



**State of Nevada
Department of Business and Industry
Real Estate Division
Office of the Ombudsman for Owners in
Common-Interest Communities and
Condominium Hotels**

2015 Ombudsman Legislative Summary

PREFACE

This digest highlights select changes to the Nevada Revised Statutes from the 2015 Legislative Session that affect homeowner associations. Most of these new statutes will be incorporated into NRS 116 and NRS 116A. This summary does not purport to be a complete listing of all HOA-related changes, but highlights the most prominent changes affecting common-interest communities.

The bills summarized within are as follows:

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|------------------------------------|--------------------------------------|
| SB 174 (Effective October 1, 2015) | AB 238 (Effective July 1, 2015) |
| SB 306 (Effective October 1, 2015) | AB 192 (Effective October 1, 2015) |
| SB 154 (Effective January 1, 2016) | AB 301 (Effective July 1, 2015) |
| SB 389 (Effective October 1, 2015) | AB 141 (Effective October 1, 2015) |
| SB 39 (Effective October 1, 2015) | AB 474 (Effective July 1, 2016) |
| | AB 125 (Effective February 24, 2015) |

To see all of the bills directly relating to HOA's in their entirety, visit the Nevada Legislature Website's 2015 Bill Information page:
<http://www.leg.state.nv.us/Session/78th2015/Reports/>.

ELIGIBILITY TO SERVE ON THE BOARD

SB 174 amends NRS 116.31034 revising provisions concerning eligibility to be a candidate for or member of the board of directors or an officer of an association. SB 174 provides that persons residing with or related to another board member or candidate for the executive board may not be a candidate for or a member of the executive board or an officer. A candidate for or member of the board or an officer may also not stand to gain any personal profit or compensation of any kind from a matter before the board. A candidate for the board may also not be related to someone who

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performs the duties of a community manager for the association. The provisions relating to relatives and co-habitants do not apply to an owner of 75% or more of the units, unless the person owning and the relative or co-habitant would constitute a majority of the seats on the board. The provisions relating to relatives and co-habitants also do not apply if the number of candidates nominated for membership on the board is less than or equal to the number of open board seats. SB 174 makes it clear that if a person is not eligible to serve on the board or as an officer pursuant to the statute as amended, the association must not place his or her name on the ballot and must prohibit such person from serving on the board or as an officer. Eligibility requirements are not applicable for board members appointed by the declarant. (Effective October 1, 2015)

ASSOCIATION BIDS

AB 238 revises NRS 116.31086 to require an association to solicit at least three bids, whenever reasonably possible, if the association project is expected to cost:

- For associations with less than 1,000 units, 3% or more of the annual budget;
- For associations with more than 1,000 units, 1% or more of the annual budget.

AB 238 requires that bids opened during a meeting of the board must be read out loud as well. Finally, AB 238 expands the definition of “association project” to include professional services, to include without limitation, accounting, engineering and legal services. (Effective July 1, 2015)

DECLARANT CONTROL

AB 192 revises NRS 116.31032 to allow for a declarant to remain in control of an association longer for projects consisting of 1,000 or more units. For communities with 1,000 or more units, the declarant must turnover control to the owners 60 days after 90% of the project is conveyed. The law regarding turnover after 75% of the project is conveyed remains the same for projects of less than 1,000 units. For projects of 1,000 units or more, after conveyance of 15% of the units, owners other than the declarant shall comprise no less than 25% of the members of the board and must be elected by owners other than the declarant. (Effective October 1, 2015)

LIENS AND FORECLOSURES

SB 306 makes a number changes to NRS 116.3116 through NRS 116.31168 and NRS 107.086 and adds a section to NRS 657. These changes apply to an association’s lien and foreclosure of it. The highlights of the bill are as follows:

- The association’s lien is expanded to include the “costs of collecting” provided in NRS 116.310313;
- The super priority lien is expanded to include a specific portion of the costs of collecting that are actually incurred by the association;
- The super priority lien may not include attorneys’ fees;

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- Board members, agents and employees of the association, including the community manager, are not required to be licensed as a collection agency pursuant to NRS 649 for the purposes of collecting any amounts owed to the association before the recording of a notice of default and election to sell;
- The notice of default and election to sell must include additional details regarding the super priority lien and include disclaimers to the first security interest that the sale may extinguish the first security;
- If the first security interest holder satisfies the priority lien no later than 5 days before the sale of the property and not later than 2 days before the sale a notice of record of such satisfaction is recorded in the office of the county recorder, the association sale shall not extinguish a first security interest;
- An association may not foreclose on a unit if it has received notice that the unit is subject to foreclosure mediation unless the trustee has recorded a certificate regarding completion of the mediation or the owner has failed to pay assessments becoming due during the pendency of the mediation;
- The purchase of a unit at the association's sale is subject to the right of redemption for 60 days;
- The right of redemption may be exercised by the previous owner or any holder of a subordinate security interest.

For more details regarding the intricate changes to the foreclosure process, please review the language of the bill. (Effective October 1, 2015)

AB 141 amended NRS 116.31163 making notice of a notice of default and election to sell to holders of a first security interest mandatory, deleting the language that requires the holder of the security interest to first notice the association of its lien. (Effective October 1, 2015)

RULES AND REGULATIONS

Just as an association may not prohibit the display of the United States flag, an association cannot prohibit the display of the flag of the State of Nevada. AB 301 adds the flag of the State of Nevada along with the flag of the United States in NRS 116.320. (Effective July 1, 2015)

FUNDING FOR THE OMBUDSMAN'S OFFICE

Currently, homeowners pay \$3 per year to fund the Ombudsman's office. AB 474 increased the limit on the amount of the annual fee to \$5. Before a change to the actual fee can be imposed by the Division, the Commission will need to amend their regulation, NAC 116.445, which currently provides for the \$3 annual fee. (Effective July 1, 2016)

COMMUNITY MANAGERS

SB 154 requires the Commission to establish qualifications for the renewal of community manager certificate through the adoption of regulations. Those regulations must include provisions that the certificate is to be renewed biennially and authorize not more than 5 hours of the required hours of continuing education be obtained by observation of a disciplinary hearing before the Commission or attendance as an observer at any alternative dispute resolution process for a claim within the Division's jurisdiction. Continuing education earned one of these ways must be designated as

instruction relating to the provisions of NRS 116, 116A and applicable regulations and can be in 1 hour increments. (Effective January 1, 2016)

BUSINESS LICENSE

SB 39 (as it relates to common interest communities) exempts unit owners' associations formed under NRS 81 from receiving a business license from the state of Nevada. (Effective October 1, 2015)

CONSTRUCTION DEFECT

AB 125 amends provisions relating to construction defects and became effective upon passage in February of 2015. Associations may not represent owners in a community for purposes of bringing a construction defect claim unless the action pertains exclusively to common elements of the association. Specific language to this effect was added to NRS 116.3102(1)(d). (Effective February 24, 2015)

CONDOMINIUM HOTELS

NRS 116B governs condominium hotels. SB 389 amends NRS 116B to incorporate certain amendments proposed to be made to the Uniform Common-Interest Ownership Act with regard to condominium hotels. SB 289 specifies how notices are to be provided to owners, adds requirements for the financial institutions where association money is held, includes several provisions relating to the governance of the project, adds requirements for disclosures to purchasers and amends requirements for the public offering statement. Some of the changes to NRS 116B are already present in NRS 116 others are specific to the condominium hotel project. (Effective October 1, 2015)

CONTACT US

If you have any questions regarding NRS 116 or 116A, please email them to: CIOmbudsman@red.state.nv.us. Visit the <http://red.nv.gov/> for more information about the Ombudsman's office; P: (702) 486-4480; P: (877) 829-9907, F: (702) 486-4520.

Legislative Counsel Bureau Research Library (For copies of the statutes): Las Vegas – 702-486-2626 or Carson City – 775-684-6827

GLOSSARY

Assembly Bill (AB) – All legislation in Nevada begins either as an Assembly Bill or Senate Bill, depending upon which house of the Nevada Legislature in which it originates. Either way, a bill must pass both houses before going to the Governor for approval. Once passed, there is no difference between Assembly and Senate bills.

Common-Interest Community (CIC) / Homeowners' Association (HOA or association) – Common-Interest Community means real estate described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for a share of the real estate taxes, insurance premiums, maintenance or other improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration (NRS 116.021). The more familiar term homeowners' association is used interchangeably.

Commission on Common-Interest Communities and Condominium Hotels (Commission) – A seven-member panel, appointed by the governor, charged with adopting

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regulations and holding hearings related to NRS 116. The Commission and Real Estate Division are separate entities.

Nevada Administrative Code (NAC) – Also known as the regulations. Many bills enacted in Nevada include provisions for regulations that “fill in the details” of the statute. Regulations have the power of law but must not contradict statutes. The Commission is the entity generally authorized to adopt regulations for inclusion into NAC 116.

Nevada Revised Statutes (NRS) –Laws passed by the Nevada Legislature are organized into chapters of the Nevada Revised Statutes. For instance, Chapter 116 of the NRS is called “Common-Interest Ownership.” This is the chapter that most directly affects homeowners associations, although portions of other chapters also apply.

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels (Ombudsman) – An office within the Real Estate Division that educates HOA residents on their rights and responsibilities, assists in resolving HOA-related disputes, and maintains a registry of all HOAs in Nevada. Its duties are supplemented by other sections of the Division, which regulate community managers and investigate issues of compliance with NRS 116.

Senate Bill (SB) – See Assembly Bill.