

COMMUNITY INSIGHTS

VOLUME VIII, ISSUE I

Department of Business and Industry, Real Estate Division

Summer 2011

**Nevada
Real Estate Division
OUR MISSION**

The mission of the Nevada Real Estate Division is to safeguard and promote interest in real estate transactions by developing an informed public and a professional real estate industry.

**Office of the
Ombudsman
OUR MISSION**

To provide a neutral and fair venue to assist homeowners in handling issues that may arise while living in a common-interest community.

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Education outreach

The Ombudsman's Office sponsors classes on a variety of topics all over Nevada. Current classes include:

- A summary of changes affecting NRS 116 from the 2011 Nevada Legislature;
- The role of directors, officer, residents and managers;
- Basics of meetings, elections and recordkeeping;
- Fiscal matters;
- Reserve studies; and
- Maintenance, insurance and risk management

All HOA residents welcome. Some classes are taught by independent contractors, who cover specialized topics, and others by Ombudsman staff. Visit www.red.state.nv.us for a full list of classes or call Nick Haley at (702) 486-4480.

2011 Legislature overhauls statutes on HOA governance

Amendments include absentees ballots for owners, new methods for providing notice

A total of nine bills directly affecting NRS 116 will become law as a result of the 2011 Nevada Legislative session, which adjourned on June 7, 2011.

Collectively, the bills will effect substantial changes to the way homeowners associations conduct business. The bills and their effective dates are:

- SB (Senate Bill) 30 (eff. 7/1/11),
- SB 89 (eff. 6/2/11),
- SB 204 (eff. 1/1/12),
- SB 222 (eff. 6/14/11),
- SB 403 (eff. 6/13/11),
- AB (Assembly Bill) 246 (eff. 7/1/11),
- AB 271 (eff. 5/21/11),
- AB 317, and
- AB 388 (eff. 7/1/11).

In other words, all but one bill, SB 204, are now the law, and associations, through their leadership, membership and management, must become familiar with the changes as soon as they can in order to comply with them.

Possibly the easiest way to do so is to attend one of several legislative update classes that are available to the public. All of the ones known to this office are free and offered several times over the next few months.

The Office of the Ombudsman offers its own Legislative Summary seminar this year, featuring a brief digest of the most significant changes in plain-language. The class is scheduled at locations throughout the state.

In addition, the handout accompanying the class will be posted online for those unable to attend. In addition, newer versions of Ombudsman publications, such as brochures, will be made available in the coming weeks as well.

For those who want to see the legislative changes for themselves, the bills are viewable in their entirety at the Nevada Legislature Web site, www.leg.state.nv.us. From the main page, go to [76th session \(2011\)](#), then [Bill Information](#). At this point, viewers may select [Assembly Bills](#) or [Senate Bills](#). Both call up a list of bills in numeric order. Scan through the list and select any of the bills listed above. Finally, to see the final version of a bill (the one that actually became law), select [As Enrolled](#) on each bill's information page.

While far too numerous to summarize in these pages, changes to the law include:

- New insurance requirements for HOAs, including crime insurance;
- New ways to provide meeting notices, including hand-delivery;
- Voting by absentee ballot for unit owners;
- Provisions to allow amendment of bylaws by unit owners;
- Expanding the purview of bylaws to address matters that may otherwise be addressed via rules;
- Stricter requirements for HOAs regarding records requests, especially resale packages; and
- New standards of conduct and liability for fiduciaries.

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Commissioner's Corner

Lessons on the role of the state



By **MICHAEL BUCKLEY**
 COMMISSION CHAIRMAN

Recently, I spoke with a reporter for a Las Vegas newspaper, who was writing an article about common-interest community legislation being considered by the 2011 Nevada Legislature. During our discussion, when the reporter relayed to me an opinion from one of his interviewees that a proposed cap on collection costs was too high, I had to stop him. It was time, I told him, to give him the speech that I have made many times before in Carson City before legislative committees.

CICs come in all shapes and sizes throughout the state of Nevada. Here's what I told the Senate Commerce and Labor Committee back on April 1, 2005:

In reviewing its own statutory mandate and proposing regulations under NRS Chapter 116, the Commission was quite often tempted to adopt a regulation or propose a statutory change to respond to a particular problem. Although the length of the Commission's proposed regulations would not so indicate, the fact is that in many, if not most, cases the Commission declined to adopt or recommend a rule of general application.

As this Committee knows and as the Commission has had occasion to observe, associations come in all shapes and sizes. Master associations, the Sun Cities and the Summerlins, have multi-million dollar budgets. There are single-family subdivisions with insignificant common elements, such as perimeter landscaping, and single-family subdivisions, such as Spanish Trail with greenbelts and private streets. A condominium may be an eight-unit building or Trump Tower. Condominiums are located in resort areas, such as Lake Tahoe, and downtown urban core areas. There are planned communities in Pah-rump and Carson City. Each of these is a common-interest community.

I concur that these (issues being considered in 2005 bills) are legislative policy decisions, rather than Commission issues. Putting on my Commissioner hat, however, I caution the members of this Committee that because of the variety and diversity of common-interest communities, overly broad pronouncements that affect all common interest communities need to be very carefully evaluated.

See CORNER on Page 3

Ombudsman education calendar for second half of 2011

The Ombudsman sponsors informational sessions for HOA members. The following calendar lists class dates, locations and presenters. For details, contact the appropriate presenter:

Ombudsman: Nicholas Haley or Sherri Powell, 702-486-4480, emails: nhaley@red.state.nv.us or spowell@red.state.nv.us

Community Association Solutions (CAS): Sara Barry, 702-341-5200, email: seblv@aol.com

Complex Solutions (CSL): Rob Forney, 702-361-0111, email: raforney@complexsolutionsltd.com

The Insurance Center (TIC): Shawn Iverson, 702-451-4820, shawn@insurancecenterUT.com

July 14 – Legislative Summary, Ombudsman, Bradley Building in Las Vegas from 10:30 a.m. - 1:30 p.m.

July 28 – Reserve Studies, CAS, Reno from 6-9 p.m.

Aug. 11 – Fiscal Matters, CAS, Artesia Community Association in Pahrump from 6-9 p.m.

Aug. 16 – Legislative Summary, Ombudsman, Bradley Building in Las Vegas from 10:30 a.m. - 1:30 p.m.

Sept. 8 – Legislative Summary, Ombudsman, Bob Ruud Center in Pahrump from 11 a.m. – 2 p.m.

Sept. 10 – Directors, Officers, Unit Owners and Managers, Ombudsman at the Paseo Verde Library in Henderson from 4:30-7:30 p.m.

Sept. 15 – Insurance, CAS at Sun City Aliante in North Las Vegas from 6-9 p.m.

Sept. 17 – Fiscal Matters, CAS at Las Palmas in Laughlin from 9 a.m. - noon
Sept. 20 – Legislative Summary, Ombudsman at Bradley Building in Las Vegas from 10:30 a.m. - 1:30 p.m.

Sept. 21 – Reserve Studies, CSL in North Las Vegas (location TBA)

Sept. 28 – Legislative Summary, Ombudsman at Desert Breeze Community Center in Las Vegas from 4:30-7:30 p.m.

Sept. 29 – Insurance, CAS at Sun City Mesquite from 2-5 p.m.

Oct. 1 – Legislative Summary, Ombudsman at Sahara West Library in west Las Vegas from 10:30 a.m. – 1:30 p.m.

Oct. 8, 2011 – Maintenance, Insurance and Risk Management, TIC in North Las Vegas (location TBA)

Oct. 15 – Insurance, CAS at Sun City MacDonald Ranch in Henderson from 9 a.m. - noon

Oct. 22 – Fiscal Matters, CAS at the Centennial Hills YMCA in Las Vegas from 9 a.m. - noon

Nov. 4 – Fiscal Matters, CAS at Artesia Community Association in Pahrump from 2-5 p.m.

Nov. 5 – Fiscal Matters, CAS at the Reno-Sparks Association of Realtors from 9 a.m. - noon

Nov. 12 – Reserve Studies, CSL In Henderson (location TBA)

Nov. 19 – Reserve Studies, CAS at Sun City Aliante in North Las Vegas from 9 a.m. - noon

Dec. 3 – Insurance, CAS at Las Palmas in Laughlin from 9 a.m. - noon

Dec. 10 – Fiscal Matters, CAS at Sun City Mesquite from 9 a.m. - noon

Dec. 15 – Fiscal Matters and Reserves, Ombudsman at the Bradley Building in Las Vegas from 10:30 a.m. - 1:30 p.m.

Corner

Continued from Page 2

Of course, one of the things most attractive about CICs is that they do come in all shapes and sizes. Some may prefer to live in a large master-planned community, others a smaller neighborhood. Some might like living in a garden condominium, others a high-rise. Some look for a home, others a vacation rental. There are many choices. Similarly, I find that the greatest strength in the Commission is its own diversity.

Those of you who attend Commission meetings may recall an exchange during a 2010 meeting in which a member of the public voiced a concern about possible bias of the Commissioners. One or more of the Commissioners quickly noted, however, that Nevada law actually requires that the unit owners, manager, developer's representative, accountant and attorney who serve on the Commission must "have resided in a common-interest community or ... been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of the member's appointment." NRS 116.600(4).

That knowledge and experience is critical to good decisions by the Commission. As it deliberates on cases, policies or regulations, this diversity and breadth of background is, for me, a beautiful thing to see, as proposals are made and discussed, then modified, approved or withdrawn, as different points of view and experiences make their presence felt. Sometimes this process takes place over two or three meetings, several months apart.

A good board of directors, with its own diversity, is no different.

This brings me back to my conversation with the reporter. While the proposed cap may be high in relation to a planned community whose monthly assessments are \$20, I asked the reporter if one can categorically say that the cap is too high in a condominium whose monthly assessments are \$500 per month.

My experience is that the answers to this question and questions like it are not as easy as they might seem. Moreover, legislating solutions gives rise to the danger of unintended consequences. At a recent Commission meeting, I learned that a statute intended to make "official publications" more open to differing points of view was actually leading to less discussion.

I can't state this better than the writer of a letter I recently read from a community manager, who observed that for every complaint she received from an owner complaining about rules being unfairly enforced, she received another from an owner who thought the rules weren't being enforced strictly enough. There is a balance, she advised, that must be struck between the rights, duties and obligations of all of those living in CICs.

Legislative fixes don't always work and sometimes make matters worse — something we don't always learn until after the fact. As each of us stakes out a position that we think will solve our particular problem, let's try and remember that what's good for me and my situation might not be good for everyone in Nevada who lives in a CIC.

A fitting candidate

Ombudsman finds new program training officer's background well-suited to functions of office

When the Ombudsman's Office recruited to fill its vacant program training officer position in January, the staff hoped to find a candidate with experience in working with the law, conflict resolution, clear verbal and written communication, and the ability to consider long-term program goals. Someone with tact and discretion would be a bonus.

What surprised the office was to find a candidate who fit all of these qualifications as well as did Sherri Powell, who started her new position in January.

Although new to NRS 116, Sherri is no stranger to working with laws. She previously served Clark County in a variety of roles, including its Department of Air Quality and Environmental Management, where she was ombudsman for air quality. Her county experience also familiarized her with working with a commission, the public and legal counsel—all components of her new job.

"In my previous positions, I have worked with citizens to help them understand the law, and it has always been a passion of mine," Sherri said. "I feel that by reaching a level of understanding, they can become informed citizens that can effectively mold their activities to be in accordance with the law and create for themselves a win-win situation."

Sherri's background includes completion of the Clark County Courts Neighborhood Justice Center program for mediation — something she looks forward to incorporating into her presentations with the Division. She also has earned a master of business administration degree.

In her new role, Sherri is responsible for maintaining, expanding and promoting the Nevada Common-Interest Community Manual. The manual, created in 2010 by staff of the Ombudsman, is a reference guide intended to assist unit owners, directors and others within homeowners associations in understanding their rights and responsibilities under NRS 116 and NAC 116, as well as where to turn for assistance with particular matters. Chapters describe how to conduct meetings and elections, considerations regarding recordkeeping, terminology particular to the HOA business, and various services available through the Ombudsman's Office and how they work.

"The manual has been expertly crafted to provide common-interest communities the chance to understand a difficult subject. Our classes provide examples that engage the student and relate to challenges they may be facing everyday in their HOA," she said. "We provide the students with resources and a better understanding of how HOAs should operate."



Sherri Powell

Along with Nick Haley, education and information officer, Sherri will also take part in teaching various chapters of the manual to the public. She has scheduled numerous classes throughout the state, including sites in Laughlin, Pahrump, Mesquite and every corner of the Las Vegas Valley. Classes for the Reno and Carson City areas are planned.

In fact, Sherri has already developed and taught her first educational seminar related to the manual, and revised content relating to others.

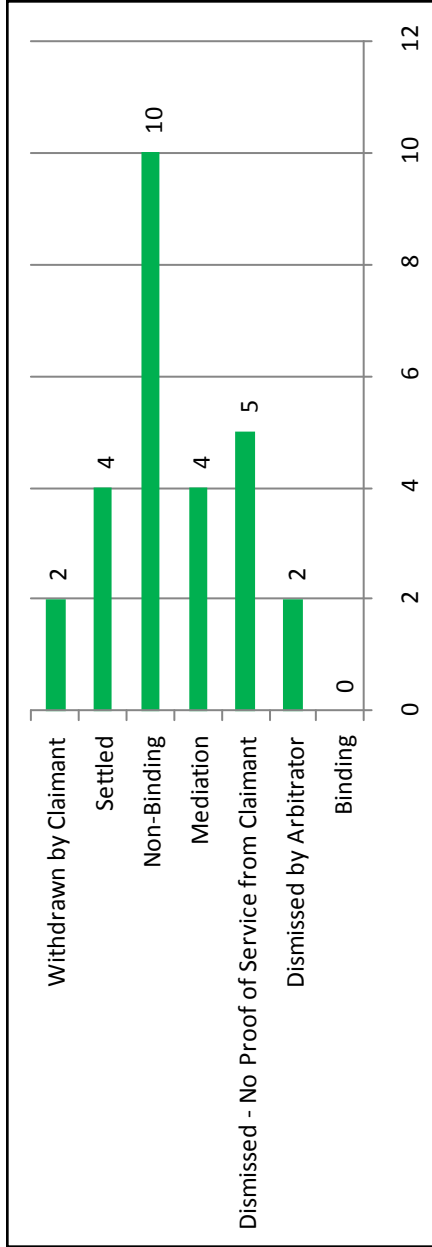
Her first endeavor was to develop and present a class on HOA finances, based on Chapter 10 of the manual. The class, which makes use of skills she learned while acquiring her MBA, enables directors with little background in accounting or bookkeeping to have a basic understanding of association finances.

"In our current economy, gaining an understanding of how the financial statements of an HOA work together is imperative to long-term success. Directors and unit owners both should understand the money-flow process of the HOA so that they can ensure continued viability of their shared community," she said.

Sherri looks forward to improving upon the educational program of the Ombudsman's Office.

Originally from Great Falls, Mont., Powell has lived in the Las Vegas Valley for 12 years. She is an experienced yoga instructor and enjoys bicycling and spending time with family, friends and her two dogs.

Alternative Dispute Resolution Claims Closed From Dec. 1, 2010 to April 11, 2011



NOTE: For a summary of Alternative Dispute Resolution decisions, visit www.red.state.nv.us, go to the Common-Interest Communities and Condominium Hotels page, search by year and click on the case number of a decision.

CLAIM	DATE OPEN	DATE CLOSED	NATURE OF CLAIM	FILED BY	RESOLUTION	DISPOSITION
11-24	10-06-10	12-01-10	Meeting procedures	Management Company	Dismissed	Dismissed — Proof of service not provided by claimant.
11-09	07-30-10	12-02-10	Maintain landscape/property	Homeowner	Mediation	Mediation.
11-03	07-16-10	12-13-10	Additional assessments	Homeowner	Settlement	Settlement agreement.
11-11	08-06-10	12-14-10	Maintain landscape/property	Association	Non-Binding Arbitration	Arbitration found in favor of association. Homeowner to pay association \$9,284.00: \$3,800.00 in fines and \$5,484.00 in attorney fees.
11-01	07-01-10	12-17-10	Inadequate reserve funding	Management Company	Mediation	Mediation.
10-88	05-14-10	12-22-10	Maintain landscape/property	Association	Settlement	Settlement agreement.
11-31	10-27-10	12-22-10	Fines	Homeowner	Dismissed	Dismissed — Proof of service not provided by claimant.
11-19	09-08-10	01-12-11	Delinquent assessments	Association	Non-Binding Arbitration	Arbitration found in favor of association. Homeowner did not participate. Owner to pay association \$18,306.07: \$15,309.57 in fines, \$424.00 in costs, and \$2,572.50 in attorney fees.
10-91	05-27-10	01-13-11	Maintain landscape/property	Homeowner	Non-Binding Arbitration	Arbitration found in favor of homeowner (claimant). Each side pays for its own costs and fees.
11-33	11-08-10	01-13-11	Fines	Homeowner	Dismissed	Dismissed — Proof of service not provided by claimant.

Alternative Dispute Resolution Claims Closed From Dec. 1, 2010 to April 11, 2011 Cont.

CLAIM	DATE OPEN	DATE CLOSED	NATURE OF CLAIM	FILED BY	RESOLUTION	DISPOSITION
10-62	02-10-10	01-14-11	Property damage	Homeowner	Mediation	Mediation.
10-19	07-17-09	01-25-11	Association meeting procedures	Homeowner	Non-Binding Arbitration	Arbitration in favor of association. Homeowner to pay association \$11,998; \$5,000 in judgment against the homeowner, \$194.86 in costs, and \$6,803.14 in arbitration fees.
11-38	11-22-10	01-18-11	Delinquent assessments	Association	Dismissed	Dismissed — Proof of service not provided by claimant.
11-08	07-28-10	02-03-11	Maintain landscape/property	Association	Non-Binding Arbitration	Arbitration found in favor of association. Homeowner did not participate. Homeowner to pay \$7,850.79; \$3,170 in fines and collection costs, \$3,989.62 in attorney fees, and \$693.17 in arbitration costs.
11-23	10-13-10	02-08-11	Not supplying required documents	Association	Dismissed	Dismissed by arbitrator.
10-85	05-05-10	02-08-11	Property damage	Homeowner	Non-Binding Arbitration	Arbitration found in favor of homeowner. Association to pay owner \$13,680.65; \$6,413.00 in repairs and \$7,267.65 in attorney fees.
10-98	06-10-10	02-08-11	Improper foreclosure proceedings	Homeowner	Settlement	Settlement agreement.
11-36	11-16-10	02-10-11	Collection of fees improperly	Homeowner	Withdrawn by Claimant	Withdrawn by claimant.
10-66	03-03-10	02-16-11	Vehicle towed improperly	Homeowner	Settlement	Settlement agreement.
11-25	10-07-10	02-23-11	Additional assessments	Homeowner	Mediation	Mediation.
11-16	08-24-10	03-01-11	Rental of unit	Association	Non-Binding Arbitration	Arbitration found in favor of Association. Homeowner to pay association \$5,945.83; \$3,000.00 in attorney's fees. \$50.00 in costs. \$1,250.00 in fines, and \$1,645.83 in arbitration costs.
11-44	01-11-11	03-08-11	Delinquent assessments	Association	Dismissed	Dismissed by Arbitrator.
11-47	01-25-11	03-21-11	Improperly held meeting	Association	Withdrawn by Claimant	Withdrawn by Claimant.
10-103	06-15-10	03-22-11	Rental of unit	Association	Non-Binding Arbitration	Arbitration found in favor of association. Homeowner to pay association: 14,909.20; \$12,034.20 in attorney's fees, \$1,600 in fines, and \$1,275 in arbitration costs.
11-12	08-09-10	03-25-11	Revoking of approved plans	Association	Non-Binding Arbitration	Arbitration found in favor of master association. Sub association to pay master association \$25,402.43; \$720 in fines, \$17,369.5 in attorney fees, \$1,855.43 in costs, and \$5457.50 in arbitration fees.
11-53	02-02-11	04-08-11	Collection of fees improperly	Homeowner	Dismissed	Dismissed — Proof of service not provided by claimant.
11-22	10-05-10	04-11-11	Delinquent assessments	Association	Non-Binding Arbitration	Arbitration found in favor of association. Homeowner to pay \$21,044.37; \$17,633.78 in assessment-related costs, \$2,604.88 in attorney fees, and \$805.71 in arbitration fees.

Forms forum

Filling out the registration should be difficult only once

By MEGAN ROLLER

ADMINISTRATIVE ASSISTANT I

Registering an association with the Ombudsman's office may appear to be complex, but by keeping a record of the registration, it becomes much easier the second time around. Let's take a look at some of the requirements.

All homeowners associations under NRS 116 and condominium hotels under NRS 116B are required to submit specific forms at specific times to the Office of the Ombudsman. These forms include:

- Form 562, Annual Registration Form;
- Form 602, Declaration of Certification;
- Form 623, Registration Filing Addendum; and
- Form 609, Reserve Study Summary Form.

While there are other forms used for other business with this office, the forms above are used by all.

Form 562, Annual Registration Form — The registration form and unit fees must be submitted to the Division within 45 days before the state's last business day of the month in which the association incorporated with the Nevada Secretary of State, pursuant to Policy 01-2, which can be viewed at www.red.state.nv.us.

What does that mean? It means, for example, if an association incorporated in October, the registration form must be received by our office every year before the end of October. The state's last business day of the month would be the last day not falling on a weekend or holiday. In 2012, for example, Dec. 30 is a holiday (N) and Dec. 31 is a Saturday. This office is closed for business. Since October 29 and 30 fall on the weekend, the last business day for the state is October 28.

Part of my duties is to process the registration forms and what I have noticed over the years is that associations either fail to submit some of the same information every year, or the information submitted is incorrect. To assist associations in providing the correct information and to ensure that the form is not sent back for missing information, here are a few tips:

- The association's subdivision name will never change. Just make sure you have the correct, legal name. Once you obtain it, keep it on file. Step-by-step instructions on how to locate this information are on our Web site, www.red.state.nv.us, under How to Locate a Subdivision's Name.
- Another section of the registration that is either omitted or submitted incorrectly is the association's file number given by the Secretary of State.

This information can be found on the Secretary of State's Web site, <http://nvsos.gov/sosentitysearch/>. Retain this information — it, too, will not change.

- Next, take a look at the section on page 2 where it asks for the contact information of the directors and officers. Pursuant to NRS 116.625(4)(e)(3), the executive board member's phone number is required to be submitted on the registration form. This information is kept confidential by the Division pursuant to Nevada Administrative Code (NAC) 116.385. Leaving it blank or providing the management company's contact information instead will result in the form being returned.
- The last bit of information that needs to be addressed is the section on the declarant's information. First, let's start by confirming that, yes, this information must be submitted annually pursuant to NRS 116.625(4)(e)(4). For those who don't have this information from previous years, review the Declaration of Covenants, Conditions & Restrictions. Usually the declarant is identified within the first few pages.

Form 602, Declaration of Certification — Each director who is elected or appointed must sign his/her own form. Essentially, it states the director has read the association's governing documents, as well as NRS 116 and NAC 116, and understands these documents to best of his or her ability. This form is required to be provided to the association within 90 days after election or appointment, pursuant to NRS 116.31034(13). A copy of Form 602 is then required to be submitted to the Ombudsman's office at the time the association submits its annual registration form.

Form 623, Registration Filing Addendum — If there is a change to the mailing/billing address of the association or to the composition of the board or officers, a filing addendum must be submitted within 30 days of the change pursuant to NAC 116.382. For example, if the association's renewal date is in March but there is a change of officers in August, a filing addendum with the new data must be sent to the Division in September. Filing an addendum is free.

Form 609, Reserve Study Summary Form — Form 609 is required to be submitted 45 days after the board adopts the reserve study, pursuant to NRS 116.31152(4). Although it may be easier to submit the entire reserve study, the law requires only the two-page summary be submitted to the Division.

Should you need any help or have any questions regarding how to complete a form, contact the Ombudsman's Office at 702-486-4480 or statewide toll-free at 877-829-9907.

New regulations tackle collections, reserves

It isn't just the statutes that have changed recently. Four regulations governing common-interest communities recently took effect. They will ultimately be codified into NAC 116 or NAC 116A. To see the regulations in full, visit: http://red.state.nv.us/Regulations/reg_changes.htm. Key changes include:

Reserve Study Specialists

R164-09 revises reserve study specialist requirements –
 Repeals permit requirements, replacing them with simpler registration requirements;
 Retains most pre-existing professional standards;
 Removes specific educational requirements;
 Removes the use of consultants as a means to qualify as a reserve study specialist; and
 Enables the Division to revoke or refuse registration to an unqualified applicant.

Collections

R199-09 regulates collection costs –
 Establishes a fee schedule for HOAs and their agents for common collection- and foreclosure-related charges, not to exceed \$1,950;
 Permits HOAs and their agents to recover actual collection-related costs and specifies who incurs them;

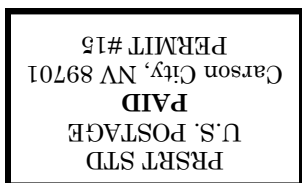
Allows a unit owner to request a one-time payoff demand without charge; and
 Allow HOAs to recover management and attorney fees.

Continuing Education

R166-09 – The first revision to education regulations in several years includes numerous changes –
 Creates an education audit committee to audit courses;
 Creates standards for continuing education classes, including acceptable topics;
 Clarifies the “NRS 116” education requirement for community managers;
 Requires 15-day notice to the Division for class offerings;
 Allows the Division greater discretion regarding renewal of courses; and
 Allows education providers to collect evaluations, rather than requiring a third party.

Condominium Hotels

R186-07 As the first set of regulations authorized under NRS 116B, this is a lengthy addition to the law addressing many fundamental matters for condominium hotels, predominantly accounting issues and disclosure requirements. Many closely resemble or parallel those for homeowners associations.



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