State of Nevada

Common-Interest Communities and Condominium Hotels Program

Department of Business & Industry
Real Estate Division

Informal Conference Option

INTERVENTION AFFIDAVIT–for informal conference

INTERVENTION AFFIDAVIT The Intervention Affidavit process is a service of the Real Estate Division to help people **resolve disputes** regarding Nevada common-interest communities and their boards of directors.

The process includes three possible steps:

1.Participation in the Ombudsman's conference, where if both parties are willing, the Ombudsman may request a conference providing a neutral setting in an attempt to resolve the issues through mutual agreement; otherwise route of ADR

2. If the issues involve **possible violations** of state law, the affidavit and file may be referred to the Compliance section; and ▪

If the **alleged violations are substantiated**, the Division may file a formal complaint for disciplinary action by the Commission of Common-Interest Communities and Condominium Hotels. The Commission for Common-Interest Communities and Condominium Hotels or a hearing panel may impose

** Form 530 vs 523, 520 for ADR process

Alternative Dispute Resolution

(ADR)

Disclaimer

This is a general education class based on NRS 116 and related laws and regulations. It is not intended to provide legal advice. The instructor cannot comment on specific cases. If you feel that the associations governing documents or NRS 116 statutes have been violated you can file a claim with the Ombudsman office

Learning Objectives

Upon completion of this class, participants will have a basic understanding of:

- Alternative Dispute Resolution
- The Referee Program
- Mediation

Alternative Dispute Resolution Overview

Parties to the Complaint

The person making the claim is the “Claimant”.

The person or entity with whom you have a dispute is the “Respondent”.

The ADR process is available to all unit owners even if they have no intentions of filing civil action

What is Alternative Dispute Resolution?

- Required by NRS 38.310 Matters must go through ADR Process:
  - Governing Documents Disputes
    - The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or
  - Procedural issues related to assessments
    - The procedures used for increasing, decreasing or imposing additional assessments upon residential property

What is Alternative Dispute Resolution?

Claim-Form 520/668(subsidy)

- $50 filing fee, the Referee program is a free service offered by the Division to the extent funding is available.

- Coordinated by the Office of the Ombudsman

- Independent Referee/Mediators
  - Referee
  - Mediation

- Closed Claim Letter – Court

Alternative Dispute Resolution

The ADR process is required under Nevada Revised Statutes (NRS) 38.300 to 38.360, before parties may file a civil action in court.

Parties with a dispute involving the **governing documents** of their common-interest community must either participate in the Division's Referee Program or Mediation **prior to going to court**.

Both parties **must agree to participate** to the Referee Program

If the Referee Program is not agreed to by both parties, the dispute will automatically default to mediation.

Can go directly to court

Claims for injunctive relief where there is an immediate threat of irreparable harm and actions relating to the title of residential property are not required to participate in the ADR process and can proceed directly to court.

(example: Association's will take an owner to court for injunctive relief when there is unapproved construction happening on the property. For example, if an owner decides to put an observation deck on their roof without ARC approval.)

Irreparable-" "the type of harm which no monetary compensation can cure or put conditions back the way they were." retrieved 02/18/2015 http://en.wikipedia.org/wiki/Irreparable_injury

Civil Action

Any party may, within 60 days after receiving the written decision and award, commence a civil action in the proper court concerning the claim..

If such an action is not commenced within 60 days after receiving the written decision, within 1 year after receiving the written decision and award, any party may apply to the proper court for a confirmation of the written decision

NRS 38.325 Program of dispute resolution: Authority of Division to establish; procedure for claim referred to program.

The Division's Role

- Division staff can assist the parties in understanding the process and forms used in ADR.
- The Division cannot provide legal advice or determine whether or not the governing documents have been violated, or the enforceability of a specific provision.
- The Division only **facilitates the process**.
- The Division's only role in the Alternative Dispute Resolution program is to gather the initial filings from each side and facilitate the assignment of a Mediator.
- The Division does not employ or otherwise control the performance of the work by the Mediators, Referees.
- The Division is not responsible for, and does not endorse, any conduct by any mediator, Referee or party.
- The Division has no stake in the outcome of any dispute.

Payment

- Directly to Referee or Mediator
- Mediator may request a deposit prior to proceeding
- Subsidy is sent to the Referee or Mediator by the Division

ADR Process

ADR Claim
Form submitted

Division sends out packet to Claimant

Claimant causes Respondent to be served

Division receives Respondent response

Division assigns a referee or mediator *Division no longer in the process

Submitting A Claim for Mediation or Referee Program

Selection of the Referee/Mediator

The last page of the Claim Form (#520) contains a list of the current Mediators and Referees. (always refer to web site for most current listing) Claimants are to select one of the names listed.

Respondent will state on the Respondent Form (#521) whether he/she agrees with the Claimant's selection.

If both parties cannot agree on a Mediator or Referee, one will be appointed by the Division.

Once a Mediator or Referee is appointed, he/she will govern the process going forward.

Referees & Mediator Listing

REFEREE\MEDIATOR PANEL

The following are names and resumes of the Referees, Arbitrators and Mediators currently on the approved panel for the referee program, mediation and arbitration process. Additional names will be added periodically.

ADR REFEREES / ARBITRATORS
Kurt R. Bonds, Esq. (North/South)
Ira David, Esq. (South)
Angela H. Dows, Esq. (North/South)
Paul H. Lamboley, Esq. (North/South)
Michael Matuska, Esq. (North)
Christopher R. McCullough, Esq. (South)
Janet Trost, Esq. (South)

ADR MEDIATORS
Sarah V. Carrasco, Esq. (North)
Ira David, Esq. (South)
Ileana Drobkin (South)
Angela H. Dows, Esq. (North/South)
Barbara Fenster (South)
Paul H. Lamboley, Esq. (North/South)
Michael Matuska, Esq. (North)
Hank Melton (South)
Christopher R. McCullough, Esq. (South)
Dee Newell, JD (South)
Janet Trost, Esq. (South)
Michael G. Chapman, Esq. (North/South)
Jill Greiner, Esq. (North)

www.red.state.nv.us/cic/cic.htm

Serving the Claim

The Division will provide:

After a claim has been filed, the Claimant will receive a packet from the Division by mail that must be served on the Respondent as soon as possible.

The Claimant may not serve the Respondent .

The package to serve will have a copy:

Claimant Claim Form (#520)
A copy of this Overview Form (#523)
Form 520A and Form 520B, if applicable
A blank Respondent Answer Form (#521)
A Subsidy Application for Mediation (#668)
Affidavit of Service form.

Serving the Claim

Who may serve required documents?

- The sheriff of the county where the Respondent resides
- Any citizen of the United States over eighteen (18) years of age other than the Claimant or the Respondent may provide service.
- A process server can also be used.
- The Affidavit of Service form must be completed by the person who served the respondent, notarized and provided to the Division.

An Affidavit of Due Diligence can be provided to the Division. If the Division determines adequate efforts were made to serve the Respondent(s), the Division will provide a letter to the Claimant(s) acknowledging their unsuccessful efforts to participate in the ADR process.

Multiple Respondents

If there are multiple respondents, each respondent must be separately served with the set of documents and a separate Affidavit of Service must be filed for each individual respondent.

Respondent's Response

- Respondents must review all documents served upon them, which shall include this Overview (#523), the Claim Form (#520), Forms 520A and B, if there are additional Claimants or Respondents to supplement the Claim Form, a blank Respondent Form (#521), and a Subsidy Application for Mediation (#668).
- Respondents are required to file with the Division a completed Respondent Form (#521) within **30 days after being served** and **mail a copy to the Claimant**.
- Respondents should provide a brief statement of his/her defense to the allegations made by Claimant.
- Respondents shall file the original Respondent Form (#521) and one (1) copy to the Division.
- Lastly, a $50.00 filing fee payable to "NRED" either by check, money order or cash must be provided at the time of filing.
- **Do not send cash** in the mail. This fee is not refundable.

FAQ: What if the respondent does not answer or refuses to pay the $50 filing fee

A letter is sent to the claimant stating they have met all the NRS statute requirements and can proceed to civil court

ADR PROGRAMS

The Referee Program

The Referee Program

The Referee Program allows disputing parties to present their case to an independent Referee.

Referee Program

The Referee Program is a free program, administered by the Real Estate Division to the **extent funds are available**

- Referees are licensed attorneys approved by the Division to hear disputes.
- The Referee assigned to the claim will schedule a hearing for the parties to present their evidence.
- Do **not** send document to the Division. All documents must be sent directly to the Referee and simultaneously mailed to the opposing party.
- The Referee will ask the parties to provide documentation, if any, to support their positions.
- The documents must be provided no less than 5 days before the hearing or as requested by the Referee.

Referee Process

At the hearing, parties may present evidence, including without limitation, witness testimony.

The Referee governs the procedures used during the hearing, including what evidence may be considered.

The Referee may ask questions of the parties and the witnesses.

Referee Process

The Referee will review the claim, the response and the supporting documentation, including the association's governing documents.

He/she will then issue **a written** decision.

The Referee's decision will be provided to the parties and the Division **within 30 days** of the hearing or 30 days after the Referee receives all documents from the parties.

After Written Decision

After receiving the Referee's decision, the parties have **60 days** to file a claim with the appropriate court.

The decision of the Referee **is not** binding on the parties if within 60 days after receiving the Referee's written decision, either party files a civil claim in court regarding the dispute.

If neither party files a claim, the Referee's decision can be confirmed in court by either party within one year.

Confirmation makes the decision an order of the court and **is binding** on both parties.

If a monetary award is granted, it may not exceed $7,500 and may not include attorneys' fees and costs.

Note that claims involving multiple parties cannot participate in the Referee program

Options

The parties may agree to waive the hearing and elect instead to submit written statements describing the issue and their positions.

The Referee will review the claim, the response and the supporting documentation, including the association's governing documents.

The Referee's decision will be provided to the parties and the Division within 30 days of the hearing or 30 days after the Referee receives all documents from the parties.

Mediation Subsidy

Mediation Subsidy

Mediation Subsidy. If the Claimant or Respondent wishes to apply for Mediation subsidy, include with your Claim Form (#520) the Subsidy Application for Mediation (#668). ▪

Mediation Subsidy

A party who wishes to have a proceeding for mediation subsidized **must**:

- Submit an **application** to the Division
- If the applicant is an association, be **registered**
- **In good standing** with The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels; and The Secretary of State

NAC 116.520 Subsidization of proceedings for mediation (NRS 116.615, 116.670)

Mediation Subsidy(continued)

A unit's owner is eligible 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.

Funds to Subsidize

The funds used to subsidize a proceeding for mediation pursuant to this section must not:

- (a) Be applied to the fee required when filing a written claim pursuant to NRS 38.320 or any attorneys' costs or fees associated with the claim; and
- (b) Exceed $500 or $250 for each party who is eligible to have the proceeding for mediation subsidized pursuant to this section, whichever is less.
- The Division shall provide notice to the mediator that a proceeding for mediation may be subsidized by forwarding to the mediator a copy of the application received pursuant to subsection 2.

Mediation Subsidy(continued)

7. If an application for subsidy is approved by the Division, the mediator shall, within 10 business days after the issuance of the mediator's statement concerning whether the mediation was successful or unsuccessful in resolving the dispute, submit to the Division:

(a) On a form prescribed by the Division, a request for payment of the cost of mediation; and

(b) A copy of the mediator's statement concerning whether the mediation was successful or unsuccessful in resolving the dispute.

8. The Division shall pay the cost of mediation pursuant to this section in accordance with the Division's procedures after the Division receives a copy of the mediator's statement concerning whether the mediation was successful or unsuccessful in resolving the dispute.

9. A party to a mediation is not eligible to receive a subsidy pursuant to this section if the party was a party to a claim in which the same or substantially similar issues were heard by the Referee Program established by the Division pursuant to NRS 38.325.

(Added to NAC by Common for Common-Interest Communities by R129-04, eff. 4-14-2005; A by Common for Common-Interest Communities and Condo. Hotels by R125-12, 10-24-2014)

Mediation

Mediation

If the disputing parties do not agree to participate in the Referee program, they must go through mediation prior to court.

Mediators are certified and approved by the Division to mediate disputes.

The parties meet with a mediator for up to 3 hours or longer if agreed to by the parties.

The mediator promotes reconciliation, agreement, and compromise.

Mediation

Mediation of a claim must be conducted in accordance with the provisions of NRS 38.300 to 38.360 inclusive.

The mediation must be concluded within 60 days of the date the claim is filed with the Division, unless the parties agree otherwise.

To complete the process in 60 days, Claimants must serve the Respondent as soon as possible since the Respondent has 30 days to answer the claim.

The mediator will contact the parties to schedule a date for the mediation.

Mediation Details

The mediation may be held at the mediator's office, or other suitable location.

The disputing parties must submit a statement to the mediator no later than five (5) days before the mediation.

The statement must describe the issues and a **proposed compromise** to the dispute.

The mediator **will not** share that information with the opposing party.

Any documents provided to the mediator are confidential and should **not be** provided to the Division.

Supporting documentation should not be provided with the Claim Form (#520) or the Respondent Form (#521)

Mediation time limit

Mediation must not exceed 3 hours , unless the parties agree to an extension of such time. If the parties agree to extend mediation beyond 3 hours, the fee for the additional hours must not exceed $200 per hour.

If the parties agree to a resolution of the claim, a document detailing the resolution will be drafted by the mediator and signed by both parties before leaving the office.

The settlement agreement is binding on the parties and can be enforced in court.

Mediation

If the parties do not agree to a resolution of the claim, either party may file a claim in the appropriate court stating that they have complied with the requirements of NRS 38.300, et seq.

If the parties so desire, they may participate in Arbitration or the Referee program through the Division after an unsuccessful Mediation

Any agreement obtained through Mediation must within 20 days after the conclusion of the mediation, be reduced to writing by the mediator.

The Division does not receive a copy.

(NRS38.330)subset 1

Mediation Costs

MEDIATION SUBSIDY (NAC 116.520): Mediators may charge up to $167.00 per hour, up to $500.00 per claim. (not to exceed)

The Mediation may be subsidized up to $250.00 per party, not to exceed $500 per mediation.

The parties must submit a Subsidy Application for Mediation (#668) at the time of filing a Claim Form (#520) or a Response Form (#521) with the Division.

Unit owners may receive a subsidy once during each fiscal year of the State for each unit owned.

An association may receive one subsidy each fiscal year against the same unit owner for each unit owned by that unit owner.

Mediation Costs

- Associations must be in good standing with the Secretary of State and the Office of the Ombudsman.
- The Claimant requesting subsidy must file the claim for mediation within 1 year of discovery of the alleged violation.
- The State's fiscal year is from July 1 through June 30.
- If you have questions about your eligibility, please contact the ADR Facilitator.

After Mediation may elect Arbitration

After participating in mediation or the Referee Program, the parties may elect to have the claim arbitrated if unresolved.

Arbitrator fees are limited to $300 per hour; however, there is no time limit or maximum allowable billing for arbitration.

Both parties must agree to arbitrate.

Arbitration may be binding or non-binding.

Licensed Nevada Attorneys

If all else fails…

- Court may be the only answer
  - Very expensive
  - Lengthy process

Quick Review

Unable to resolve dispute:

- File necessary forms
- Fill out subsidy forms
- Serve claim
- Provide evidence/compromise
- Attend Referee/Mediation
- Referee- decision by Referee
- Confirm decision in court
- Mediation-agreement by parties
- File claim in court-if necessary

FAQ

1. Do mediators have to be licensed attorneys?

Answer: No, but Mediators are certified and approved by the Division

2. After participating in Referee Program, when does the 60days/1 year calendar start ticking? Is it at the end of the hearing or after receiving the written decision?

Answer: After written decision (38.325)

3. Where are mediation hearings held?

Answer: Mediator's office or other suitable location determined at the time of the hearing.

FAQ

4. If a Mediator requires a deposit, will the Division be reimbursing me or will the Mediator once the Mediator is paid per the subsidy payment?

Answer: The mediator would provide the deposit back to you. The Division only pays the Referee or the Mediator.

5. Is mediation only for unit owners?

Answer: no (a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property.

6. It says "until extent funding is available", would we be notified if funding ended?

Answer: yes and it would be posted on the website

Summary

Attempt to resolve concern on own

No resolution – send formal notice to Respondent- allowing adequate time to respond

No resolution- fill out Intervention Affidavit with Ombudsman Office

Attend Informal Conference- unsuccessful referred to ADR

Instead go directly to ADR :File claim-ADR process-Confirm in court

No resolution- attend Referee hearing

No resolution- attend Mediation

*Extreme situations civil court

Reference Slides

NRS 38.310 Limitations on commencement of certain civil actions.

1. No civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,

Ê may be commenced in any court in this State **unless the action has been submitted to mediation or, if the parties agree, has been referred to a program** pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

NRS 38.300 Definitions. As used in NRS 38.300 to 38.360, inclusive, unless the context otherwise requires:

1. "Assessments" means:

(a) Any charge which an association may impose against an owner of residential property pursuant to a declaration of covenants, conditions and restrictions, including any late charges, interest and costs of collecting the charges; and

(b) Any penalties, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 or subsections 10, 11 and 12 of NRS 116B.420.

2. "Association" has the meaning ascribed to it in NRS 116.011 or 116B.030.

3. "Civil action" includes an action for money damages or equitable relief. The term does not include an action in equity for injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title to residential property.

4. "Division" means the Real Estate Division of the Department of Business and Industry.

5. "Program" means a program established by the Division under which a person, including, without limitation, a referee or hearing officer, can render decisions on disputes relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property.

6. "Residential property" includes, but is not limited to, real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS. The term does not include commercial property if no portion thereof contains property which is used for residential purposes.

(Added to NRS by 1995, 1416; A 2003, 2251, 2274; 2007, 2277; 2013, 2295)

NAC 116.520 Subsidization of proceedings for mediation (NRS 116.615, 116.670)

1. The Division may subsidize proceedings for mediation conducted pursuant to NRS 38.300 to 38.360, inclusive, 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.

2. A party who wishes to have a proceeding for mediation subsidized must:

(a) Submit an application to the Division on a form prescribed by the Division;

(b) File a claim for mediation within 1 year after the date of discovery of the alleged violation; and

(c) If the applicant is an association, be registered and in good standing with :

(1) The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels; and

(2) The Secretary of State, if the association is required to register with the Secretary of State pursuant to title 7 of NRS.

3. A unit's owner is eligible to have one proceeding for mediation subsidized per fiscal year for each unit that he or she owns.

4. 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.

5. The funds used to subsidize a proceeding for mediation pursuant to this section must not:

(a) Be applied to the fee required when filing a written claim pursuant to NRS 38.320 or any attorneys' costs or fees associated with the claim; and

(b) Exceed $500 or $250 for each party who is eligible to have the proceeding for mediation subsidized pursuant to this section, whichever is less.

6. The Division shall provide notice to the mediator that a proceeding for mediation may be subsidized by forwarding to the mediator a copy of the application received pursuant to subsection 2.

7. If an application for subsidy is approved by the Division, the mediator shall, within 10 business days after the issuance of the mediator's statement concerning whether the mediation was successful or unsuccessful in resolving the dispute, submit to the Division:

(a) On a form prescribed by the Division, a request for payment of the cost of mediation; and

(b) A copy of the mediator's statement concerning whether the mediation was successful or unsuccessful in resolving the dispute.

8. The Division shall pay the cost of mediation pursuant to this section in accordance with the Division's procedures after the Division receives a copy of the mediator's statement concerning whether the mediation was successful or unsuccessful in resolving the dispute.

9. A party to a mediation is not eligible to receive a subsidy pursuant to this section if the party was a party to a claim in which the same or substantially similar issues were heard by the referee program established by the Division pursuant to NRS 38.325.

(Added to NAC by Common for Common-Interest Communities by R129-04, eff. 4-14-2005; A by Common for Common-Interest Communities and Condo. Hotels by R125-12, 10-24-2014)

NRS 38.310 Limitations on commencement of certain civil actions.

1. No civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,

Ê may be commenced in any court in this State unless the action has been submitted to mediation or, if the parties agree, has been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

(Added to NRS by 1995, 1417; A 1997, 526; 2007, 2278; 2013, 2296)

NRS 38.320 Submission of claim for mediation or referral to program of dispute resolution; contents of claim; fees; service of claim; written answer.

1. Any civil action described in NRS 38.310 must be submitted to mediation or referred to a program by filing a written claim with the Division. The claim must include:

(a) The complete names, addresses and telephone numbers of all parties to the claim;

(b) A specific statement of the nature of the claim;

(c) A statement of whether the person wishes to have the claim referred to a program; and

(d) Such other information as the Division may require.

2. The written claim must be accompanied by a filing fee of $50.

3. Upon the filing of the written claim, the Claimant shall serve a copy of the claim in the manner prescribed in Rule 4 of the Nevada Rules of Civil Procedure for the service of a summons and complaint. The claim so served must be accompanied by a statement explaining the procedures for mediation and for a program set forth in NRS 38.300 to 38.360, inclusive.

4. Upon being served pursuant to subsection 3, the person upon whom a copy of the written claim was served shall, within 30 days after the date of service, file a written answer with the Division, which must include a statement of whether the person wishes to have the claim referred to a program. The answer must be accompanied by a filing fee of $50.

(Added to NRS by 1995, 1417; A 2013, 2296)

NRS 38.325 Program of dispute resolution: Authority of Division to establish; procedure for claim referred to program.

If the Division establishes a program:

1. Upon receipt of a written claim and answer filed pursuant to NRS 38.320 in which all the parties indicate that they wish to have the claim referred to such a program, the Division may refer the parties to the program.

2. The person to whom the parties are referred pursuant to the program shall review the claim and answer filed pursuant to NRS 38.320 and, unless the parties agree to waive a hearing, conduct a hearing on the claim. After reviewing the claim and the answer and, if required, conducting a hearing on the claim, the person shall issue a written decision and award and provide a copy of the written decision and award to the parties. The person may not award to either party costs or attorney's fees.

3. Any party may, within 60 days after receiving the written decision and award pursuant to subsection 2, commence a civil action in the proper court concerning the claim. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive. If such an action is not commenced within 60 days after receiving the written decision and award pursuant to subsection 2, any party may, within 1 year after receiving the written decision and award, apply to the proper court for a confirmation of the written decision and award pursuant to NRS 38.239.

(Added to NRS by 2013, 2295)

NRS 38.330 Procedure for mediation or arbitration of claim; payment of costs and fees upon failure to obtain a more favorable award or judgment in court.

1. Unless a program has been established and the parties have elected to have the claim referred to a program, the parties shall select a mediator from the list of mediators maintained by the Division pursuant to NRS 38.340. Any mediator selected must be available within the geographic area. If the parties fail to agree upon a mediator, the Division shall appoint a mediator from the list of mediators maintained by the Division. Any mediator appointed must be available within the geographic area. Unless otherwise provided by an agreement of the parties, mediation must be completed within 60 days after the filing of the written claim. Not later than 5 days before mediation is scheduled to be conducted, each party must submit to the mediator a written statement which sets forth the issues in dispute. Mediation must not exceed 3 hours, unless the parties agree to an extension of such time. Any agreement obtained through mediation conducted pursuant to this section must, within 20 days after the conclusion of mediation, be reduced to writing by the mediator and a copy thereof provided to each party. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section, the parties are responsible for the cost of mediation conducted pursuant to this section, which must not exceed $500 for 3 hours of mediation. If the parties agree to extend mediation beyond 3 hours pursuant to this subsection, the fee for the additional hours must not exceed $200 per hour. If the parties participate in mediation and an agreement is not obtained, any party may commence a civil action in the proper court concerning the claim that was submitted to mediation. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been mediated pursuant to the provisions of NRS 38.300 to 38.360, inclusive, but an agreement was not obtained.

2. Before commencing a civil action in the proper court, the parties named in the claim may agree to arbitration if the parties have participated in mediation in which an agreement was not obtained or if a written decision and award have been issued pursuant to NRS 38.325. Unless the parties agree in writing to binding arbitration, the arbitration is nonbinding. The cost of arbitration conducted pursuant to this section must not exceed $300 per hour. If the parties agree to arbitration, they shall select an arbitrator from the list of arbitrators maintained by the Division pursuant to NRS 38.340. Any arbitrator selected must be available within the geographic area. If the parties fail to agree upon an arbitrator, the Division shall appoint an arbitrator from the list maintained by the Division. Any arbitrator appointed must be available within the geographic area. Upon appointing an arbitrator, the Division shall provide the name of the arbitrator to each party. An arbitrator shall, not later than 5 days after the arbitrator's selection or appointment pursuant to this subsection, provide to the parties an informational statement relating to the arbitration of a claim pursuant to this section. The written informational statement:

(a) Must be written in plain English;

(b) Must explain the procedures and applicable law relating to the arbitration of a claim conducted pursuant to this section, including, without limitation, the procedures, timelines and applicable law relating to confirmation of an award pursuant to NRS 38.239, vacation of an award pursuant to NRS 38.241, judgment on an award pursuant to NRS 38.243, and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and

(c) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement, which must be returned to the arbitrator by the party not later than 10 days after receipt of the informational statement.

3. The Division may provide for the payment of the fees for a mediator or an arbitrator selected or appointed pursuant to this section from the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630, to the extent that:

(a) The Commission for Common-Interest Communities and Condominium Hotels approves the payment; and

(b) There is money available in the Account for this purpose.

4. Except as otherwise provided in this section and except where inconsistent with the provisions of NRS 38.300 to 38.360, inclusive, the arbitration of a claim pursuant to this section must be conducted in accordance with the provisions of NRS 38.231, 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association, the arbitrator may issue an order prohibiting the action upon which the claim is based. An award must be made within 30 days after the conclusion of arbitration, unless a shorter period is agreed upon by the parties to the arbitration.

NAC 38.350 Claims relating to residential property within common-interest community. (NRS 38.360)

1. A person required to submit a civil action to mediation or arbitration pursuant to NRS 38.310 must serve a copy of the written claim and the statement explaining the procedures for mediation and arbitration on the opposing party within 45 days after filing the claim with the real estate division of the department of business and industry.

2. Proof of service of the documents required pursuant to subsection 1 must be filed:

(a) With the division within 10 days after service of the claim and statement; and

(b) On a form provided by the division.

3. A copy of an agreement reached through mediation must be filed with the division within 30 days after the completion of mediation.

4. A copy of an award reached through binding or nonbinding arbitration must be filed with the division within 90 days after the completion of arbitration.

5. If the person upon whom a copy of the written claim was served fails to file a written answer with the division within 30 days after the date of service as required by subsection 4 of NRS 38.320, that person shall be deemed to have waived his right to participate in the selection of a mediator or arbitrator, and the division will appoint an arbitrator from the list maintained by the division.

6. If a claim proceeds to arbitration pursuant to subsection 5, the arbitration is nonbinding.

7. The division will issue a certificate certifying that the claim has been submitted to arbitration or mediation as required by NRS 38.310 within 30 days after receiving a copy of:

(a) The agreement reached through mediation;

(b) The award reached through binding or nonbinding arbitration; or

(c) Written verification from the arbitrator which confirms that the arbitrator served notice of the arbitration hearing on both parties and that the person upon whom a copy of the written claim was previously served failed to appear at the hearing.

NRS 38.330 Procedure for mediation or arbitration of claim; payment of costs and fees upon failure to obtain a more favorable award or judgment in court.(continued)

5. If all the parties have agreed to arbitration but have not agreed whether the arbitration will be binding or nonbinding, the arbitration will be nonbinding. If arbitration is nonbinding, any party to the nonbinding arbitration may, within 30 days after a final decision and award which are dispositive of any and all issues of the claim which were submitted to nonbinding arbitration have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the provisions of NRS 38.300 to 38.360, inclusive. If such an action is not commenced within that period, any party to the arbitration may, within 1 year after the service of the award, apply to the proper court for a confirmation of the award pursuant to NRS 38.239.

6. If all the parties agree in writing to binding arbitration, the arbitration must be conducted in accordance with the provisions of this chapter. An award procured pursuant to such binding arbitration may be vacated and a rehearing granted upon application of a party pursuant to the provisions of NRS 38.241.

7. If, after the conclusion of binding arbitration, a party:

(a) Applies to have an award vacated and a rehearing granted pursuant to NRS 38.241; or

(b) Commences a civil action based upon any claim which was the subject of arbitration,

Ê the party shall, if the party fails to obtain a more favorable award or judgment than that which was obtained in the initial binding arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party after the application for a rehearing was made or after the complaint in the civil action was filed.

8. Upon request by a party, the Division shall provide a statement to the party indicating the amount of the fees for a mediator or an arbitrator selected or appointed pursuant to this section.

9. As used in this section, "geographic area" means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to NRS 38.320.

(Added to NRS by 1995, 1418; A 1999, 3016; 2001, 1283; 2003, 35, 39, 2251; 2007, 2278; 2009, 2904; 2011, 801; 2013, 2297)

NRS 116.3102 Powers of unit-owners' association; limitations.

1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:

(a) Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations.

(b) Shall adopt and may amend budgets in accordance with the requirements set forth in NRS 116.31151, may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395.

(c) May hire and discharge managing agents and other employees, agents and independent contractors.

(d) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

(e) May make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.