

COMMON-INTEREST COMMUNITIES

An Educational Manual

This manual includes information extracted from NRS and NAC Chapters 116. It is not all inclusive, but rather highlights and clarifies common areas of confusion.

Nevada Real Estate Division
Office of the Ombudsman for Common-Interest
Communities and Condominium Hotels

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Contents

| | |
|--|-----------|
| I. INTRODUCTION | 2 |
| II. CREATION OF A COMMON-INTEREST COMMUNITY | 3 |
| III. MANAGEMENT OF A COMMON-INTEREST COMMUNITY | 5 |
| A. Association Organization, Declarant, Powers and Fiduciary Duty..... | 5 |
| B. Penalties, Fines and Collections by the Executive Board | 6 |
| C. Running of the Executive Board..... | 7 |
| i. Elections [NRS 116.31034] | 7 |
| ii. Removal from the Board [NRS 116.31036] | 9 |
| iii. Indemnification [NRS 116.31037] | 10 |
| D. Meetings and Voting..... | 10 |
| i. Unit Owners’ Meeting [NRS 116.3108]..... | 10 |
| ii. Executive Board Meeting [NRS 116.31083] | 11 |
| iii. Solicitation of Bids [NRS 116.31086] | 12 |
| iv. Quorum [NRS 116.3109] | 12 |
| v. Alternative Voting [NRS 116.311]..... | 12 |
| E. Liabilities, Insurance and Fiscal Affairs | 13 |
| i. Insurance [NRS 116.3113] | 14 |
| ii. Funds of the Association [NRS 116.3114] | 15 |
| iii. Common Expenses [NRS 116.3115] | 15 |
| iv. Study of Reserves [NRS 116.31152] | 16 |
| v. Association’s Fees [NRS 116.31155]..... | 17 |
| vi. Reporting Finances to Owners [NRS 116.31151] | 17 |
| F. Liens..... | 18 |
| G. Books, Records and Other Documents [NRS 116.31175] | 20 |
| H. Miscellaneous Rights, Duties and Restrictions | 21 |
| i. Personal Profit..... | 21 |
| ii. Display of the Flag..... | 21 |
| iii. Political Signs | 22 |
| iv. Drought Tolerant Landscaping | 22 |
| v. Waste Containers | 22 |
| vi. Ingress and Egress | 22 |
| vii. New Construction | 23 |
| viii. Interruption of Utilities | 23 |
| ix. Regulation of Roads..... | 23 |
| x. Approval to Rent or Lease | 23 |
| xi. Transient Commercial Use | 24 |
| xii. Retaliation and Harassment | 24 |
| IV. PROTECTION OF PURCHASERS [Article IV] | 24 |
| A. Sale of Unit | 24 |
| B. Organization of Common-Interest Communities Section..... | 25 |
| C. Filing a Complaint | 26 |
| V. DIVISION FORMS | 28 |

I. INTRODUCTION

A common-interest community (CIC) refers to real estate to which a person, through ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, and other expenses related to common elements of the community. By purchasing a property in a CIC, owners are agreeing to pay assessments and are bound by restrictions on how they can use and enjoy their property. Assessments must be paid whether or not an owner agrees with the way the community is being managed or the money is being spent. If assessments are left unpaid, the owner risks losing their home to foreclosure.

Homeowners' associations operate on democratic principles. After the period of developer control, the CIC is taken over by unit owners who are elected from a pool of eligible unit owners within the community to sit on the executive board and make decisions on behalf of the association. The executive board is responsible for managing the association's money and the day to day operation and maintenance of the community. As unpaid volunteers, executive board members may not have the experience or professional background required to understand and carry out the responsibilities of the association properly. As such, they may hire a professional community manager to assist in carrying out some of these responsibilities.

As a member of a CIC's executive board, it is a requirement to read and understand the law governing CICs; [NRS 116](#) and [NAC 116](#). NRS stands for Nevada Revised Statutes, which are the codified laws of the State of Nevada. NAC, the Nevada Administrative Code, is the regulation that clarifies and governs how these laws are to be enforced. NRS chapter 116 pertains exclusively to common-interest ownership. [Chapter 116A](#) deals specifically with the regulation of community managers and reserve study specialists. [Chapter 116B](#) applies to condominium hotels. The Office of the Ombudsman for Common-Interest Communities and Condominium Hotels has developed this manual to assist board members in understanding their obligations as defined by NRS and NAC 116.

Board members and unit owners should also read and become familiar with their association's Declaration of Covenants, Conditions and Restrictions (CC&Rs). CC&Rs are provided to unit owners when they purchase their home and become a part of the property's title. They bind every current and future owner of the property, and together with other "governing documents" (bylaws and rules and regulations), guide the board regarding their roles, responsibilities and restrictions.

While this manual does not serve to interpret the law, nor be a restatement of the statutes, it should serve as a quick reference guide, highlighting common areas of confusion and directing readers to where specific information can be found within the statutes. This manual will follow in order of NRS 116 and is not all encompassing. The manual is simply meant to be an additional tool for understanding the law, not a substitution for reading Chapter 116 in its entirety. Any requests for *specific* training can be made by utilizing the "Training Request" form found at <http://red.nv.gov/trainingrequest/>. Our website, <http://red.nv.gov/Content/CIC/Main/>, also has a variety of useful links, including [brochures](#), [cheat sheets and templates](#), [the calendar for regularly scheduled classes](#), [presentations](#), [advisory opinions](#), and [frequently asked questions](#) among other things. The Office of the Ombudsman is here to serve the community and provides several resources for those seeking to better understand their rights and responsibilities under the law.

II. CREATION OF A COMMON-INTEREST COMMUNITY

A CIC is created pursuant to NRS 116.2101 by recording a Declaration of Covenants, Conditions and Restrictions (CC&Rs), executed in the same manner as a deed, and recorded in each county in which the community is located. The declaration is recorded by the declarant/developer, and is the founding document that creates the CIC, defines its parameters, states its purpose for being, and provides the source of the association's authority. All policies, rules and actions of the association must be in conformance with the declaration.

A declaration must contain: the name(s) of the CIC; a statement that the CIC is either a condominium, cooperative or planned community; a legally sufficient description of the real estate included in the community; a statement of the maximum number of units the declarant reserves the right to create; in a condominium or planned community, a description of the boundaries of each unit; a description of any limited common elements; a description of any developmental rights and other special declarant's rights; an allocation to each unit of the allocated interests; any restrictions on use, occupancy and the amount for which a unit may be sold; the file number or other information for recording; and any other inclusions listed in NRS 116.2105. Plats are also a part of the declaration and are required for all CICs except cooperatives. Each plat must comply with the provisions of chapter 278 of NRS and must be certified by a professional land surveyor [NRS 116.2109].

Except as otherwise provided, the declaration, including any plats, may be amended only by vote or agreement of units' owners. To approve an amendment to the declaration, more than a majority of the total number of votes must be cast in favor of the amendment, unless the declaration specifies a different percentage. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval. No action to challenge the validity of an amendment adopted by the association may be brought more than 1 year after the amendment is recorded. Every amendment to the declaration must be recorded in every county in which a portion of the CIC is located and is effective only upon this recordation [NRS 116.2117].

The governing documents of an association include the declaration (CC&Rs), articles, bylaws, rules and regulations, and any other documents that govern the operation of the community [NRS 116.049]. If the declaration is the *what*, the bylaws define *how* the association will govern from day to day. When a conflict exists between the declaration and the bylaws, the declaration prevails, except to the extent the declaration is inconsistent with NRS 116 [NRS 116.2103]. Any provision contained in the governing documents which violates any provision of NRS 116 is superseded by the law, regardless of whether the provision was in place before the provision of law came into effect.

Additional rules and regulations can be created by the executive board of an association to clarify aspects not fully addressed by either the declaration or bylaws. Oftentimes, these rules and regulations are more flexible and more easily amended as changes occur within the community over time, but they cannot be more stringent than the bylaws or the declaration set before them. If any change is made to the governing documents, the secretary or other officer specified in the bylaws shall, within 30 days after the change is made, prepare and cause to be delivered a copy of the change [NRS 116.12065].

The bylaws of the association must: provide the number of members of the executive board and the titles of the officers of the association; provide for election by the executive board of at least a president, treasurer and secretary; specify the qualifications, powers, duties, terms of office, manner of electing and removing officers and members of the executive board/procedures for filling vacancies; specify the

powers the executive board may delegate to other persons or to a community manager; specify the officers who may prepare, execute, certify and record amendments to the declaration on behalf of the association; provide procedural rules for conducting meetings of the association; specify a method for the units' owners to amend the bylaws; contain any provision necessary to satisfy requirements concerning meetings, voting, quorums and other activities of the association; and provide for any matter required by law of this State other than this chapter to appear in the bylaws of organizations of the same type as the association [NRS 116.3106].

Unit owners and board members have specific rights and responsibilities pertaining to the CIC. While the unit owner is primarily responsible for ensuring that any maintenance, upkeep and renovations to his or her unit abide by the governing documents, the board is responsible for enforcing the governing documents and statutes within NRS and NAC 116 fairly and uniformly, maintaining all common elements of the community, and appropriately managing the community's funds.

III. MANAGEMENT OF A COMMON-INTEREST COMMUNITY

A. Association Organization, Declarant, Powers and Fiduciary Duty

A homeowner's association must be organized no later than the date the first unit in the CIC is conveyed by the declarant. The membership of the association at all times must consist exclusively of all units' owners. While recording the CC&Rs creates a CIC, recording the articles of incorporation creates the association. The following must be included in the association's articles of incorporation: articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust that its purpose is to operate as an association pursuant to this chapter, and contain in its name the words "common-interest community," "community association," "master association," "homeowners' association" or "unit-owners' association" [NRS 116.3101].

A declarant is the person or entity that creates the original governing documents for the CIC and association, generally the developer of the project, and maintains rights and powers over the association until it sells the majority of units to individual homeowners. At most, a period of declarant's control terminates five years after ceasing to offer units for sale or five years after any right to add new units was last exercised. For a CIC with less than 1,000 units, a period of declarant's control terminates 60 days after conveyance of 75 percent of the units. For a community with 1,000 units or more, a period of declarant's control terminates 60 days after conveyance of 90 percent of the units. Not later than 60 days after conveyance of 50 percent of the units, at least one-third of the members of the executive board must be elected by units' owners other than the declarant [NRS 116.31032].

Within 30 days after units' owners may elect a majority of the members of the executive board, the declarant shall deliver to the association all property under its control, including any rules or regulations which may have been adopted. An accounting for money of the association and audited financial statements for each fiscal year must also be included. Financial statements must fairly and accurately report the association's financial position. Control of the association's money must be handed over, along with tangible property of the association. A complete study of the reserves of the association, as well as a copy of any plans and specifications used in the construction of improvements, all insurance policies, any permits and approvals which are required by law to be kept on the premises of the community, any written warranties still in effect, a roster of owners, any contract for service, and a disclosure of the amount by which the declarant has subsidized the association's dues on a per unit or per lot basis must also be provided [NRS 116.31038].

Within 2 years after the executive board *elected by units' owners* takes office, the board may terminate without penalty, upon not less than 90 days' notice to the other party, any contract or lease that was entered into by the declarant or an affiliate of the declarant. This section does not apply to any lease the termination of which would terminate the CIC, or reduce its size, or a proprietary lease [NRS 116.3105].

It is crucial that all members of the board understand their powers and limitations. The board may, pursuant to the authority granted in the declaration: adopt and amend rules and regulations; adopt and amend budgets in accordance with the requirements set forth in NRS 116.31151; collect assessments for common expenses from the units' owner; invest funds of the association in accordance with the requirements set forth in NRS 116.311395; hire and discharge managing agents and other employees and independent contractors; institute, defend or intervene in litigation or arbitration, mediation or administrative proceedings affecting the CIC; make contracts and incur liabilities; regulate the use, maintenance, repair, replacement and modification of common elements; impose and receive any

payments, fees or charges for the use, rental or operation of the common elements and for services provided to the units' owners; impose charges for late payment of assessments pursuant to NRS 116.3115; impose reasonable fines for violations of the governing documents of the association; abide by conflict of interest rules; etc. [NRS 116.3102].

Members of the executive board must not: act outside the scope of the authority granted in the governing documents; act for reasons of self-interest, prejudice or revenge; commit an act or omission which amounts to incompetence or negligence; disclose confidential information without the consent of the person to whom the information relates; or impede an investigation of the Division by failing to comply with a request, providing false information or concealing facts [NAC 116.405].

Members of the executive board should: hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association (at least once every quarter); obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any service for use by the association; consult with appropriate professionals as necessary before making any major decision affecting the association or the common elements; deposit all funds of the association for investment in government securities that are backed by the full faith and credit of the United States; maintain current, accurate and properly documented financial records; provide proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in making business decisions, and facilitation of fraud detection and prevention; make sure that the association complies with, and uniformly enforces, all applicable federal, state and local laws and regulations and the governing documents of the association; and fairly enforce the collection policies of the association [NAC 116.405].

It is important to remember that no act should be carried out by the board in which expending the association's resources cannot be justified. Every action should take into account the community's best interests. Per NRS 116.3103, officers and members of the executive board must act on an informed basis and in good faith when making any decisions affecting the CIC, and per NRS 116.31065 rules must be uniformly enforced under the same or similar circumstances against all units' owners.

B. Penalties, Fines and Collections by the Executive Board

When making any improvements or additions to a unit, a unit's owner must receive approval from the executive board and shall adhere to any pre-determined schedule for commencement and completion for both design and construction. The association may impose and enforce a construction penalty against any unit's owner who fails to adhere to this schedule only if the right to assess and collect a construction penalty was previously documented, the association included notice of the maximum amount of the construction penalty and schedule as part of the resale package, and the unit's owner received notice of the alleged violation, informing him or her of a right to a hearing [NRS 116.310305].

If a unit's owner, tenant or invitee violates any provision of the governing documents of an association, the executive board may act in several ways. NRS 116.310312 addresses entering the grounds of the violator's unit under certain, extreme circumstances. Pursuant to the governing documents, the board may also prohibit, for a reasonable time, the violator from voting on matters related to the CIC and using common elements, not including any vehicular or pedestrian ingress or egress from the unit, and the board may impose a fine.

If any 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 CIC, the amount of the fine must be equal 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, the amount of the fine must not exceed \$100 for each violation, or a total amount of \$1,000, whichever is less. Limitations on the amount of the fine do not apply to any charges or costs that may be collected by the association if the fine becomes past due [NRS 116.31031].

A fine against a unit's owner for a violation committed by an invitee or the tenant cannot be imposed unless the owner participated in or authorized the violation, had prior notice of the violation, or had an opportunity to stop the violation and failed to do so. If the association adopts a policy imposing fines for any violations, a schedule of the fines that may be imposed for those violations must be sent to the unit owner.

A written notice must be provided to the unit owner which includes applicable provisions of the governing documents that form the basis of the alleged violation. Written notice must be mailed to the address of the unit and, if different, to a mailing address specified by the unit's owner. This notice must specify, in detail, the alleged violation, the proposed action to cure the alleged violation, the amount of the fine, a clear and detailed photograph of the violation, and the date, time and location for a hearing where the alleged violation can be cured or contested [NRS 116.31031].

The executive board must provide notice and schedule a hearing so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and attend. The executive board must attempt to hold this hearing before it may impose any fine. If the unit owner fails to attend the hearing or cure the violation, a fine may then be imposed. The board must establish a compliance account to document the fine, separate from any account established for assessments [NRS 116.310315].

If a fine is imposed and the violation is still not cured, the executive board may impose an additional fine for the continuing violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and opportunity to be heard. Any past due fine must not bear interest, but an association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation [NRS 116.31031].

The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine and do not preempt any provisions of the governing documents that provide greater procedural protections [NRS 116.31031].

C. Running of the Executive Board

i. Elections [NRS 116.31034]

Unit owners shall elect to the executive board at least three members, all of whom must be units' owners. Officer positions are then defined by the bylaws and delegated by the executive board. The term of office of a member of the executive board may not exceed 3 years. 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.

Not less than 30 days before the preparation of a ballot for the election of members to the executive board, notice shall be given to each unit's owner of upcoming vacancies. In order to have one's name placed on the ballot, a nomination must be submitted to the board within 30 days after this original notice is sent.

Each candidate who is qualified to serve as a member of the executive board may have his or her name placed on the ballot.

The executive board may determine to use the duly elected process, meaning that if the number of candidates nominated for membership on the executive board is equal to or less than the number of vacancies, the nominated members may be duly elected, and no ballots will be prepared or mailed to the units' owners. If the executive board chooses to use the duly elected process, notice of the executive board's determination as well as the provision of law contained in NRS 116.31034(5) must be included in the notice sent to each unit's owner of the upcoming vacancies [NRS 116.31034(4)(5)(6)]. If the number of candidates nominated for membership on the executive board is greater than the number of vacancies, then the board must mail ballots to the units' owners and conduct an election accordingly.

Candidates may not be considered if they reside in a unit with, are married to, are domestic partners with, or are related by blood, adoption or marriage to another person who is also a member of the executive board, officer of the association, or community manager. Board members may be related to one another if the number of candidates is less than or equal to the number of vacancies. Candidates may not be considered if they stand to gain any personal profit or compensation of any kind from a matter before the board.

Each person who is nominated as a candidate for membership must make a good faith effort to disclose any financial, business, professional or personal relationship that would result in a potential conflict of interest and disclose whether they are a member in good standing. A candidate shall not be deemed to be in "good standing" if the candidate has any unpaid or past due assessments, or construction penalties that are required to be paid to the association. The candidate must make all disclosures required, in writing, to the association with his or her candidacy information.

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, except that the candidate's campaign is limited to 90 days before the date that ballots are required to be returned. A candidate may request that the association send, at the association's expense, a candidate informational statement; no longer than a single, typed page, without any defamatory, libelous or profane information. The candidate is also allowed to communicate campaign material directly to unit owners, as long as a copy of the campaign material is provided to the association first. Any list of mailing addresses provided to the candidate by the board must not include the names of units' owners or the name of any tenant.

If an official publication (website, newsletter, circulation, bulletin board) contains any mention of a candidate or ballot question, the official publication must provide equal space to all candidates or issues. The association and its officers, employees and agents are immune from any criminal or civil liability resulting from an act or omission arising out of the publication or disclosure of information related to any person [NRS 116.31035].

Unless the duly elected process is applied, the election of a member to the executive board must be conducted by secret written ballot sent, prepaid by United States mail, to the listed mailing address of each eligible unit. Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to return the ballot to the association. Only secret written ballots that are returned to the association may be counted to determine the outcome of the election. The secret written ballots must be opened and counted in plain sight at the annual meeting of the units' owners. Incumbent members of the executive board and each person whose name is placed on the ballot as a candidate may not be given

access to or participate in the opening or counting of the secret written ballots before those ballots have been opened and counted. If candidates are duly elected, they must be announced at this annual meeting. A quorum is not required to be present at this meeting.

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 (form 602), that the member has read and understands the governing documents of the association and the provisions of chapter 116 to the best of his or her ability. This certification becomes a record of the association.

An executive board shall provide to the Division the names, mailing addresses and telephone numbers of all members of the executive board in accordance with NRS 116.625. This information must be kept confidential by the Division. The executive board shall indicate on a form prescribed by the Division (form 623) any change in contact information and submit the form to the Division within 30 days of any such change.

Notwithstanding any provision of the governing documents to the contrary, if a vacancy occurs on the executive board at any time, the executive board may fill the vacancy by appointment at a board meeting. Any such person appointed to the executive board shall serve as a member until the next regularly scheduled election. An executive board member elected to a previously appointed position may only be elected to fulfill the remainder of that term [NRS 116.31034].

ii. Removal from the Board [NRS 116.31036]

Any member of the executive board, other than a member appointed by the declarant, may be removed, with or without cause. In order to be removed, **at least 35 percent of the total** number of voting members of the association must cast votes **in favor** of removal **and** those votes must represent a **majority of all votes cast**.

*Example: If there are 140 units in an association, at least 49 votes must be cast in favor of removal **and** the 49 votes must also be the majority of votes cast. If 100 total votes are received, 49 votes in favor of removal is not the majority, and the member cannot be removed. If exactly 49 votes are received, but not all in favor of removal, then the member cannot be removed.*

To call a removal election, the units' owners must submit a written petition, signed by the required percentage of the total number of voting members of the association, to the executive board or the community manager for the association. The written petition must be served by a process server or mailed, return receipt requested to the association. Except as otherwise provided in NRS 116.31105, the removal of any member of the executive board must be conducted by secret written ballot. The 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 designated mailing address of each eligible unit within the CIC. Each unit's owner must be provided with at least 15 days to return the secret written ballot to the association. Only secret written ballots returned to the association may be counted to determine the outcome. The secret written ballots must be opened and counted at a meeting of the association; a quorum is not required to be present. The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not be given access to or participate in the opening or counting of the secret written ballots.

iii. Indemnification [NRS 116.31037]

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 executive board, the association shall indemnify the member for his or her losses or claims and undertake all costs of defense. This is true 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.

D. Meetings and Voting

Meetings of the association must be conducted in accordance with the most recent edition of *Robert's Rules of Order*, unless the bylaws or a resolution of the executive board adopted before the meeting provide otherwise [NRS 116.3109]. Robert's Rules of Order is a handbook for running both efficient and effective meetings.

i. Unit Owners' Meeting [NRS 116.3108]

A meeting of the units' owners must be held at least 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, the meeting must be held 1 year after the date of the last meeting. If the units' owners have not held a meeting for 1 year, the meeting must be held on the following March 1.

To call a special meeting, the units' owners must submit a written petition, signed by the required percentage of the total number of voting members of the association, to the executive board or the community manager for the association. The executive board shall set the date for the special meeting so that the meeting is held not less than 15 days or more than 60 days after the date on which the petition is received.

Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, notice of the meeting is 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. The notice must include notification of the right of a unit's owner to have a copy or a summary of the minutes of the meeting.

The agenda for a meeting of the units' owners must consist of a clear and complete statement of the topics scheduled to be considered, a list describing the items on which action may be taken, a period devoted to comments by units' owners regarding any matter affecting the CIC, as well as a period for 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.

Minutes must be recorded or otherwise taken at each meeting of the units' owners. Minutes of each meeting must include: the date, time and place of the meeting; the substance of all matters proposed, discussed or decided at the meeting; and the substance of remarks made by any unit's owner at the meeting if the unit's owner so requests. A unit's owner may record the meeting if, before recording the meeting, he or she provides notice of his or her intent to record to the other units' owners who are in attendance.

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. The association shall maintain the minutes of each meeting of the units' owners until the CIC is terminated.

ii. Executive Board Meeting [NRS 116.31083]

A meeting of the executive board must be held at least once every quarter, and not less than once every 100 days. It must be held at a time other than during standard business hours at least twice annually. Except when the executive board is meeting in executive session, a unit's owner may attend and speak at any meeting of the executive board. A period devoted to comments by the units' owners and discussion of those comments must be scheduled for both the beginning and end of each board meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting [NRS 116.31085].

Except in an emergency or unless the bylaws of an association require a longer period of notice, the officer specified in the bylaws 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. 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 **or** the date on which and locations where copies of the agenda may be conveniently obtained. Only in an emergency can the executive board act on an item which is not listed on the agenda. The notice must include notification of the right of a unit's owner to have a copy of the audio recording and the minutes, or a summary of the minutes, provided upon request.

An executive board may meet in a private executive session only to: consult with the attorney for the association; discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association; discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment; discuss the alleged failure of a unit's owner to adhere to a schedule, if it may subject the unit's owner to a construction penalty [NRS 116.31085]. If the executive board is meeting in executive session, the meeting must not be audio recorded.

If the executive board holds a meeting in executive session only to discuss: a violation of the governing documents, including the failure to pay an assessment, or discuss the alleged failure of a unit's owner to adhere to a schedule if the alleged failure may subject the unit's owner to a construction penalty, the secretary or other officer specified in the bylaws of the association is required to give notice of the meeting only to the person who may be subject to a hearing scheduled for that meeting [NRS 116.31083(3)(a)]. The executive board must acknowledge that this meeting occurred pursuant to NRS 116.31085(6) during the next regularly scheduled executive board meeting and include such an acknowledgement in the minutes of the meeting at which the acknowledgement was made.

If the executive board holds a meeting in executive session to (a) consult with the attorney for the association on matters relating to proposed or pending litigation, or (b) discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association pursuant to NRS 116.31085(3)(a)(b), the secretary or other officer specified in the bylaws shall post notice of the executive session in one or more prominent places within the common elements of the association; and provide electronic notice of the executive session to all units' owners who have provided the association with an electronic mail address.

The minutes of each meeting of the executive board must include: the date, time and place of the meeting; those members of the executive board who were present and those members who were absent; the substance of all matters proposed, discussed or decided; a record of each member's vote on any matter decided by vote; and the substance of remarks made by any unit's owner who addresses the executive board at the meeting, if the unit's owner so requests.

If an executive board receives a written complaint from a unit's owner alleging that the board has violated any provision of chapter 116 or the governing documents of the association, the executive board shall, not later than 10 business days after receipt of such a complaint, acknowledge receipt of the complaint and notify the unit's owner that, if the unit's owner submits a written request that the subject of the complaint be placed on the agenda of the next regularly scheduled meeting, the subject of the complaint will be placed as such [NRS 116.31087].

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 current year-to-date financial statement of the association; a current year-to-date schedule of revenues and expenses for the operating and reserve accounts compared to the budget for those accounts; a current reconciliation of the operating and reserve account; the latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and the current status of any civil action or claim submitted to arbitration or mediation in which the association is a party [NRS 116.31083].

iii. Solicitation of Bids [NRS 116.31086]

If the board solicits bids for an association project, the board must, whenever reasonably possible, solicit at least three bids if the association project is expected to cost:

- (1) In a CIC that consists of less than 1,000 units, 3 percent or more of the annual budget of the association; or
- (2) In a CIC that consists of 1,000 or more units, 1 percent or more of the annual budget of the association.

The bids must be opened and read aloud during a meeting of the executive board.

iv. Quorum [NRS 116.3109]

Except when the governing documents provide otherwise, a quorum is present throughout any *meeting of the units' owners* if persons entitled to cast 20 percent of the votes in the association are present in person, by proxy, or through absentee ballot. If a quorum is not met, 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 from the date of the current meeting. A quorum of the *executive board* is present only if a majority of the individuals entitled to cast votes is present at the time a vote regarding an action is taken, unless the governing documents specify a larger number.

v. Alternative Voting [NRS 116.311]

Unless prohibited or limited by the declaration or bylaws, units' owners may vote at a meeting in person, by absentee ballot, by a proxy, or, when a vote is conducted without a meeting, by electronic or paper

ballot. A ballot is not revoked after delivery to the association by death or disability, or attempted revocation by the person who cast that vote.

The board 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. 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 CIC, another unit's owner who resides in the CIC, or a delegate or representative when authorized pursuant to NRS 116.31105. A proxy terminates immediately after the conclusion of the meeting. 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.

Unless prohibited or limited by the declaration or bylaws, the association may conduct a vote without a meeting, but the following requirements apply: the association shall notify the units' owners that the vote will be taken by ballot; the association shall deliver a paper or electronic ballot to every unit's owner entitled to vote on the matter; the ballot must set forth each proposed action and provide an opportunity to vote for or against that action; the ballot must indicate the number of responses needed to meet the quorum requirements; the ballot must state the percentage of votes necessary to approve each matter; the ballot must specify the time and date to submit in order to be counted (not fewer than 3 days after the date the association delivers the ballot); and 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.

A member of the executive board shall not participate in any hearing or cast any vote relating to a fine imposed if the member has not paid all assessments which are due to the association. A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall disclose the matter to the executive board and abstain from voting on any such matter. A member of an executive board who has a member of his or her household or any person related by blood, adoption or marriage within the third degree of consanguinity or affinity who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall disclose the matter to the executive board before voting on any such matter. A member of an executive board shall not be deemed to gain any personal profit or compensation solely because the member is the owner of a unit in the CIC [NRS 116.31084].

E. Liabilities, Insurance and Fiscal Affairs

A unit's owner is not liable, solely by reason of being a unit's owner, for any injury or damage arising out of the condition or use of the common elements of the community. If damage to any part of the CIC, 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 the unit, even if the association maintains insurance with respect to that damage or common expense. This applies unless the damage or common expense is caused by a vehicle and is committed by a person who is delivering goods to or performing services for the unit. Neither the association nor any unit's owner except the declarant is liable for a declarant's wrongful acts in connection with any part of the CIC that the declarant has responsibility to maintain. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation incurred by the association [NRS 116.3111].

i. Insurance [NRS 116.3113]

Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain property insurance, commercial general liability insurance, crime insurance, and director's and officer's insurance.

Property insurance must be taken out on the common elements and insure against risks of direct physical loss. After application of any deductibles, this insurance must be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased.

Commercial general liability insurance must include insurance for medical payments in an amount determined by the executive board, but not less than any amount specified in the declaration. This insurance must cover all occurrences commonly insured against for bodily injury and property damage arising out of, or in connection with the use, ownership, or maintenance of the common elements.

Crime insurance must include coverage for dishonest acts by members of the executive board and the officers, employees, agents, directors and volunteers of the association, and extend to cover any business entity that acts as the community manager of the association, as well as the employees of that entity. The minimum amount of this 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.

Directors and officer's insurance that is a nonprofit organization errors and omissions policy in a minimum amount of not less than \$1,000,000 naming the association as the owner and the named insured. The coverage must extend to the members of the executive board and the officers, employees, agents, directors and volunteers of the association and to the community manager of the association and any employees thereof while acting as agents as insured persons under the policy terms. Coverage must be subject to the terms listed in the declaration.

The declaration may require the association to carry any other insurance, and the association may carry any other insurance it considers appropriate to protect the association or the units' owners. If at any time insurance is not reasonably available, the association promptly shall cause notice of that fact to be given to all units' owners.

Insurance policies must provide that each unit's owner is an insured person under the policy with respect to the common elements. 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 provides primary insurance. Subject to NRS 116.31135, insurance proceeds must be disbursed first for the repair or restoration of the damaged property. The association, units' owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored.

An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit's owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit's owner, and each holder of a security interest.

Any portion of the CIC which is damaged or destroyed must be repaired or replaced promptly by the association unless: the CIC is terminated; repair or replacement would be illegal under any state or local

statute or ordinance governing health or safety; or eighty percent of the units' owners, including every owner of a unit that will not be rebuilt (if applicable), vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds, deductibles and reserves is a common expense [NRS 116.31135].

ii. Funds of the Association [NRS 116.3114]

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 is located and qualified to conduct business in this State, or has consented to be subject to the jurisdiction of the courts of this State and the Division. Except as otherwise provided by the governing documents, an association shall deposit, maintain and invest all funds of the association in: a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund/the Securities Investor Protection Corporation, with a private insurer approved pursuant to NRS 678.755, or in a government security backed by the full faith and credit of the Government of the United States [NRS 116.311395].

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the units' owners in proportion to their liabilities for common expenses, or credited to them to reduce their future assessments [NRS 116.3114].

If the annual budget of the association is \$45,000 or more but less than \$75,000, the executive board shall cause the financial statement of the association to be reviewed by an independent certified public accountant during the year immediately preceding the year in which a study of the reserves of the association is to be conducted [NRS 116.31144].

If the annual budget of the association is \$75,000 or more but less than \$150,000, the executive board shall cause the financial statement of the association to be *reviewed* by an independent certified public accountant *every fiscal year* [NRS 116.31144].

If the annual budget of the association is \$150,000 or more, the executive board shall cause the financial statement of the association to be *audited* by an independent certified public accountant *every fiscal year* [NRS 116.31144]. NAC 116.457 provides greater detail as to what the *audited* financial statement of an association must include, as well as the qualifications necessary for a person to prepare and present financial statements of an association.

If, within 180 days before the end of the fiscal year, 15 percent of the total number of voting members of the association submits a written request for an audit, the executive board of an association shall cause the financial statement for that fiscal year to be audited by an independent certified public accountant [NRS 116.31144]. This does not apply to an association whose annual budget is \$150,000 or more. The Division may investigate and audit all financial accounts related to an association if the Division has reasonable cause to believe that the accounts or records of the association have not been properly maintained [NAC 116.550].

iii. Common Expenses [NRS 116.3115]

Common elements enjoyed by all unit owners within a CIC must be cared for and maintained. For this reason, each unit owner contributes to the funds (operating and reserve) used to care for these elements by paying monthly dues (assessments). Any common expense benefiting fewer than all the units or their owners may be assessed exclusively against the units or units' owners benefited. At least annually, the

association assesses common elements within the community and adopts a budget in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a financial plan for the daily and long-term operation of the association.

To adequately fund the reserve account, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments. Any such assessments imposed by the executive board must be based on the study of the reserves conducted pursuant to NRS 116.31152.

When assessments are not paid by a unit owner, the association must follow the process outlined in NRS 116.3116 through 116.31168, which can result in foreclosure of the unit. To cover the costs of collecting any past due obligation from a unit's owner, an association may not charge the unit's owner fees in connection with a notice of delinquent assessment which exceed a total of \$1,950. A specific listing of fees that an association cannot exceed is set forth in NAC 116.470. The association or person acting on behalf of an association *may* recover from the unit's owner reasonable management company fees which may not exceed a total of \$200, as well as any reasonable attorney's fees [NAC 116.470].

iv. Study of Reserves [NRS 116.31152]

The association shall establish adequate reserves for the repair, replacement and restoration of major components of the common elements and any other portion of the CIC that the association is obligated to maintain over the course of the next 30 years. The projected life expectancy of major components and the funding needs of the reserves are based upon the association scheduling appropriate routine and preventative maintenance. Failure to perform such maintenance, and a failure to keep any guarantees provided by manufacturers or service providers, can dramatically increase the funding needs of the reserves over time [NAC 116.425]. The reserves may be used only for the purposes of maintaining major components and must not be used for daily maintenance.

Adequately funded reserves are defined as having funds sufficient to maintain the common elements at the level described in the governing documents/reserve study, without using the funds from the operating accounts or special reserve assessments (unforeseen catastrophes excluded) [NAC 116.425]. An executive board shall include in the budget to maintain the reserve an estimate of the amount of reserve funds necessary in the projected fiscal year to complete scheduled maintenance, repairs, replacements or restorations. If the projected balance of the reserve account at the end of the budgeted fiscal year is less than the amount required to adequately fund the reserves, the reason for the difference and how this difference is proposed to be resolved by the executive board should be stated [NAC 116.415].

The executive board shall, at least once every 5 years, cause to be conducted a study of the reserves. The study of the reserves must include: a summary of an inspection of the major components of common elements; an identification of the major components which have a remaining useful life of less than 30 years; an estimate of the remaining useful life of each major component; an estimate of the cost of maintenance, repair, replacement or restoration of each major component during and at the end of its useful life; an estimate of the total annual assessment that may be necessary to cover the cost of maintaining, repairing, replacement or restoration of the major components after subtracting the reserves of the association; and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves. NAC 116.425 lists all additional requirements.

The study of the reserves must be conducted by a person who holds a permit issued pursuant to chapter 116A of NRS. If the CIC contains 20 or fewer units and is located in a county whose population is less than 55,000, the study of the reserves may be conducted by any person whom the executive board deems qualified to conduct the study.

A person conducting a reserve study and any consultant assisting in the preparation of a reserve study shall include the following disclosures: the background, training, qualifications and references that would qualify the person as competent; any relationship which could result in actual or perceived conflicts of interest; and whether the person conducting or assisting in the preparation of the reserve study is bonded or has professional liability insurance with a minimum coverage of \$1,000,000 [NAC 116.430].

The board must adopt the reserve study and provide a summary to the Division, using reserve study summary form 609, no later than 210 days after the board receives the first draft of the reserve study. If the board adopts the reserve study earlier, a summary of the study must be provided to the Division within 45 days of adoption [NRS 116.31152(4)].

At least annually, the board shall review the results of the study to determine whether reserves are sufficient and make any necessary adjustments to the association's funding plan accordingly. Money in the reserve account of an association may not be withdrawn without the signatures of at least two members of the executive board or the signatures of at least one member of the executive board and one officer of the association who is not a member of the executive board [NRS 116.31153].

v. *Association's Fees [NRS 116.31155]*

An association shall pay annually to the Administrator a fee for every unit in the association used for residential use (up to \$5 per unit). Each association shall, at the time it pays the fee, register with the Ombudsman on a form prescribed by the Division (form 562) [NRS 116.31158]. If an association is subject to the governing documents of a master association, the master association shall pay the fees required pursuant to this section for each unit in the association, unless the governing documents of the master association provide otherwise.

The Division shall impose an administrative penalty against an association or master association that fails to pay the fees owed within the times established by the Division (no earlier than 45 days and no later than the last business day in the month the association incorporated with the Office of the Secretary of State). The administrative penalty imposed for each violation must equal 10 percent of the amount of fees owed by the association or master association, or \$500, whichever amount is less. The amount of the unpaid fees owed by the association or master association bears interest at the rate set forth in NRS 99.040 (a rate equal to the prime rate at the largest bank in Nevada).

vi. *Reporting Finances to Owners [NRS 116.31151]*

Unless the declaration of a CIC imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of the budget for the daily operation of the association, including the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account, as well as the full budget needed to provide adequate funding for the reserves.

Within 60 days after *adoption* of any proposed budget for the CIC, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units'

owners to consider *ratification* of the proposed budget not less than 14 days or more than 30 days after mailing the summaries. Unless at that meeting at least a majority of all units' owners reject the proposed budget, the proposed budget is ratified. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner.

F. Liens

A lien is a claim on a residential property for certain legal obligations of the owner. A valid lien must be satisfied either by full payment of the obligation or by satisfaction when the property is sold. A lien bears interest from the date that the charges become due until the charges, including all interest, are paid.

An association may not take any action to collect a past due obligation from a unit's owner unless, not earlier than 60 days after the obligation becomes past due, the association mails to the address on file, or emails if authorized by the parties, to the unit's owner a schedule of the fees that may be charged if the unit's owner fails to pay. This notice must also include a proposed repayment plan and a notice of the right of the owner to contest the past due obligation at a hearing before the executive board, followed by the procedures for requesting such a hearing. If, within 30 days after mailing, the past due obligation has not been paid in full or the unit's owner has not entered a repayment plan or requested a hearing before the executive board, the association can take action to collect [NRS 116.31162].

The association can place a lien on a unit for any penalties, fees, charges, late charges, fines, interest charged and any costs of collecting a past due obligation. The amount of the costs of enforcing the association's lien must not exceed:

- (a) For a demand or intent to lien letter, \$150.
- (b) For a notice of delinquent assessment, \$325.
- (c) For an intent to record a notice of default letter, \$90.
- (d) For a notice of default, \$400.
- (e) For a trustee's sale guaranty, \$400.

Except as otherwise provided, the association may foreclose its lien by sale. This can be done after the association has mailed by certified or registered mail, or emailed if authorized by the parties, to the unit's owner a notice of delinquent assessment which states the amount of the assessments and other sums which are due. Not less than 30 days after mailing the notice of delinquent assessment, a notice of default and election to sell the unit to satisfy the lien stating: **WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** must be provided. If the unit's owner has failed to pay the amount of the lien for 90 days following the election to sell, the association may foreclose its liens by sale. The notice of default and election to sell must be signed, if no one else is designated, by the president of the association [NRS 116.31162].

An association shall not initiate the foreclosure of a lien by sale during any period that a service member or dependent of a service member is on active duty or deployment or for a period of 1 year immediately

following the end of such active duty or deployment. It is the association's responsibility to make a good faith effort to verify whether the person is entitled to the protection set forth in this section [NRS 116.311625].

Additionally, the association shall not initiate the foreclosure of a lien by sale if the unit's owner is a federal worker, tribal worker, state worker or a household member or landlord of such during the period commencing on the date on which a government shutdown begins and ending on the date that is 90 days after the date on which the shutdown ends. This protection does not apply if a court determines that the ability of the individual to comply with the terms of the obligation secured by the residential mortgage loan is not materially affected by the shutdown.

The association is obligated to: (a) Inform each unit's owner or his or her successor in interest that if the person is a federal worker, tribal worker, state worker, household member or landlord of such a worker, he or she may be entitled to certain protections pursuant to this section; and (b) Give the person the opportunity to provide any information required to enable the association to verify whether he or she is entitled to the protections set forth in this section. Whether or not the appropriate documentation is received, the association must make a good faith effort to verify whether the person is entitled to the protections set forth in this section. Any person who knowingly initiates the foreclosure of a lien by sale in violation of this section: (a) Is guilty of a misdemeanor; and (b) May be liable for actual damages, reasonable attorney's fees and costs incurred by the injured party [NRS 116.311627].

The association or other person conducting the sale shall, before selling the unit, give notice of the time and place of the sale as well as other requirements prescribed by NRS 116.311635. Any copy of the notice of sale must include the amount necessary to satisfy the lien as of the date of the proposed sale; and 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 702-486-4480 IMMEDIATELY. The association must have proof of service of any copy of the notice of sale [NRS 116.311635].

Any sale must be conducted in accordance with the provisions of NRS 116.31164. The sale 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. After the sale, the person conducting the sale shall apply the proceeds 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 [NRS 116.31164].

The person conducting the sale shall give to the purchaser: a certificate of the sale containing a description of the unit sold; the price bid for the unit; the whole price paid; and a statement that the unit is subject to redemption. The person conducting the sale must also record a copy of the certificate in the office of the county recorder [NRS 116.31166].

The unit's owner whose interest in the unit was extinguished may redeem the property at any time within 60 days after the sale by: paying the purchaser the amount of his or her purchase price, with interest at the rate of 1 percent per month; paying the amount of any assessment, taxes or payments toward liens which were created before the purchase; and paying any reasonable amount expended by the purchaser which is reasonably necessary to maintain and repair the unit in accordance with the standards set forth in the governing documents.

If the unit's owner whose interest in the unit was extinguished by the sale redeems the property, the effect of the sale is terminated, and the unit's owner is restored to his or her interest in the unit, subject to any security interest on the unit that existed at the time of sale. The person to whom the redemption amount was paid must execute and deliver to the unit's owner a certificate of redemption, and the certificate must be recorded in the office of the recorder of the county in which the unit, or part of the unit, is situated. If no redemption is made within 60 days after the date of sale, the person conducting the sale shall make, execute and, if payment is made, deliver to the purchaser a deed without warranty which conveys to the purchaser all title of the unit's owner to the unit, and deliver a copy of the deed to the Ombudsman within 30 days [NRS 116.31166].

G. Books, Records and Other Documents [NRS 116.31175]

Except for meeting minutes, which must be maintained until the CIC is terminated, all other books, records and papers of the association must be maintained for at least 10 years.

Upon the written request of a unit's owner, the executive board shall make records available for *review*: at a designated business location not to exceed 60 miles from the physical location of the community; during the regular working hours of the association; in such a way that a unit's owner and his or her authorized agents can inspect, examine, photocopy and audit the records; and at a cost not to exceed \$10 per hour.

Records that must be made available for review include all contracts to which the association is a party, all records filed with a court relating to a civil or criminal action to which the association is a party, and all financial records as defined in NAC 116.0433.

Upon the written request of a unit's owner, the executive board shall provide *a copy* of the following within 21 days: the financial statement of the association; the budgets of the association; and the study of the reserves of the association. These records must be provided in electronic format at no charge to the unit's owner or, if the association is unable to provide the 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.

The executive board shall not provide to unit owner: the personnel records of employees of the association, except for those records relating to the number of hours worked, salaries and benefits; any documents which are still in the process of being developed for final consideration by the executive board and have not been placed on an agenda for final approval; and any records relating to another unit's owner, except

for the general record concerning each violation of the governing documents for which a sanction was imposed. This record contains a *general* description of the nature of the violation and the type of sanction imposed/fine amount if applicable. It 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 location of the unit associated with the violation.

If the executive board fails to provide required copies within 21 days of request or refuses to allow a unit's owner to review the books, records or other papers of the association, the unit owner can request, using Form 781, that the Ombudsman request the records from the association on the unit owner's behalf. If the Ombudsman is subsequently denied access to the requested records, the Ombudsman may request the Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production. A penalty of \$25 for each day the records were not provided may also be charged to the association by the Division, through the Commission.

An executive board, a community manager, or an officer, employee or agent of an association shall not take, or direct another person to take, any retaliatory action against a unit's owner because the unit's owner has requested to review the books, records or other papers of the association [NRS 116.31183].

H. Miscellaneous Rights, Duties and Restrictions

i. Personal Profit

A member of an executive board or an officer of an association shall not enter into a contract or renew a contract to provide financing, goods or services to the association, or accept any commission, personal profit or compensation of any kind from the association for providing financing, goods or services. The provisions of this section do not apply to a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant [NRS 116.31187].

No member of an executive board or officer of an association shall receive, in the aggregate, any gift, incentive, gratuity, reward or other item of value in any calendar year which exceeds the sum of \$100 [NAC 116.480] (\$500 for community managers [NAC 116.482]). On or before the annual distribution to each unit's owner of the budgets of the association, each manager, member and officer shall deliver to the executive board a statement of any gifts, incentives, gratuities, rewards or other items of value received which exceed \$15.

A community manager or member of the executive board who asks for or receives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his or her vote, opinion or action upon any matter then pending, or which may be brought before him or her in his or her capacity as a community manager or member of the executive board, will be influenced thereby, is guilty of a category D felony and shall be punished as provided in NRS 193.130. The same applies to the person who presents the offer. This does not apply to compensation for work performed by a declarant or community manager etc. [NRS 116.31189].

ii. Display of the Flag

The executive board of an association shall not, and the governing documents of that association must not, prohibit a unit's owner from engaging in the display of the flag of the United States or of the State of Nevada on that unit owner's property. The provisions of this section do not apply to the display of the flag

for commercial advertising purposes and do not preclude the governing documents of an association from setting forth rules that reasonably restrict the placement and manner of the display of the flag. The board *can* deny a request to display a flag in or on common elements of the community [NRS 116.320].

iii. Political Signs

The executive board shall not and the governing documents must not prohibit a unit's owner or an occupant of a unit from exhibiting one or more political signs, except that: all political signs exhibited must not be larger than 24 inches by 36 inches; if the unit is occupied by a tenant, the unit's owner may not exhibit any political sign unless the tenant consents in writing; and all political signs exhibited are subject to any applicable provisions of law governing the posting of political signs. A unit's owner or an occupant of a unit may exhibit as many political signs as desired, but may not exhibit more than one political sign for each candidate, political party or ballot question [NRS 116.325]. The board *can* deny a request to display political signs in or on common elements of the community.

iv. Drought Tolerant Landscaping

The executive board shall not and the governing documents must not prohibit a unit's owner from installing or maintaining drought tolerant landscaping. Before installing drought tolerant landscaping, the unit's owner must submit a detailed description or plans for the drought tolerant landscaping for architectural review and approval in accordance with the procedures, if any, set forth in the governing documents of the association. The drought tolerant landscaping must be selected or designed to the maximum extent practicable to be compatible with the style of the CIC [NRS 116.330].

v. Waste Containers

An association of a planned community may not regulate or restrict the manner in which containers for the collection of solid waste or recyclable materials are stored on the premises of a residential unit with curbside service. An association may adopt rules that reasonably restrict the manner in which these containers are stored during the time the containers are not within the collection area, including rules prescribing the location at which the containers are stored during that time. Within the collection area, an association may adopt rules pertaining to the boundaries of the collection area, the time at which the containers may be placed in the collection area, and the length of time for which the containers may be kept in the collection area [NRS 116.332].

Rules adopted by the association must allow the unit's owner, or a tenant of the unit's owner, to store these containers outside any building or garage on the premises of the unit during the time the containers are not within the collection area. The rules may require that the containers be stored in such a manner that they are screened from view from the street, a sidewalk, or any adjacent property. Rules may also prescribe the size, location, color and material of any device, structure, or item used to screen these containers [NRS 116.332].

vi. Ingress and Egress

An association may not restrict the access of a person to any portion of his or her property unless the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or

maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property [NRS 116.345].

An association may also not unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit improvement such as ramps, railings, or elevators that are necessary to access the unit for any occupant who has a disability. Any such alteration that is visible from any other portion of the CIC, however, must be installed, constructed or added in accordance with the procedures set forth in the governing documents of the association and must be selected or designed to the maximum extent practicable to be compatible with the style of the community [NRS 116.2111].

vii. New Construction

An association may not expand, construct or situate a building or structure that is not part of any plat of the planned community if the building or structure was not previously disclosed to the units' owners, unless the association obtains the written consent of a majority of the units' owners and residents who own property or reside within 500 feet of the proposed location of the building or structure [NRS 116.345].

viii. Interruption of Utilities

An association may not interrupt any utility service furnished to a unit's owner, or a tenant of a unit's owner, except for the nonpayment of utility charges when due. An association shall in every case send a written notice of its intent to interrupt any utility service to the unit's owner or the tenant of the unit's owner at least 10 days before the association interrupts the utility service [NRS 116.345].

ix. Regulation of Roads

In a CIC which is not gated or enclosed and the access to which is not restricted or controlled by a person or device, the executive board shall not and the governing documents must not provide for the regulation of any road, street, alley or other thoroughfare the right-of-way of which is accepted by the State or a local government. An association can set forth rules that reasonably restrict the parking or storage of recreational vehicles, watercraft, trailers or commercial vehicles to the extent authorized by law. If the governing documents so authorize, the executive board of the association may impose a fine pursuant to NRS 116.31031 for any violation of the rules that reasonably restrict parking or storage, including on public streets, pursuant to NRS 116.350.

x. Approval to Rent or Lease

Unless at the time a unit's owner purchased his or her unit the declaration prohibited the unit's owner from renting or leasing, the association may not prohibit the unit's owner from renting or leasing his or her unit. The same applies to an owner having to secure or obtain approval from the association in order to rent or lease [NRS 116.335].

If a declaration contains a provision establishing a maximum number or percentage of units in the CIC which may be rented or leased, that provision of the declaration may not be amended to decrease that maximum number or percentage. If a unit's owner is prohibited from renting or leasing a unit because the maximum number or percentage has already been reached, the unit's owner may seek a waiver from the executive board based upon a showing of economic hardship [NRS 116.335].

If the governing documents of an association require a unit's owner, or the tenant of a unit's owner, to register with the association or its agent, or otherwise submit information concerning a lease or rental agreement, the association or its agent may require the unit's owner to provide a copy of the lease or rental agreement, and may not charge a fee for the registration or submission of this information [NRS 116.335].

xi. Transient Commercial Use

Transient commercial use means the use of a unit for any compensation, money, rent or other valuable consideration given in return for the occupancy, possession or use of a unit as a hostel, hotel, inn, motel, resort, vacation rental or other form of transient lodging. The term of the occupancy, possession or use of the unit must be for less than 30 consecutive calendar days [NRS 116.340].

A person who owns one or more units within a planned community that is restricted to residential use by the declaration, may use that unit or units for a transient commercial use only if: the governing documents of the association and any master association do not prohibit such use; the executive board of the association and any master association approve the transient commercial use; the unit is properly zoned for the use by the county; and any license required by the local government for the transient commercial use is obtained. The association and any master association may establish requirements for the transient commercial use of a unit, including the payment of additional fees [NRS 116.340].

xii. Retaliation and Harassment

Per NRS 116.31183 and NRS 116.31184, an executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has: complained in good faith about any alleged violation of the association; recommended the selection or replacement of an attorney, community manager or vendor; or requested in good faith to review the books, records or other papers of the association. No person shall willfully and without legal authority threaten, harass or otherwise engage in a course of conduct against any other person which causes harm or serious emotional distress, or creates a hostile environment for that person. A person who violates this provision is guilty of a misdemeanor enforceable by a law enforcement agency.

IV. PROTECTION OF PURCHASERS [Article IV]

A. Sale of Unit

A public offering statement is only provided to the initial purchaser of a unit. A person required to deliver a public offering statement (usually the declarant) shall provide the purchaser with the statement not later than the date on which an offer to purchase becomes binding on the purchaser. Unless the purchaser has personally inspected the unit, the purchaser may cancel, by written notice, the contract of purchase until midnight of the fifth calendar day following the date of execution of the contract. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly [NRS 116.4108].

If the unit is being resold, a unit's owner or his or her authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package which remains effective for 90 calendar days. The resale package must contain: a copy of the declaration; the bylaws; the rules and regulations of the association; the information statement required by NRS 116.41095; a statement from the association setting forth the

amount of the monthly assessment and any unpaid obligation of any kind due from the selling unit's owner; a copy of the current operating budget and year-to-date financial statement for the association; a summary of the reserves; a statement of any unsatisfied judgments or pending legal actions against the association; and a statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit. The association must provide all necessary documents within 10 days after receipt of a written request by a unit's owner or his or her authorized agent for the resale package [NRS 116.4109].

The association may charge the unit's owner a reasonable fee to cover the cost of preparing the aforementioned documents. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section [NRS 116.4109]. An association may not charge more than \$165 for preparing a statement of demand, or per NAC 116.465, \$185 for preparing the certificate (costs to expedite not included).

Similar to a public offering statement, 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. If the purchaser elects to cancel a contract, the purchaser must hand deliver or mail the notice of cancellation by prepaid United States mail to the unit's owner or his or her authorized agent, or email the notice of cancellation to the unit's owner or his or her authorized agent. Cancellation is without penalty, and all payments made by the purchaser to the association before cancellation must be refunded promptly [NRS 116.4109].

In addition to the fees that may be charged for a resale package, pursuant to NRS 116.3102 and subject to the provisions of the declaration, the association may also charge a fee for opening and closing a file for each unit. Such a fee: must be based on the actual cost the association incurs to open or close any file; must not be charged to both the seller and the purchaser of a unit; must be disclosed as part of the Certificate described above; and is capped at \$350.

The unit and the common elements of the CIC must be in at least as good a condition at the time of resale as it is at the time of contracting; reasonable wear and tear expected [NRS 116.4114].

B. Organization of Common-Interest Communities Section

The Ombudsman is appointed by the Administrator of the Division. The Ombudsman assists in processing claims submitted to mediation or arbitration; assists owners in common-interest communities and condominium hotels to understand their rights and responsibilities; assists members of executive boards and officers of associations to carry out their duties; assists in resolving disputes; and compiles and maintains a registration of each association organized within the State [NRS 116.625].

The Commission for Common-Interest Communities and Condominium Hotels is appointed by the Governor. The Commission consists of 7 members: one member who is a unit's owner residing in this State and who has served as a member of an executive board in this State; two members who are units' owners residing in this State but who are not required to have served as members of an executive board; one member who is in the business of developing common-interest communities in this State; one member who holds a certificate; one member who is a certified public accountant licensed to practice in this State; and one member who is an attorney licensed to practice in this State [NRS 116.600].

The Commission has jurisdiction to take appropriate action against any person who commits a violation, and may issue subpoenas to compel the attendance of witnesses and the production of books, records and other papers in its disciplinary capacity [NRS 116.750 & NRS 116.662].

C. Filing a Complaint

All documents and other information compiled as a result of an investigation by the Division are confidential, while all documents and information considered by the Commission when making a determination are public record [NRS 116.757].

Except as otherwise provided, a person who is aggrieved by an alleged violation may not, later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file a complaint with the Division. Prior to filing a complaint, the aggrieved person must provide the respondent by certified mail, return receipt requested, written notice of the alleged violation in a letter [NRS 116.760]. This letter must be mailed to the respondent's last known address and specify, in reasonable detail, the alleged violation, any actual damages suffered, and any corrective action proposed. The respondent must be given reasonable opportunity (typically 14 days) after receiving this letter to respond.

The complainant must then file his or her complaint utilizing Intervention Affidavit form 530. Upon receipt of a notarized affidavit form 530 by the Office of the Ombudsman, and if there is good cause to proceed, a letter is sent to all parties informing them of the next step in the process. If the Ombudsman determines that allegations can be addressed in an informal conference, this opportunity is offered.

The informal conference is a chance for all sides of a dispute to discuss issues raised in the letter. During the conference, both parties are given time to state their position, and a facilitator from the Office of the Ombudsman is assigned to promote dialogue in an attempt to reach a resolution. If the matter cannot be resolved in this manner, at the Ombudsman's discretion, the case may be referred to enforcement for investigation or to Alternative Dispute Resolution (ADR), by completing form 520.

Through ADR, both parties can either agree to go to a Referee for a final decision, or if the disputing parties do not agree, utilize the Mediation program. The Division may subsidize proceedings within the ADR program to the extent that funds are available in the Account for Common-Interest Communities and Condominium Hotels in the State General Fund for that purpose. A party who wishes to have a proceeding subsidized must submit an application to the Division. If the applicant is an association, it must also be registered and in good standing with the Office of the Ombudsman and The Secretary of State to be eligible [NAC 116.520].

A unit's owner is authorized to have one proceeding for mediation subsidized per fiscal year for each unit that he or she owns. An association is eligible to have one proceeding for mediation subsidized per fiscal year against the same unit's owner for each unit that he or she owns. A party who wishes to have a proceeding for mediation subsidized must file an application for mediation within one (1) year after the date of discovery of the alleged violation [NAC 116.520].

The funds used to subsidize a proceeding for mediation must not be applied to the fee required when filing a written claim, or any attorneys' costs or fees associated with the claim. The subsidization will not exceed \$500 or \$250 for each party who is eligible. A party to mediation is not eligible to receive a subsidy pursuant to this section if the party was already a party to a claim in which the same or substantially similar issues were heard by a referee from the referee program [NAC 116.520].

If parties wish to file a civil action in court, participation in the ADR program is required. A civil action may be brought by the association against a declarant, community manager, or a unit's owner, or by a unit's owner against the association, a declarant, or another unit's owner within the association. A class

of units' owners constituting at least 10 percent of the total number of voting members of the association can also file against a community manager [NRS 116.4117].

If the Office of the Ombudsman finds that the complaint has exposed an egregious violation of NRS 116, the Administrator shall file a formal complaint with the Commission and schedule a hearing. The Commission or a hearing panel shall hold a hearing on the complaint no later than 90 days after the date that the complaint is filed. The Division shall give the respondent written notice of the date, time and place of the hearing at least 30 days before the date of the hearing. This notice must be delivered personally to the respondent or mailed to the respondent by certified mail, return receipt requested, to his or her last known address. This notice must include a copy of the complaint and all communications, reports, affidavits and depositions in the possession of the Division that are relevant to the issue [NRS 116.770].

Any evidence offered at a hearing must be material and relevant to the issues of the hearing [NAC 116.555]. Not less than 5 working days before a hearing before the Commission, the respondent must provide to the Division a copy of all documents that will be used in support of his or her position and a list of witnesses whom the respondent intends to call at the time of the hearing. This list must include the name of the witness, the company for whom the witness works and his or her title, and a brief summary of expected testimony. The respondent shall provide at the time of the hearing 10 copies of each document he or she wishes to have admitted into evidence [NAC 116.575].

NAC 116.585 outlines the procedure for hearings. If a party fails to appear at a hearing, the Commission or a hearing panel may proceed to consider the case without the participation of the absent party and may dispose of the matter simply on the basis of the evidence before it [NAC 116.580].

After conducting its hearings on the complaint, the Commission shall render a final decision on the merits of the complaint not later than 20 days after the date of the final hearing. The Commission or the hearing panel shall notify all parties to the complaint of its decision in writing by certified mail, return receipt requested, not later than 60 days after the date of the final hearing. The written decision must include findings of fact and conclusions of law [NRS 116.780].

A party may file a motion for rehearing or reconsideration only if newly discovered or available evidence which the moving party could not with reasonable diligence have discovered and produced at the original hearing is produced, or if there is an error in the decision or change of substantive law. If a rehearing is ordered, the rehearing must be confined to the issues upon which the rehearing is ordered [NAC 116.617].

If disciplinary action is to be taken, the Commission may order the respondent to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees. If the respondent is a member of an executive board or an officer of an association and knowingly and willfully committed a violation, the association is not liable for any fines and costs imposed [NRS 116.785]. The Commission may impose an administrative fine of not more than \$1,000 for each violation, or order an audit of the association, at the expense of the association, among other disciplinary actions [NRS 116.790].

V. DIVISION FORMS

| Number | Form Name | Revision Date | Pages |
|----------------------|---|---------------|-------|
| 562 | Annual Association Registration | 11/16/2018 | 4 |
| 584 | Before You Purchase Property In a Common-Interest Community Did You Know... | 07/01/2017 | 4 |
| 584A | Before You Purchase Property In a Condominium Hotel Did You Know... | 03/22/2019 | 4 |
| 602 | Declaration of Certification Common-Interest Community Board Member | 09/09/2019 | 1 |
| 603 | Initial Association Registration | 11/20/2018 | 3 |
| 609 | Reserve Study Summary Form | 02/13/2019 | 2 |
| 620 | Common-Interest Communities Master Roster | 11/01/2009 | 2 |
| 623 | Registration Filing Addendum | 01/11/2019 | 3 |
| 646 | Association Name Change Notification | 08/13/2015 | 1 |
| 651 | Limited Purpose Rural Agricultural Exemption | 08/25/2009 | 2 |
| 653 | Limited Purpose Association Created as a Rural Agricultural Residential Common-Interest Community Annual Registration | 01/06/2010 | 1 |
| 667 | Annual Hotel Unit Owner Registration | 03/12/2012 | 1 |
| 780 | Request for Record of Complaints Against Community Managers | 08/06/2019 | 1 |
| 781 | Request for Books, Records and Other Documents | 01/28/2019 | 2 |
| 514A | Statement of Fact Against Community Managers | 05/18/2018 | 2 |
| 514B | Complaint Against a Reserve Study Specialist | 10/10/2016 | 3 |
| 530 | Intervention Affidavit | 05/01/2019 | 2 |
| 605 | Ombudsman Intervention Reopening Affidavit Form and Instruction Page | 04/08/2005 | 3 |