in subsection 2; and
 - (b) Mail, on or before the date of first publication or posting, a copy of the notice by first-class mail to:
 - (1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116B.640;
 - (2) The holder of a recorded security interest or the purchaser of the residential unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and
 - (3) The Ombudsman.
- 2. -In addition to the requirements set forth in subsection 1, a copy of the notice of sale must be served:
 - (a) By a person who is 18 years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the notice of sale to an occupant of the residential unit who is of suitable age; or
 - (b) By posting a copy of the notice of sale in a conspicuous place on the residential unit.
- 3. -Any copy of the notice of sale required to be served pursuant to this section must include:
 - (a) The amount necessary to satisfy the lien as of the date of the proposed sale; and
 - (b) The following warning in 14-point bold type:

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR ~~HOME~~UNIT, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association or hotel unit owner). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE

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SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.

- 4. -Proof of service of any copy of the notice of sale required to be served pursuant to this section must consist of:
 - (a) A certificate of mailing which evidences that the notice was mailed through the United States Postal Service; or
 - (b) An affidavit of service signed by the person who served the notice stating:
 - (1) The time of service, manner of service and location of service; and
 - (2) The name of the person served or, if the notice was not served on a person, a description of the location where the notice was posted on the residential unit.

Section ~~44~~42. NRS 116B.665 -Liens against association.

- 1. -Except as otherwise provided in subsection 2, a judgment for money against the association, if a copy of the docket or an abstract or copy of the judgment is recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the other real property of the association and all of the units in the condominium hotel at the time the judgment was entered. No other property of a unit's owner or the declarant is subject to the claims of creditors of the association.
- 2. -If the association has granted a security interest in the common elements to a creditor of the association pursuant to NRS 116B.560, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.
- 3. -Whether perfected before or after the creation of the condominium hotel, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium hotel, becomes effective against two or more units, the owner of an affected unit may pay to the lienholder the amount of the lien attributable to his or her unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that owner's liability for common expenses bears to the liabilities for common expenses of all owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that owner's unit for any portion of the common expenses incurred in connection with that lien.
- 4. -A judgment against the association must be indexed in the name of the condominium hotel and the association and, when so indexed, is notice of the lien against the units.

Section ~~42~~43. NRS 116B.670 -Maintenance and availability of books, records and other papers of association: General requirements; exceptions; general records concerning certain violations; enforcement by Ombudsman; limitations on amount that may be charged to conduct review.

- 1. -Except as otherwise provided in ~~this~~ subsection 4, 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~~:
 - (a) The financial statement of the association;
 - (b) The budgets of the association required to be prepared pursuant to NRS 116B.600;
 - (c) The study of the reserves of the association required to be conducted pursuant to NRS 116B.605; and
 - (d) 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. 2. The executive board shall provide a copy of any of the records described in paragraphs (a), (b) and (c) of subsection 1 to a unit's owner or the Ombudsman within 21 days after receiving a written request therefor. Such records must be provided in electronic format at no charge to the unit's owner or, if the association is unable to provide records in electronic format, the executive board may charge a fee to cover the actual costs of preparing a copy, but the fee may not exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.
- 3. If the executive board fails to provide a copy of any of the records pursuant to subsection 2 within 21 days, the executive board must pay a penalty of \$25 per day the executive board fails to provide the records.

- ~~4.~~ 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, 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, the general record must specify the amount of the fine.
 - (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.~~ 4. 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.~~ 5. The books, records and other papers of an association must be maintained for at least 10 years.
- ~~5.~~ 6. 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.

Section ~~43~~44. NRS 116B.725 -Applicability; exceptions.

- 1. -Except as otherwise provided in ~~this section~~ subsection 2, NRS 116B.725 to 116B.795, inclusive, apply to all condominium hotels.
- 2. -Neither a public offering statement nor a certificate of resale need be prepared or delivered in the case of a:
 - (a) Gratuitous disposition of a unit;
 - (b) Disposition pursuant to court order;
 - (c) Disposition by a government or governmental agency;
 - (d) Disposition by foreclosure or deed in lieu of foreclosure;
 - (e) Disposition to a dealer;
 - (f) Disposition that may be cancelled at any time and for any reason by the purchaser without penalty; ~~or~~
 - (g) Disposition of a unit not used for residential use.

Section ~~44~~45. NRS 116B.735 -Public offering statement: General provisions.

- 1. -Except as otherwise provided in this chapter, a public offering statement must set forth or fully and accurately disclose each of the following:
 - (a) The name and principal address of the declarant, the hotel unit owner and of the condominium hotel.
 - (b) A general description of the condominium hotel, including to the extent possible, the types, number and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the condominium hotel, including the shared components.
 - (c) The estimated number of units in the condominium hotel.
 - (d) Copies of this chapter, the declaration, bylaws, and any rules or regulations of the association or hotel unit owner, but a plat is not required.
 - (e) ~~A current year to date financial statement, including the most recent audited or reviewed financial statement, and the projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association. The budget must include, without limitation:~~
 - (1) ~~A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to this chapter; and~~
 - (2) ~~The projected monthly assessment for common expenses for each type of unit, including the amount established as reserves pursuant to this chapter.~~
 - (fe) The financial information required by subsection 2

- (c) The projected budget for the shared expenses, either within or as an exhibit to the public offering statement. The budget must include, without limitation:
- (1) A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to this chapter;
 - (2) The projected monthly shared expenses for each type of unit, including the amount established as reserves pursuant to this chapter; and
 - (3) A description of any other payments, fees and charges that may be charged by the hotel unit owner in order to offset the increased burden placed on the shared components due to use of residential units as transient rentals.
- (f) After the date of the first conveyance of a residential unit to a purchaser, a current year-to-date statement of the shared expenses charged to the units.
- (g) A description of any services or subsidies being provided by the declarant or an affiliate of the declarant or the hotel unit owner not reflected in the budget that the declarant provides, or expenses which the declarant pays and which the declarant expects may become at any subsequent time a common expense of the association and the project common expense assessment attributable to each of those services or expenses for the association and for each type of unit.
- (h) Any initial or special fee due from the purchaser at closing, including, without limitation, any transfer fees, whether payable to the association, the community manager or the association or any third party, together with a description of the purpose and method of calculating the fee.
- (i) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.
- (j) A statement that the purchaser may cancel, by written notice, his or her contract for purchase until midnight of the fifth calendar day following the date of execution of the contract, and the contract must contain a provision to that effect.
- (k) A statement of any unsatisfied ~~judgments~~judgment or pending ~~suits~~action against the association or the hotel unit owner, and the status of any pending ~~suits~~actions material to the condominium hotel of which a declarant has actual knowledge.
- (l) Any current or expected fees or charges to be paid by residential unit owners for the use of the shared components, the hotel unit or the common elements and other facilities related to the condominium hotel.
- (m) The information statements required by this chapter.
2. (n) Any restraints on alienation of any portion of the condominium hotel and any restrictions:
- (1) On the leasing and renting of units;
 - (2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on the sale or condemnation of or casualty loss to the unit or to the condominium hotel, or on termination of the condominium hotel.
2. A statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include:
- (a) A statement of the amount included in the budget as a reserve for repairs, replacement and restoration pursuant to NRS 116B.590;
 - (b) A statement of any other reserves;
 - (c) The projected common expense assessment by category of expenditures for the association; and
 - (d) The projected monthly common expense assessment for each type of unit, including the amount established as reserves pursuant to NRS 116B.590.
3. A declarant is not required to revise a public offering statement more than once each calendar quarter, if the following warning is given prominence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT AS OF (insert a specified date). RECENT DEVELOPMENTS REGARDING (here refer to particular provisions of NRS 116B.735 and 116B.740) MAY NOT BE REFLECTED IN THIS STATEMENT."

Section 4546. NRS 116B.760 -Resales of units.

- 1. Except in the case of a sale in which delivery of a public offering statement is required, a unit's owner or his or her authorized agent shall furnish to a purchaser a resale package containing all of the following:
 - (a) A copy of this chapter, the declaration, other than any plats, the bylaws, the rules or regulations of the association and the hotel unit owner and the information statement required by NRS 116B.765;
 - (b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

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- (c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by this chapter;
 - (d) A current year-to-date statement of the shared expenses charged to the units and the projected budget for the shared expenses, either within or as an exhibit to the public offering statement. The budget must include, without limitation:
 - (1) A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to this chapter;
 - (2) The projected monthly shared expenses for each type of unit, including the amount established as reserves pursuant to this chapter;
 - (e) A description of any other payments, fees and charges that may be charged by the hotel unit owner, including those that may be charged in order to offset the increased burden placed on the shared components as a result of use of residential units as transient rentals; and
 - (f) A statement of any unsatisfied judgments or pending legal actions against the association or the hotel unit owner which affect the shared components and the status of any pending legal actions relating to the condominium hotel of which the unit's owner has actual knowledge.
- 2. -The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, the purchaser must hand deliver the notice of cancellation to the residential unit owner or his or her authorized agent or mail the notice of cancellation by prepaid United States mail to the residential unit owner or his or her authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the residential unit, the purchaser is not entitled to:
- (a) Cancel the contract pursuant to this subsection; or
 - (b) Damages, rescission or other relief based solely on the ground that the residential unit owner or his or her authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.
- 3. -Within 10 days after receipt of a written request by a residential unit owner or his or her authorized agent, the hotel unit owner shall furnish all of the following to the residential unit owner or his or her authorized agent for inclusion in the resale package:
- (a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and
 - (b) A certificate containing the information necessary to enable the residential unit owner to comply with paragraphs (b), (d), (e) and (f) of subsection 1.
- 4. -If the hotel unit owner furnishes the documents and certificate pursuant to subsection 3:
- (a) The residential unit owner or his or her authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the residential unit owner nor his or her authorized agent is liable to the purchaser for any erroneous information provided by the hotel unit owner and included in the documents and certificate.
 - (b) The hotel unit owner may charge the residential unit owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that the hotel unit owner may charge for preparing the certificate.
 - (c) The other documents furnished pursuant to subsection 3 must be provided in electronic format at no charge to the unit's owner or, if the hotel unit owner is unable to provide such documents in electronic format, the hotel unit owner may charge the residential unit owner a reasonable fee, not to exceed 25 cents per page, for the first 10 pages, and 10 cents per page thereafter, to cover the cost of copying ~~the other documents furnished pursuant to subsection 3.~~
 - (d) Except for the fees allowed pursuant to paragraphs (b) and (c), the hotel unit owner may not charge the residential unit owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.
- 5. -Neither a purchaser nor the purchaser's interest in a residential unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the hotel unit owner. If the hotel unit owner fails to furnish the documents and certificate within the 10 days allowed by this section, the ~~seller~~purchaser is not liable for the delinquent assessment.
- 6. -Upon the request of a residential unit owner or his or her authorized agent, or upon the request of a purchaser to whom the hotel unit owner has provided a resale package pursuant to this section or his or her authorized agent,

the hotel unit owner shall make the entire study of the reserves of the association or the shared components reasonably available for the residential unit owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or the hotel unit owner or some other suitable location within the county where the condominium hotel is situated or, if it is situated in more than one county, within one of those counties.

BEFORE YOU PURCHASE PROPERTY IN A
CONDOMINIUM HOTEL
DID YOU KNOW...

—1. -YOU GENERALLY HAVE 5 DAYS TO CANCEL THE PURCHASE AGREEMENT?

When you enter into a purchase agreement to buy a home or unit in a condominium hotel, in most cases you should receive either a public offering statement, if you are the original purchaser of the home or unit, or a resale package, if you are not the original purchaser. The law generally provides for a 5-day period in which you have the right to cancel the purchase agreement. The 5-day period begins on different starting dates, depending on whether you receive a public offering statement or a resale package. Upon receiving a public offering statement or a resale package, you should make sure you are informed of the deadline for exercising your right to cancel. In order to exercise your right to cancel, the law generally requires that you hand deliver the notice of cancellation to the seller within the 5-day period, or mail the notice of cancellation to the seller by prepaid United States mail within the 5-day period. For more information regarding your right to cancel, see NRS 116B.755, if you received a public offering statement, or NRS 116B.760, if you received a resale package.

—2. -YOU ARE AGREEING TO RESTRICTIONS ON HOW YOU CAN USE YOUR PROPERTY?

These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions. The CC&Rs become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you. The CC&Rs, together with other “governing documents” (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the condominium hotel, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property. By purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the CC&Rs, and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you.

Certain provisions in the CC&Rs and other governing documents may be superseded by contrary provisions of chapter 116B of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the Internet address <http://www.leg.state.nv.us/nrs/>.

—3. -YOU WILL HAVE TO PAY OWNERS’ ASSESSMENTS AND CHARGES FOR AS LONG AS YOU OWN YOUR PROPERTY?

As an owner in a condominium hotel, you are responsible for paying your share of expenses relating to the common elements and shared components. The obligation to pay these expenses binds you and every future owner of the property. Owners’ fees are usually assessed for these expenses monthly. You have to pay dues whether or not you agree with the way the association or the hotel unit owner is managing the property or spending the assessments or charges. The hotel unit owner executive board of the association may have the power to change and increase the amount of the assessment or charges and to levy special assessments or special charges against your property to meet extraordinary expenses.

—4. -IF YOU FAIL TO PAY OWNERS’ ASSESSMENTS OR CHARGES, YOU COULD LOSE YOUR HOME?

If you do not pay these assessments or charges when due, the hotel unit owner or the association usually has the power to collect them by selling your property in a nonjudicial foreclosure sale. If fees become delinquent, you may also be required to pay penalties and the association’s or hotel unit owner’s costs, as applicable, and attorney’s fees to become current. If you dispute the obligation or its amount, your only remedy to avoid the loss of your home may be to file a lawsuit and ask a court to intervene in the dispute.

—5. -YOU MAY BECOME A MEMBER OF A HOMEOWNERS’ ASSOCIATION THAT HAS THE POWER TO AFFECT HOW YOU USE AND ENJOY YOUR PROPERTY?

Many condominium hotels have a homeowners’ association. In a new development, the association will usually be controlled by the developer until a certain number of units have been sold. After the period of developer control, the association may be controlled by property owners like yourself who are elected by homeowners to sit on an executive board and other boards and committees formed by the association. The association, and its executive board, are responsible for assessing homeowners for the cost of operating the association and the common elements of the condominium hotel. Because homeowners sitting on the executive board and other boards and committees of

the association may not have the experience or professional background required to understand and carry out the responsibilities of the association properly, the association may hire professional condominium association managers to carry out these responsibilities.

Homeowners' associations operate on democratic principles. Some decisions require all homeowners to vote, some decisions are made by the executive board or other boards or committees established by the association or governing documents. Although the actions of the association and its executive board are governed by state laws, the CC&Rs and other documents that govern the condominium hotel, decisions made by these persons will affect your use and enjoyment of your property, your lifestyle and freedom of choice, and your cost of living in the condominium hotel. You may not agree with decisions made by the association or its governing bodies even though the decisions are ones which the association is authorized to make. Decisions may be made by a few persons on the executive board or governing bodies that do not necessarily reflect the view of the majority of residential unit in the condominium hotel. If you do not agree with decisions made by the association, its executive board or other governing bodies, your remedy is typically to attempt to use the democratic processes of the association to seek the election of members of the executive board or other governing bodies that are more responsive to your needs. If you have a dispute with the association, its executive board or other governing bodies, you may be able to resolve the dispute through the complaint, investigation and intervention process administered by the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, the Nevada Real Estate Division and the Commission for Common-Interest Communities and Condominium Hotels. However, to resolve some disputes, you may have to mediate or arbitrate the dispute and, if mediation or arbitration is unsuccessful, you may have to file a lawsuit and ask a court to resolve the dispute. In addition to your personal cost in mediation or arbitration, or to prosecute a lawsuit, you may be responsible for paying your share of the association's cost in defending against your claim.

—6. -YOU ARE REQUIRED TO PROVIDE PROSPECTIVE PURCHASERS OF YOUR PROPERTY WITH INFORMATION ABOUT LIVING IN YOUR CONDOMINIUM HOTEL?

The law requires you to provide a prospective purchaser of your property with a copy of the condominium hotel's governing documents, including the CC&Rs, association bylaws, and rules and regulations, as well as a copy of this document. You are also required to provide a copy of the association's current year-to-date financial statement, including, without limitation, the most recent audited or reviewed financial statement, a copy of the association's operating budget and information regarding the amount of the monthly assessment for common expenses, including the amount set aside as reserves for the repair, replacement and restoration of common elements. You are also required to provide a copy of the current year-to-date statement of the shared expenses charged to your unit by the declarant or hotel unit owner, as applicable. You are also required to inform prospective purchasers of any outstanding judgments or lawsuits pending against the association of which you are aware. For more information regarding these requirements, see NRS 116B.725 to [116B.795](#), inclusive.

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—7. -YOU HAVE CERTAIN RIGHTS REGARDING OWNERSHIP IN A CONDOMINIUM HOTEL THAT ARE GUARANTEED YOU BY THE STATE?

Pursuant to provisions of this chapter, you have the right:

- (a) To be notified of all meetings of the association and its executive board, except in cases of emergency.
- (b) To attend and speak at all meetings of the association and its executive board, except in some cases where the executive board is authorized to meet in closed, executive session.
- (c) To request a special meeting of the association.
- (d) To inspect, examine, photocopy and audit financial and other records of the association.
- (e) To be notified of all changes in the condominium hotel's rules and regulations and other actions by the association or board that affect you.

—8. -QUESTIONS?

Although they may be voluminous, you should take the time to read and understand the documents that will control your ownership of a property in a condominium hotel. You may wish to ask your real estate professional, lawyer or other person with experience to explain anything you do not understand. You may also request assistance from the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, Nevada Real Estate Division, at (telephone number).

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Buyer or prospective buyer's initials: _____

Date: _____

Section 4647. NRS 116B.770 Escrow of deposits; furnishing of bond in lieu of deposit.

1. Except as otherwise provided in subsections 2 and 3, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of [NRS 116B.730](#) must be placed in escrow and held either in this State or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until:

- (a) Delivered to the declarant at closing;
- (b) Delivered to the declarant because of the purchaser's default under a contract to purchase the unit;
- (c) Released to the declarant for an additional item, improvement, optional item or alteration, but the amount so released:

(1) Must not exceed the lesser of the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for the purpose; and

(2) Must be credited upon the purchase price; or

(d) Refunded to the purchaser.

2. A deposit or advance payment made for an additional item, improvement, optional item or alteration may be deposited in escrow or delivered directly to the declarant, as the parties may contract.

3. In lieu of placing a deposit in escrow pursuant to subsection 1, the declarant may furnish a bond executed by the declarant as principal and by a corporation qualified under the laws of this State as surety, payable to the State of Nevada, and conditioned upon the performance of the declarant's duties concerning the purchase or reservation of a unit. Each bond must be in a principal sum equal to the amount of the deposit sought to be bonded. The bond must be held until:

(a) A bond cancellation notice or a reduction rider reducing the amount of the bond is delivered provided to the payee by the declarant or the bonding company after the declarant at closing;

(b) A bond cancellation notice or a reduction rider reducing the amount of the bond is provided to the payee by the declarant or the bonding company after Delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or

(c) The bonded amount is rReleased to the declarant for an additional item, improvement, optional item or alteration, but the amount so released must not exceed the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for that purpose, whichever is less; and

(d) An amount equal to the bonded amount is refunded to the purchaser.

4. Pursuant to subsection 1, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116B.735 is deemed to be placed in escrow and held in this State when the escrow holder has:

(a) The legal right to conduct business in this State;

(b) A registered agent in this State pursuant to subsection 1 of NRS 14.020; and

(c) Consented to the jurisdiction of the courts of this State by:

(1) Maintaining a physical presence in this State; or

(2) Executing a written instrument containing such consent, with respect to any suit or claim, whether brought by the declarant or purchaser, relating to or arising in connection with such sale or the escrow agreement related thereto.

Section 4748. NRS 116B.790 -Effect of violations on rights of action; civil action for damages for failure or refusal to comply with provisions of chapter or governing documents; attorney's fees.

—1. If a declarant, hotel unit owner or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply has a claim for appropriate relief.

—2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116B.555, a civil action for damages caused by a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

—(a) By the association against:

—(1) A declarant; or

—(2) A unit's owner.

—(b) By a unit's owner against:

—(1) The association;

- ~~—(2) A declarant; or~~
- ~~—(3) Another unit's owner of the association.~~
- ~~3. Members of the executive board are not personally liable to the victims of crimes occurring on the property. — 3.~~
- ~~4. Except as otherwise provided in subsection 5, punitive damages may not awarded against~~
 - ~~(a) The association;~~
 - ~~(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or~~
 - ~~(c) The officers of the association for acts or omissions that occur in their capacity as officers of the association.~~
- ~~5. Punitive damages may be awarded for a willful and material failure to comply with this chapter if the failure is established by clear and convincing evidence.~~
- ~~—4. 6. The court may award reasonable attorney's fees to the prevailing party.~~
- ~~—5. 7. The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.~~
- ~~—8. The provisions of this section do not prohibit the Commission from taken any disciplinary action against a member of an executive board pursuant to NRS 116B.865 to NRS 116B.920 inclusive.~~

Section 4849. NRS 116B.815 -Ombudsman for Owners in Common-Interest Communities and Condominium Hotels: Powers and duties. -The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels created by NRS 116.625 shall:

- ~~—1. -Assist in processing claims arising under this chapter that are submitted to mediation or arbitration pursuant to NRS 38.300 to 38.360, inclusive;~~
- ~~—2. -Assist owners in condominium hotels to understand their rights and responsibilities as set forth in this chapter and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities;~~
- ~~—3. -Assist members of executive boards and officers of associations to carry out their duties;~~
- ~~—4. -When appropriate, investigate disputes involving the provisions of this chapter or the governing documents of an association and assist in resolving such disputes; and~~
- ~~—5. -Compile and maintain a registration of each association organized within the State which includes, without limitation, the following information:~~
 - ~~—(a) The name, address and telephone number of the association;~~
 - ~~—(b) The names, mailing addresses and telephone numbers of the members of the executive board of the association;~~
 - ~~—(c) The name of the declarant;~~
 - ~~—(d) The name of the hotel unit owner;~~
 - ~~(e) The number of units in the condominium hotel;~~
 - ~~—(e)(f) The total annual assessment made by the association; and~~
 - ~~—(f)(g) The number of foreclosures which were completed on units within the 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.~~

Field Code Changed

Field Code Changed

MBUCKLEY/9378432.2/005017.0002

PROPOSED MODIFICATIONS TO NRS 116 AND 116B

UPDATING NRS CHAPTER 116B TO INCLUDE THE 2008 AMENDMENTS TO THE UNIFORM COMMON INTEREST OWNERSHIP ACT (UCIOA) and SB 204

INTRODUCTION

The CIC Subcommittee of the Real Property Section of the State Bar of Nevada (the "Subcommittee") met on several occasions from spring, 2012 to summer 2012 to consider changes to NRS Chapter 116B based on applicable provisions of 2008 Uniform Common Interest Ownership Act ("UCIOA") and SB 204 changes to NRS Chapter 116 from the 2011 Legislative Session. Many of the 2008 UCIOA changes were incorporated into NRS Chapter 116 by SB 204. Participants included:

Michael Buckley
Karen Dennison
Mandy Shavinsky

The proposed amendments incorporate both the applicable provisions of the 2008 draft of UCIOA and SB 204. In addition, the Subcommittee also discovered and corrected a number of minor changes to existing law. Some of these changes included moving provisions of existing law into sections which addressed the same topic.

<u>Section</u>	<u>Page</u>	<u>Explanation</u>
1	1	Proposed Amendment to NRS Chapters 116, which incorporates provisions already existing in NRS 107.080, regarding (i) finality of lien foreclosure sale and (ii) procedures for attacking the sale (based on NRS 107.080, subsections 5 and 6).
2	1	Proposed Amendment to NRS Chapters 116B, which incorporates provisions already existing in NRS 107.080, regarding (i) finality of lien foreclosure sale and (ii) procedures for attacking the sale (based on NRS 107.080, subsections 5 and 6).
3	1	Modifies NRS 116.411(3) to clarify release provisions for bonds in lieu of deposit. Also, see Section 46, which provides for the same clarifications and adds protections that are currently in NRS 116.411(4) to NRS 116B.770. NRS 116.411(4) provides clarification on when a deposit is deemed to be held in escrow in Nevada. In addition, NRS.116.411(4) contains requirements for escrow holders (must be qualified to do business in Nevada).
4	2	Modifies NRS 361.585 to include associations in the categories of persons entitle to a reconveyance after property is conveyed to the County Treasurer for unpaid taxes. Presently, the association has no ability to have its interest in the property (i.e. an association lien right) reconveyed upon redemption.
5	3	Adds reference to NRS 116B to 40.433, including an assessment lien pursuant to 116B among the types of liens excluded from the definition of "Mortgage of other lien" in NRS 40.433 for the purposes of the one-action rule. NRS 116 is presently excluded and the addition of a lien arising under NRS Chapter 116 is a conforming change.
6	3	<p>Adds Sections 2 and 3 to NRS 116B.</p> <p>Section 2 was added to NRS 116.31068 by SB 204 in 2011 to provide for various means of giving notice under NRS 116. The addition in SB 204 was based on UCIOA section 3-108. The alternatives listed in sub-section (1) include all the forms of notice previously authorized in UCIOA section 3-108, which required that unit owners be given notice of meetings. The new additional forms of notice are electronic transmissions and "(d) any other method reasonably calculated to provide notice to the unit owner." Depending on the circumstances, this might include posting notice on bulletin boards, placing large and legible "sandwich boards" at the entrances to the common interest community, or other methods. As a consequence, UCIOA no longer designates the method of giving notice in particular instances. The basic concept reflected in the language permitting electronic notice is taken from a 2004 Maryland statute; see Maryland Stat. Ann. § 11B-113.1. This change does not affect the manner in which notices are given in connection with foreclosures or any other statute which prescribes a particular form of notice.</p> <p>Section 3 was added to NRS 116.1118 by SB 204 in 2011.</p> <p>The addition in SB 204 was based on comparable language appears in NRS 107A.370. The effect of this provision is to overrule conflicting provisions of the cited Federal law, except with respect to (1) consumer disclosures, as to which Section 7001(c) delineates how a consumer may consent to electronic records, and (2) certain formal writings, such as court orders, foreclosures, utility terminations and product safety notices which, under Section 7003(b) must continue to be in writing.</p>
7	3	This section mirrors a change to NRS 116.003 made by SB 204 in 2011.

<u>Section</u>	<u>Page</u>	<u>Explanation</u>
8	3	This section mirrors a change to NRS 116.007 made by SB 204 in 2011 and is stylistic in nature.
9	4	This section mirrors a change to NRS 116.035 made by SB 204 in 2011. In SB 204, this was an LCB stylistic change.
10	4	This section was changed to include the different components existing within a condominium hotel, as opposed to a common-interest community or traditional condominium (hotel unit, shared components) within the section defining developmental rights.
11	4	This section mirrors a change to NRS 116.045 made by SB 204 in 2011. The equivalent provision of SB 204 was based on a 2008 UCIOA change that recognizes that very often the bylaws will be the main document governing the board.
12	4	This section mirrors a change to NRS 116.079 made by SB 204 in 2011. In SB 204, this was an LCB stylistic change.
13	4	This section mirrors a change to NRS 116.081 made by SB 204 in 2011. In SB 204, this was a 2008 UCIOA grammatical change.
14	4	This section mirrors a change to NRS 116.1188 made by SB 204 in 2011. In SB 204, this change was based on the 2008 UCIOA changes recognizing that, depending on the type of entity an association is, the association may be governed by laws other than corporate laws.
15	4	This section mirrors a change to NRS 116.1114 made by SB 204 in 2011. This is not a substantive change. In SB 204, the omitted language appears in NRS 116.4117 and appears in NRS 116B.790.
16	5	Mirrors technical UCIOA change to NRS 116.2103 made by SB 204 in 2011.
17	5	Mirrors technical UCIOA change to NRS 116.2105 made by SB 204 in 2011.
18	5	Mirrors LCB technical change to NRS 116.2106 made by SB 204 in 2011.
19	6	Minor technical change made to be consistent with NRS 116.2109(5)
20	6	Mirrors 2008 UCIOA change to NRS 116.2113 reflecting technical and grammatical corrections.
21	7	Mirrors change to NRS 116.2118(7) by in SB 204 in 2011.
22	7	Mirrors 2008 UCIOA clarifications to NRS 116.3101(4) made by SB 204 in 2011.
23	8	Mirrors certain applicable changes made to NRS 116.3102 made in SB 204 in 2011. Explanation for changes made to that section in SB 204 were that changes clarify powers that the board must exercise versus those that may be exercised.
24	8	New proposed section mirroring requirements for funds of an association to be deposited/invested only in certain financial institutions that already appear in NRS 116.311395
25	9	Mirrors certain applicable changes made to NRS 116.3103 in SB 204 in 2011. Explanation of changes made to this section in SB

<u>Section</u>	<u>Page</u>	<u>Explanation</u>
		<p>204 were as follows:</p> <p>The amendments to subsection 1 incorporate 1994 and 2008 UCIOA changes. These changes make it clear that officers as well as directors are subject to standards of conduct and provide a specific reference to nonprofit corporations as the applicable standard.</p> <p>Subsection 2. Changes to subsection 2 reflect 2008 UCIOA and appear to be mainly grammatical.</p> <p>Subsection 3. The original version of NRS 116.3103 contained subsection 3 dealing with budgets. In 2005 Nevada moved subsection 3 to NRS 116.31151, dealing with budgets rather than the duties of executive boards, in order to locate all of the budget requirements in one place. 2008 UCIOA basically follows Nevada's 2005 change by replacing the original subsection 3 with a requirement that the board adopt a budget, in accordance with 116.31151. The changes made in NRS 116B.425B track the corresponding sections in NRS 116.</p>
26	9	<p>Mirrors change to NRS 116.31031(3) by in SB 204 in 2011. Explanation for the changes made to that section in SB 204 were that the new addition of subsection 3 is not new law. The language is simply moved from 116.3108, which deals with a different topic than fines. Change in section 2(b) is a minor but new change, necessary to clarify that the association, and not the hotel unit owner is the party that must discover the violation.</p>
27	11	<p>Mirrors change to NRS 116.31032 by in SB 204 in 2011, which were originally based on UCIOA changes.</p> <p>The changes made in SB 204 were explained as follows: Subsection (d) was amended in 1994 to add a new fourth category regarding voluntary relinquishment of retained rights to control any aspect of the affairs of the association. This category frequently has been written into declarations under UCIOA and the new wording also contains an improvement on the arrangement of the language. Section 24 contains of the proposed bill contains the same changes.</p>
28	11	<p>Mirrors changes to NRS 116.31036 by SB 204 in 2011.</p> <p>The changes made in SB 204 were explained as follows:</p> <p>Subsection 2: Basically moves language regarding removal elections from NRS 116.3108 which deals with special meetings of owners.</p> <p>Old subsection 3: Moved to new section. See Section 5.</p> <p>Old subsection 3: Moved to NRS 116.4117(3) (in this case NRS 116B.790(3)).</p> <p>Old subsection 3: Moved to NRS 116.4117(5) (in this case NRS 116B.790(4)).</p>
29	12	<p>Mirrors LCB technical changes to NRS 116 3106 made by SB 204 in 2011.</p> <p>Additional explanations from SB 402 as to Subsections (1)(i) and (j) are as follows: These subsections are new. With regard to these new subsections, the bylaws are intended to address procedural matters affecting the governance of the association. They</p>

<u>Section</u>	<u>Page</u>	<u>Explanation</u>
		are not intended to contain matters that might affect title to real property nor any of the covenants restricting the use of the units or the common property. That is one of the primary reasons why UCIOA requires that the declaration be recorded on the land records, while the bylaws need not be recorded.
30	12	Minor but new change, necessary to clarify that the hotel unit owner, and not the association, must discover the violation of the rules.
31	13	Mirrors primarily stylistic changes made to NRS 116.3108 in SB 204. Changes made to reflect the relocation of removal procedures into NRS 116.31036 (in this case NRS 116B.450).
32	14	Minors changes on notice provisions from SB 204 that must be given in accordance with the new overall notice section (Sec. 1).
33	16	<p>Mirrors changes made to NRS 116.3109 by SB 204 in 2011, which provided the following explanation: An important change in subsection 3 determines a quorum as of the time a vote is taken rather than at the beginning of the meeting.</p> <p>These 2008 UCIOA changes also reflect grammatical and technical changes. They also take into account presence of unit owners through ballots and provide a reference for procedural rules for association meetings. The changes to Section 4 make it clear that the bill is not intended to require associations with properly adopted existing procedural rules to change those rules.</p>
34	16	<p>Mirrors changes made to NRS 116.311 by SB 204 in 2011, which provided the following explanation:</p> <p>The 1994 version of UCIOA did not contain any provision by which unit owners may cast ballots except during a physical meeting of the unit owners. The 2008 amendments significantly alter that outcome, and offer a very broad range of voting options.</p> <p>The current text incorporates both existing and proposed laws from a significant number of states' corporate and common interest community statutes, as well as existing provisions of the Model Non-Stock Corporation Act, and proposed amendments to that model act that were pending at the time this Act was promulgated.</p> <p>In the case of new subsections 2(d) and 9, permitting voting by ballot without the need for a meeting, the Act borrows significantly from Florida statutes governing the election of directors of the unit owners association; see Fla. Gen. Stat. 718.112 (Bylaws) (2)(d)2, 3.</p>
35	18	<p>Mirrors changes made to NRS 116.3111 by SB 204 in 2011, which provided, in part, the following explanation:</p> <p>This section has been amended to require that a tort claim based on ownership of common elements be brought against the association, and not against individual unit owners.</p>
36	18	<p>Mirrors changes made to NRS 116.3113 by SB 204 in 2011, which provided the following explanation:</p> <p>Requires associations to maintain crime insurance in addition to property and casualty and liability insurance, and makes stylistic changes.</p>

<u>Section</u>	<u>Page</u>	<u>Explanation</u>
37	19	This section mirrors a change to NRS 116.31133 made by SB 204 in 2011 and is stylistic in nature.
38	19	<p>Mirrors changes made to NRS 116.3115 by SB 204 in 2011, which provided the following explanation:</p> <p>The amendment to subsection 4(b) reflects the increasing practice where, for example, assisted living communities organized as common interest communities are in the business of providing food, janitorial, nursing and other services to residents of individual units as part of the common expense budget of the association. This may occur whether or not the occupants are the owners of those units.</p> <p>The purpose of the amendment is simply to call to the drafter's attention the concern that if some forms of unusual or unique services are to be included in the common expense budget for the entire association, rather than being charged to individual service recipients, then the drafter might use the mechanism permitted under 4(b) to insure that the non-benefitted owners should not be assessed, and possibly have a lien against their units, for services provided to other persons.</p> <p>Section 6 previously provided that "[i]f any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit." As drafted, it did not directly address the concerns where the association may incur an insurable loss to a unit or common element as a result of a unit owner's actions.</p> <p>This change strikes a middle position on the questions of whether and under what circumstances a unit owner may be charged with the costs of repair. First, the section makes clear that such a charge back may be appropriate, even when the association does carry an insurance policy covering that loss. Thus, in an appropriate case, the association might choose not to submit a claim under its insurance policy, and instead proceed directly against the unit owner for the entire amount of the cost of repair, including any sum that would otherwise be paid from the deductible.</p> <p>However, in contrast to the practice of some associations, the section does not permit a charge back in a "no fault" or in a "simple negligence" situation. Instead, the unit owner to be assessed, or the owner's guest or invitee, must be guilty either of "willful misconduct" or "gross negligence."</p>
39	20	<p>Changes in Section 2 mirror the existing provision in NRS 116.3116(2)(c) regarding the priority of mechanics' liens and the fact that they are unaffected by NRS 116 (in our case NRS 116B).</p> <p>Mirrors changes made to NRS 116.3116 by SB 204 in 2011, which provided the following explanation:</p> <p>(d) New Section 11 (in this case Section 10) provides for the ability of a receiver to collect rents; this is a common remedy for real estate lenders.</p>
40	21	Minor stylistic change made to section 3 warning referring to "unit", as the term is commonly used for condominium hotel units, instead of "home". Not an SB 204 change.
41	21	Minor stylistic change made to Section 3 warning referring to "unit", as the term is commonly used for condominium hotel units,

<u>Section</u>	<u>Page</u>	<u>Explanation</u>
		instead of “home”. Not an SB 204 change.
42	22	Mirrors changes made to NRS 116.3117(1)(a) by SB 204 in 2011, which provided the following explanation: The change in subsection 1(a) recognizes that a judgment may extend to property other than common elements that is owned by the association.
43	22	Mirrors changes made to NRS 116.31175 by SB 204 in 2011, which provided the following explanation: This new language incorporates existing language from NRS 116.31177 which is repealed. The two statutes have been combined in order to address inconsistencies between the two. Subsection 2 has been amended to reduce copying charges, after the first 10 pages, from \$0.25 to \$0.10 per page.
44	23	Mirrors minor stylistic change to NRS 116.4101(1) by SB 204 in 2011 -Change made to section reference
45	23	Mirrors changes made to NRS 116.4103 by SB 204 in 2011, which provided the following explanation: These changes are intended to strengthen the disclosures of the public offering statement. In particular: (a) The disclosed financial information, now in subsection 2, is increased and (b) Transfer fees and leasing restrictions must be disclosed.
46	25	Mirrors changes made to NRS 116.4109 by SB 204 in 2011, which provided the following explanation: Subsection 3(b): Corrects an error in 2009 legislation. Subsection 5: This corrects a long overlooked error in the statute which is intended to protect purchasers from undisclosed HOA fees, not the seller who already owes them. Subsection 4(c), has been amended to reduce copying charges, after the first 10 pages, from \$0.25 to \$0.10 per page.
47	28	Modifies NRS 116B.770(3) to clarify release provisions for bonds in lieu of deposit. Also, see Section 3, which provides for the same clarifications and adds protections that are currently in NRS 116.411(4) to NRS 116B.770. NRS 116.411(4) provides clarification on when a deposit is deemed to be held in escrow in Nevada. In addition, NRS.116.411(4) contains requirements for escrow holders (must be qualified to do business in Nevada). The protections of NRS 116.411(4) should be incorporated into NRS 116B.770.
48	29	Relocates existing language from NRS 116.31036 (in this case NRS 116B.450) to this section.
49	29	Existing NRS 116B.815 modified to require the name of the hotel unit owner in the information required to be provided to the Ombudsman.

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL #7

NRS CHAPTER 116

TRANSFER OF SPECIAL DECLARANT'S RIGHTS

Brief Narrative:

NRS 116 creates special declarant's rights and developmental rights which are held by the declarant (developer) and are critical and essential for the creation, construction, marketing and sale of residential units. The unintended loss of these rights may impugn a successor declarant's ability to complete construction of a development and market and sell units to the public. NRS 116.3104 governs the transfer of the special declarant's rights. The economic downturn and the original declarant's involuntary loss of property to be developed have exposed a flaw in the current statute. The amendment addresses what happens to special declarant's rights when title is conveyed involuntarily, i.e., foreclosures, tax sales, judicial sales or sales under the Bankruptcy Code. The amendment provides that the successor declarant retains all special declarant's rights. If the person acquiring title to the property wants to succeed to some, but not all of the special declarant's rights, the person shall succeed only to those rights or none of those rights if the person signs the instrument conveying title.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

Section 1. Amend NRS 116.3104 as follows:

NRS 116.3104 Transfer of special declarant's right.

1. A special declarant's right created or reserved under this chapter may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common-interest community is located. **Except as otherwise provided in subsection 3,** ~~the~~ the instrument is not effective unless executed by the transferee.

2. Upon transfer of any special declarant's right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranties imposed upon the transferor by this chapter. Lack of privity does not deprive any unit's owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant's right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the common-interest community.

(c) If a transferor retains any special declarant's rights, but transfers other special declarant's rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant's rights and arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual obligation or warranty arising from the exercise of a special declarant's right by a successor declarant who is not an affiliate of the transferor.

3. Unless otherwise provided in a mortgage, deed of trust or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership, of any units owned by a declarant or real estate in a common-interest community subject to developmental rights, a person acquiring title to all the property being foreclosed or sold, ~~but only upon the person's request,~~ succeeds to all special declarant's rights related to that property held by that declarant, **and the instrument conveying title need not be executed by the transferee to be effective.** ~~or only to any rights reserved in the declaration pursuant to NRS 116.2115 and held by that declarant to maintain models, offices for sales and signs. The~~ **If the person acquiring title to the property being foreclosed or sold pursuant to this section wants to succeed to some but not all of the special declarant's rights or none of the special declarant's rights then the** judgment or instrument conveying title ~~must~~ **may** provide for transfer of only the special declarant's rights requested **or none of the special declarant's rights, in which event the transferee shall succeed only to any special declarant's rights requested and such judgment or instrument must be executed by the transferee to be effective.**

4. Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership of all interests in a common-interest community owned by a declarant:

(a) The declarant ceases to have any special declarant's rights; and

(b) The period of declarant's control ([NRS 116.31032](#)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant's rights held by that declarant to a successor declarant.

(Added to NRS by [1991, 560](#); A [1993, 2366](#))

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL # 8

NRS CHAPTER 116

AMENDMENT OF DECLARATION

Brief Narrative:

NRS 116.2117 establishes, among other things, the process by which a declaration may be amended. As currently constituted, no amendment may “change the uses to which any unit is restricted, in the absence of unanimous consent.” This requirement was deleted by the 2009 Legislature and inexplicably added back in 2011. The proposed amendment removes the requirement of unanimous consent to change a use to which a unit is restricted. This amendment is consistent with the Uniform law changes in 1994.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. However, this same amendment was approved by the 2009 Legislature.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

Section 1. Amend NRS 116.2117 as follows:

NRS 116.2117 Amendment of declaration.

1. Except as otherwise provided in [NRS 116.21175](#), and except in cases of amendments that may be executed by a declarant under subsection 5 of [NRS 116.2109](#) or [NRS 116.211](#), or by the association under [NRS 116.1107](#), [116.2106](#), subsection 3 of [NRS 116.2108](#), subsection 1 of [NRS 116.2112](#) or [NRS 116.2113](#), or by certain units’ owners under subsection 2 of [NRS 116.2108](#), subsection 1 of [NRS 116.2112](#), subsection 2 of [NRS 116.2113](#) or subsection 2 of [NRS 116.2118](#), and except as otherwise limited by subsections 4, 7 and 8, the declaration, including any plats, may be amended only by vote or agreement of units’ owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

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

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

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

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

6. An amendment to the declaration which prohibits or materially restricts the permitted uses of a unit or the number or other qualifications of persons who may occupy units may not be enforced against a unit's owner who was the owner of the unit on the date of the recordation of the amendment as long as the unit's owner remains the owner of that unit.

7. A provision in the declaration creating special declarant's rights that have not expired may not be amended without the consent of the declarant.

8. If any provision of this chapter or of the declaration requires the consent of a holder of a security interest in a unit, or an insurer or guarantor of such interest, as a condition to the effectiveness of an amendment to the declaration, that consent is deemed granted if:

(a) The holder, insurer or guarantor has not requested, in writing, notice of any proposed amendment;
or

(b) Notice of any proposed amendment is required or has been requested and a written refusal to consent is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder, insurer or guarantor, by certified mail, return receipt requested, to the address for notice provided by the holder, insurer or guarantor in a prior written request for notice.

(Added to NRS by [1991, 551](#); A [1993, 2362](#); [1999, 395, 396](#); [2005, 2589](#); [2009, 1615, 1733](#); [2011, 2424](#))

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL No. 9.

NRS CHAPTER 116

ELECTION WITH CANDIDATES EQUAL TO OR LESS THAN VACANCIES

Brief Narrative:

In 2009, NRS 116.31034 was amended to include an optional executive board election procedure which deems candidates elected if the number of candidates is less than or equal to the number of vacancies. However, the amendment included an additional nomination period. The 2009 addition of the optional procedure was originally intended to make the election process less costly when there were few candidates running for office, but the additional nomination period extends the length of the election cycle, and ultimately could result in a full election in certain circumstances. This legislation removes the additional nomination period to streamline the optional procedure.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. This language is similar in purpose to the First Reprint of Assembly Bill 251 in the 2009 session.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

Section 1. Amend NRS 116.31034 to read as follows:

NRS 116.31034 Election of members of executive board and officers of association; term of office of member of executive board; staggered terms; eligibility to serve on executive board; required disclosures; procedure for conducting elections; certification by member of executive board of understanding of governing documents and provisions of chapter.

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; and~~

~~(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 at the meeting where ballots would have otherwise been counted pursuant to NRS 116.31034(11)(e), in lieu of the counting of ballots.~~

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

If the executive board determines to utilize the election process as outlined in this subsection 5, then the association shall disclose the executive board's decision to do so, and include the disclosures contained in subsection (a) and (b) above with the notice given pursuant to subsection 4.

6. 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 less than the number of members to be elected to the executive board at the election, then the remaining vacancies on the executive board may be filled by appointment of the executive board at an executive board meeting after the candidates are elected pursuant to section 5, and any such person appointed in that manner shall serve until the next regularly

scheduled election of executive board members. The person elected at the next regularly scheduled election of the executive board to the position previously appointed pursuant to this section 6 shall serve only the remainder of that term in order to preserve the staggered term requirement set forth in section 3.

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 ~~54~~, 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 ~~65~~, 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 manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, the person shall file proof in the records of the association that:

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

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

11. Except as otherwise provided in subsection 6 or [NRS 116.31105](#), the election 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) A quorum is not required for the election of any member of the executive board.

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

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

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for membership on the executive board may not possess, be given access to or participate in the

opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

12. An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election as a member of the executive board, except that the candidate's campaign may be limited to 90 days before the date that ballots are required to be returned to the association.

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

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

- (1) Must be no longer than a single, typed page;
- (2) Must not contain any defamatory, libelous or profane information; and
- (3) May be sent with the secret ballot mailed pursuant to subsection 11 or in a separate mailing; or

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

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

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

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

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

□ The information provided pursuant to this paragraph must not 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](#).

(Added to NRS by [1993, 2353](#); A [1997, 3117](#); [1999, 3001](#); [2003, 2229](#); [2005, 2594](#); [2009, 1250, 2883, 2915](#); [2011, 660](#))

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL No. 10.

NRS CHAPTER 116

NOTICE OF MEETINGS HELD ENTIRELY IN EXECUTIVE SESSION

Brief Narrative:

NRS 116.31083 requires that notice of executive board meetings be sent to the membership which includes notification that unit owners may attend and speak at meetings of the executive board. NRS 116.31085 states that unit owners may not attend or speak at a meeting of the executive board held in executive session, unless being called to a hearing. Therefore, if an executive board holds a meeting entirely in executive session, under current law the association must send notice to unit owners who may not attend or speak at the meeting. This legislation addresses that anomaly by only requiring notice be sent to unit owners entitled to attend the executive session, while requiring disclosure of the executive session meeting to the general membership at the next regularly scheduled meeting, and in the minutes of the next regularly scheduled meeting.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. This was not introduced in prior sessions.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

Section 1. Amend NRS 116.31083 to read as follows:

NRS 116.31083 Meetings of executive board; frequency of meetings; periodic review of certain financial and legal matters at meetings; requirements concerning minutes of meetings; right of units' owners to make audio recordings of certain meetings.

1. A meeting of the executive board must be held at least once every quarter, and not less than once every 100 days and must be held at a time other than during standard business hours at least twice annually.

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

- (a) Given to the units' owners in the manner set forth in NRS 116.31068; or
- (b) Published in a newsletter or other similar publication that is circulated to each unit's owner.

Notwithstanding any provision of this chapter or the governing documents of the association to the contrary, if the executive board holds a meeting limited exclusively to executive session items pursuant to the provisions of NRS 116.31085, then notice need only be sent to persons who may be subject to any hearing scheduled for that meeting.

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

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

(a) Have a copy of the audio recording, the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

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

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

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

- (a) A current year-to-date financial statement of the association;
- (b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;
- (c) A current reconciliation of the operating account of the association;
- (d) A current reconciliation of the reserve account of the association;
- (e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and
- (f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The secretary or other officer specified in the bylaws shall cause each meeting of the executive board to be audio recorded and the minutes to be recorded or otherwise taken at each meeting of the executive board, but if the executive board is meeting in executive session, the meeting must not be audio recorded. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the audio recording of the meeting, the minutes of the meeting and a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the audio recording, the minutes or a summary of the minutes must be provided to any unit's owner upon request, in electronic format at no charge to the unit's owner

or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

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

- (a) The date, time and place of the meeting;
- (b) Those members of the executive board who were present and those members who were absent at the meeting;
- (c) The substance of all matters proposed, discussed or decided at the meeting;
- (d) A record of each member's vote on any matter decided by vote at the meeting; and
- (e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

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

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

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

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

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;
- (c) Requires the immediate attention of, and possible action by, the executive board; and
- (d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

(Added to NRS by 1999, 2995; A 2001, 472; 2003, 2234; 2005, 2600; 2009, 2803, 2889, 2922; 2011, 2439)

Section 2. Amend NRS 116.31085 to read as follows:

NRS 116.31085 Right of units' owners to speak at certain meetings; limitations on right; limitations on power of executive board to meet in executive session; procedure governing hearings on alleged violations; requirements concerning minutes of certain meetings.

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

2. An executive board may not meet in executive session to open or consider bids for an association project as defined in NRS 116.31086, or to enter into, renew, modify, terminate or take any other action regarding a contract.

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

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive.

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

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

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

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

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

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

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

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

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. *If the executive board holds a meeting limited exclusively to executive session, then the executive board, at the next regularly scheduled meeting of the executive board, shall disclose to the units' owners the date and generally the matters discussed at the meeting held exclusively in executive session, and include such disclosures in the minutes of the regularly scheduled meeting of the executive board.* The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to the person's designated representative.

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

(Added to NRS by 1997, 3111; A 1999, 3005; 2003, 2236, 2271; 2005, 2602; 2009, 1100, 2891)

REAL PROPERTY SECTION LEGISLATIVE PROPOSAL No. 11.

NRS CHAPTER 116

**ANNUAL OWNER MEETING, BUDGET MEETING, AND DIRECTOR
ELECTION SYNCHRONIZATION**

Brief Narrative:

NRS Chapter 116 currently contains provisions regarding the timing of the annual budgetary process which are not synchronized with the elections of executive directors. Additionally, the provisions regarding the timing of unit owner meetings do not explicitly incorporate director election provisions. This results in the election and seating of executive boards which must then implement a budget of which the newly elected executive directors may have had no input, as the budget was prepared and voted upon by the previously seated executive board. This legislation seeks to synchronize the executive board election, unit owner meetings, and budgetary process such that the executive board that is implementing a budget is the same executive board that prepared and voted upon that budget.

Similar Legislation:

Similar legislation has not been proposed and we do not believe the legislative body is considering it at this time. This was not introduced in prior sessions.

Other sections:

We are not aware of any known positions in opposition to this proposal by other sections of the State Bar.

Section 1. Amend NRS 116.3103 to read as follows:

NRS 116.3103 Power of executive board to act on behalf of association; members and officers are fiduciaries; duty of care; application of business-judgment rule and conflict of interest rules; limitations on power.

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

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

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

2. The executive board may not act to:

(a) Amend the declaration.

(b) Terminate the common-interest community.

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

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

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

(Added to NRS by 1991, 557; A 1993, 2364; 2001, 3193; 2003, 225; 2005, 2592; 2009, 1734, 2797; 2011, 2430)

Section 2. Amend NRS 116.31034 to read as follows:

NRS 116.31034 Election of members of executive board and officers of association; term of office of member of executive board; staggered terms; eligibility to serve on executive board; required disclosures; procedure for conducting elections; certification by member of executive board of understanding of governing documents and provisions of chapter.

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 manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a

member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, the person shall file proof in the records of the association that:

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

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

11. Except as otherwise provided in subsection 6 or NRS 116.31105, the election 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) A quorum is not required for the election of any member of the executive board.

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

(e) The secret written ballots must be opened and counted at *the annual meeting of the units' owners held pursuant to NRS 116.3108(1)* ~~a meeting of the association~~. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

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

12. An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election as a member of the executive board, except that the candidate's campaign may be limited to 90 days before the date that ballots are required to be returned to the association.

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

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

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

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

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

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

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

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

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

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

➤ The information provided pursuant to this paragraph must not 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.

(Added to NRS by 1993, 2353; A 1997, 3117; 1999, 3001; 2003, 2229; 2005, 2594; 2009, 1250, 2883, 2915; 2011, 660)

Section 3. Amend NRS 116.3108 to read as follows:

NRS 116.3108 Meetings of units' owners of association; frequency of meetings; calling special meetings; requirements concerning notice and agendas; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings.

1. *Notwithstanding any provision of the governing documents of an association to the contrary, an annual meeting of the units' owners must be held **not less than 180 days or more than 210 days before the beginning of the fiscal year of the association**—once each year ~~—at a time and place stated in or fixed in accordance with the bylaws. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners.~~ If, **for whatever reason,** the units' owners have not held **a an annual meeting within the time frame required by this paragraph 1 in any given year, for 1 year, a the annual** meeting of the units' owners **for that year** must be held **as soon as practicable after the time frame has expired on the following March 1. The counting of ballots pursuant to NRS 116.31034(1)(e) must occur at the annual units' owners meeting. Nothing in this paragraph shall be interpreted as to limit the number of units' owners meetings that may be held per year.***

2. An association shall hold a special meeting of the units' owners to address any matter affecting the common-interest community or the association if its president, a majority of the executive board or units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of votes in the association request that the secretary call such a meeting. To call a special meeting, 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 the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 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. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be given to the units' owners in the manner set forth in NRS 116.31068. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

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

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

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

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

(c) A period devoted to comments by units' owners regarding any matter affecting the common-interest community or the association and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

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

- (a) The date, time and place of the meeting;
- (b) The substance of all matters proposed, discussed or decided at the meeting; and
- (c) The substance of remarks made by any unit's owner at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

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

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

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

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

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

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;
- (c) Requires the immediate attention of, and possible action by, the executive board; and
- (d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

(Added to NRS by 1991, 562; A 1995, 2230; 1997, 3118; 1999, 3004; 2001, 470; 2003, 2232, 2270; 2005, 2598; 2009, 2800, 2886, 2920; 2011, 2436)