

State of Nevada

Department of Business & Industry

Real Estate Division

Common-Interest Communities
and Condominium Hotels Program



Understanding Association Violations

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 there has been a violation of the governing documents or NRS116 you can file a complaint with the NV Real Estate Division



Learning Objectives

- ▶ Upon completion of this class, participants will have a basic understanding of:
 - The HOA's right/duty to enforce the governing documents and impose fines and sanctions for violations of governing documents
 - Executive Board procedural requirements and limitations
 - Rights of unit owner – notice and hearing
 - Rights of unit owner– ability to correct violation
 - Executive Board ability to charge for continuing violations



An HOA provides...

- ▶ A desirable lifestyle
- ▶ Predictable community standards
- ▶ Common areas/amenities for owners
- ▶ Potential for long-term appreciation



Before you purchase!

You should review the CC&Rs, and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you.

HOA Requirements

- ▶ When you purchase property in an HOA...
 - You attest that you have read the information statement
 - Articles of Incorporation, Bylaws, Rules
 - Declaration (CC&Rs)
 - You agree to abide by the CC&Rs
 - By purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your lifestyle and freedom of choice.



HOA Requirements

YOU ARE AGREEING TO RESTRICTIONS ON HOW YOU CAN USE YOUR PROPERTY

The CC&Rs become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you.

NRS 116.41095 Required form of information statement.



HOA Requirements

The CC&Rs, together with other “governing documents” (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community,

but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property.



NRS Speaks to Rules

The rules adopted by an association:

1. Must be reasonably related to the purpose for which they are adopted.
2. Must be sufficiently explicit in their prohibition, direction or limitation to **inform a person of any action or omission required for compliance**.
3. Must not be adopted to evade any obligation of the association.
4. Must be consistent with the governing documents of the association and must not arbitrarily restrict conduct or require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association.
5. **Must be uniformly enforced** under the same or similar circumstances against all units' owners. Any rule that is not so uniformly enforced may not be enforced against any unit's owner.
6. May be enforced by the association through the imposition of a fine only if the association complies with the requirements set forth in [NRS 116.31031](#).

NRS 116.31065 Rules.

Things to consider when creating rules

Rules can be passed by board resolution

Determine if a rule will solve the situation –is the situation limited to one person or would the rule benefit the whole community

Make sure the rule follows governing documents and can be created, understand what is required to create and what tools are required to enforce any new rule.

Good ideas to get community input

Insure the rule is specific (vague rules open up community to interpretation)

Communicate the new rule to community

Powers of the association

May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in [NRS 116.31031](#)

Option on enforcement

The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's **best interests** to pursue an enforcement action.

How does the association respond to possible violations?

Proactive:

Association regular inspections and courtesy notices to all unit owners of up coming inspections and results

Reactive:

Association only reacts when they receive complaints from neighbors. Then the board investigates.

Does the Association have a standard complaint policy?

Is the board aware of the actual procedure the community managers takes for the following situations:

- ▶ Inspection of association –walk thru’s (when are they being completed and by whom?)
- ▶ Complaints from unit owners about other unit owners
- ▶ Standardize letter sent to all owners
- ▶ Anonymous complaints

Beware the neighbors' complaint

- ▶ Over Zealous neighbors – “do gooder’s”
- ▶ Abuse of power
- ▶ Spying on each other
- ▶ Hidden agenda– (possible domestic differences)
- ▶ Remind community to respect neighbor’s privacy
- ▶ Best to have more than one person verify the alleged violation

Confirm the Violation

The board must know the following:

- ▶ Exactly what happened
- ▶ When it happened
- ▶ Where
- ▶ Who observed
- ▶ Identify exact rule or bylaw being violated

- ▶ What actions or procedures does the Community Manager take to verify the alleged violations? Email? Warning Letters?

*Complaints from neighbors should be in writing—helps with stories changing

Reaction from unit owner

- ▶ Surprise unaware committing a violation
- ▶ Annoyed
- ▶ Anger –feel being pick out of crowd
- ▶ Aware of violating the rule, waiting to be called out
- ▶ Aware of violating the rule, working to solution

Power of executive board to enter grounds of unit

If an **action or notice** described in subsection 1 has **been filed** or recorded regarding a unit and the association has **provided the unit's owner with notice** and an **opportunity for a hearing** in the manner provided in [NRS 116.31031](#), the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, **whether or not the unit is vacant**, to take any of the following actions **if the unit's owner refuses or fails to take any action** or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

- (a) **Maintain the exterior** of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.
- (b) Remove or abate a public nuisance on the exterior of the unit which:
 - (1) **Is visible** from any common area of the community or **public streets**;
 - (2) **Threatens the health or safety of the residents** of the common-interest community;
 - (3) Results in blighting or deterioration of the unit or surrounding area; and
 - (4) **Adversely affects the use and enjoyment** of nearby units.

Exterior of Unit

“Exterior of the unit” includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

NRS 116.310312(9)(a) Power of executive board to enter grounds

“Vacant” means a unit:

(1) Which reasonably appears to be unoccupied;

(2) On which the owner has failed to maintain the exterior to the standards set forth in the governing documents the association; and

(3) On which the owner has failed to pay assessments for more than 60 days.

NRS 116.310312(9)(b) Power of executive board to enter grounds of unit

Vacant Unit

If a unit is vacant and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in [NRS 116.31031](#), the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance as described in subsection 2 if the unit's owner refuses or fails to do so.

NRS 116.310312(3) Power of executive board to enter grounds of unit

Not Trespassing

Notwithstanding any other provision of law, an association, its directors or members of the executive board, employees, agents or community manager who enter the grounds of a unit pursuant to this section are not liable for trespass.

NRS 116.310312(8) Power of executive board to enter grounds of unit

Maintenance cost to unit

The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges.

NRS 116.310312 Power of executive board to enter grounds of unit (4)

Violations of Governing Documents



Meet in Executive Session for Violations (NRS 116.31085)

An executive board may meet in executive session only to:

(c) Discuss a **violation of the governing documents**, including, without limitation, the failure to pay an assessment.

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

NRS 116.31085 Right of units' owners



No fines

- ▶ A fine may not be imposed for a violation that is the subject of a construction penalty pursuant to [NRS 116.310305](#); and
- ▶ A fine may not be imposed against a unit's owner or a tenant or invitee of a unit's owner or a tenant for a violation of the governing documents which involves a vehicle and which is committed by a person who is delivering goods to, or performing services for, the unit's owner or tenant or invitee of the unit's owner or the tenant.

NRS 116.31031 Power of executive board to impose fines

Executive Board cannot impose a fine on unit owner

The executive board may not impose a fine against a unit's owner for a violation of any provision of the governing documents of an association committed by an invitee of the unit's owner or the tenant unless the unit's owner:

- (a) Participated in or authorized the violation;
- (b) Had prior notice of the violation; or
- (c) Had an opportunity to stop the violation and failed to do so.

Schedule of fines

If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

NRS 116.31031(3) Power of executive board to impose fines

Appoint a committee

If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on alleged violations and to impose fines pursuant to this section.

While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

NRS 116.31031 Power of executive board to impose fines (8)

CC&R Violations– NRS 116.31031

Notice Must be Given!

- ▶ Written notice to alleged offender
 - Detailed description of the violation
 - Amount of fine
 - Proposed action to cure violation
 - Clear photograph if the violation relates to physical condition of the unit or grounds (and in other circumstances when possible)
 - Date, time, location of hearing
 - Opportunity to cure or contest the violation before a fine can be levied

- NRS 116.31031(4) Power of executive board to impose fines



Wait it is not me!

Mistakes can happen but do not ignore the notice

Contact community manager (phone, email, formal letter)

Contact board members (email or association email, formal letter)

Clearly explain the error and why it is an error—verify understanding of mistake

Send follow up communications requesting verification that violation is no longer being considered –want it in writing

Otherwise go to the hearing!

www.googlesearch.com Cartoonstock.com retrieved 05/07/2015



"How can he make so many mistakes? He's our best multi-tasker."

Request for open hearing

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

NRS 116.31085 Right of units' owners to speak at certain meetings; procedure governing hearings on alleged violations;

Procedure governing hearings on alleged violations

If the person who may be sanctioned for the alleged violation **requests in writing** that an open hearing be conducted, the person:

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

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

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

Scheduling Hearing

The executive board must schedule the date, time and location for the hearing on the alleged violation so that the unit's owner and, if different, the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

The executive board **must hold** a hearing before it may **impose the fine**, unless the fine is paid before the hearing or **unless** the unit's owner and, if different, the person against whom the fine will be imposed:

(a) Executes a **written waiver** of the right to the hearing; or

(b) **Fails to appear** at the hearing after being provided with proper notice of the hearing.

Board member not participate

A member of the executive board shall not participate in any hearing or cast any vote relating to a fine if the member has not paid all assessments which are due to the association by the member.

If a member of the executive board:

(a) Participates in a hearing in violation of this subsection, any action taken at the hearing is void.

(b) Casts a vote in violation of this subsection, the vote is void.

NRS 116.31031(9) Power of executive board to impose fines

Confidential information

(board members do not discuss hearings with any other unit owners)

Except as otherwise required by law or court order, disclosed confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates

NAC 116.405 Executive board

Any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board.

The executive board shall maintain minutes of any decision made concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to the person's designated representative.

NRS 116.31085(6) Procedure governing hearings on alleged violations

Consequences

Non-Monetary Sanctions

- ▶ NRS 116.31031(1) if a unit's owner or a tenant or an invitee of a unit's owner or a tenant violates any provision of the governing documents of an association,
- ▶ The executive board may, if the governing documents so provide:
 - ▶ Prohibit voting on CIC matters
 - ▶ Prohibit use of the common elements
 - ▶ *Note that you cannot block access to a unit!

NRS 116.31031 Power of executive board to impose fines 1.(a)



Amount of Fine

If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, **the amount** of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents

Amount of Fine

If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less.

Fines

- ▶ Fines should NEVER be used to enhance the budget
- ▶ Fines should be commensurate (equal) with the violation
- ▶ The goal of a fine is to encourage compliance
- ▶ Interest cannot be charged for unpaid fines
- ▶ The HOA cannot foreclose for unpaid fines (except for health, safety, and welfare violations)



Continuing Violation

If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation

NRS 116.31031 Power of executive board to impose fines (7)

Continuing Violation

Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured.

Any additional fine may be imposed without providing the opportunity to cure the violation and without the notice and an opportunity to be heard

NRS 116.31031 Power of executive board to impose fines (7)

Fines must not bear interest

Any past due fine must not bear interest, but may include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

NRS 116.31031 Power of executive board to impose fines (11)

Statement of balance

If requested by a person upon whom a fine was imposed, not later than 60 days after receiving any payment of a fine, an association shall provide to the person upon whom the fine was imposed a statement of the remaining balance owed.

NRS 116.31031 Power of executive board to impose fines (12)

Construction Penalties

▶ NRS 116.310305

- ▶ Construction penalty is not a fine. It is a penalty for failure to adhere to schedule
 - Authority granted in the CC&Rs
 - Applies to construction of a unit or its improvement
 - Maximum amount must be included in public offering statement or resale package
 - Unit owner must be notified of violation and right to a hearing



Summary

- ▶ The HOA is required to enforce the governing documents– Must be uniformly enforced !
- ▶ Fines are assessed to gain compliance
- ▶ Verify the violation is actual being presented to correct unit owner
- ▶ Provide notice of error if association created violation notice in error and no fine being issued



Summary

Actual Alleged Violation

- ▶ Notice sent to unit owner's address on file
- ▶ Specifying in detail the alleged violation
- ▶ The proposed action to cure the alleged violation
- ▶ The amount of the fine, and the date, time and location for a hearing on the alleged violation
- ▶ A reasonable opportunity to cure the alleged violation or to contest the alleged violation at the hearing.



Questions?

- ▶ Web Site

- www.red.nv.gov

- ▶ Phone

- 702.486.4480/877.829.9907/775.687.4280

- ▶ FAX

- 702.486.4520/775.687.4868

- ▶ E-Mail

- Ombclasses@red.state.nv.us

- ▶ Office Locations

- 2501 East Sahara Ave, Suite 202, Las Vegas, NV 89104
- 1179 Fairview Drive, Suite E, Carson City, NV 89701



Reference Slides

NRS 116.310312 Power of executive board to enter grounds of unit to conduct certain maintenance or remove or abate public nuisance; notice of security interest and hearing required; imposition of fines and costs; lien against unit; limitation on liability.

1. A person who holds a security interest in a unit must provide the association with the person's contact information as soon as reasonably practicable, but not later than 30 days after the person:

(a) Files an action for recovery of a debt or enforcement of any right secured by the unit pursuant to [NRS 40.430](#); or

(b) Records or has recorded on his or her behalf a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to [NRS 107.080](#).

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in [NRS 116.31031](#), the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.

(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community or public streets;

(2) Threatens the health or safety of the residents of the common-interest community;

(3) Results in blighting or deterioration of the unit or surrounding area; and

(4) Adversely affects the use and enjoyment of nearby units.

3. If a unit is vacant and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in [NRS 116.31031](#), the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance as described in subsection 2 if the unit's owner refuses or fails to do so.

NRS 116.310312 Power of executive board to enter grounds of unit to conduct certain maintenance or remove or abate public nuisance; notice of security interest and hearing required; imposition of fines and costs; lien against unit; limitation on liability.

4. The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges. The lien may be foreclosed under [NRS 116.31162](#) to [116.31168](#), inclusive.

5. A lien described in subsection 4 bears interest from the date that the charges become due at a rate determined pursuant to [NRS 17.130](#) until the charges, including all interest due, are paid.

6. Except as otherwise provided in this subsection, a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of [NRS 116.3116](#). If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

7. A person who purchases or acquires a unit at a foreclosure sale pursuant to [NRS 40.430](#) or a trustee's sale pursuant to [NRS 107.080](#) is bound by the governing documents of the association and shall maintain the exterior of the unit in accordance with the governing documents of the association. Such a unit may only be removed from a common-interest community in accordance with the governing documents pursuant to this chapter.

8. Notwithstanding any other provision of law, an association, its directors or members of the executive board, employees, agents or community manager who enter the grounds of a unit pursuant to this section are not liable for trespass.

9. As used in this section:

(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

(b) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

(2) On which the owner has failed to maintain the exterior to the standards set forth in the governing documents the association; and

(3) On which the owner has failed to pay assessments for more than 60 days.

(Added to NRS by [2009, 1007](#))

determined in accordance with those federal regulations.

Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

7. A person who purchases or acquires a unit at a foreclosure sale pursuant to [NRS 40.430](#) or a trustee's sale pursuant to [NRS](#)

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.
- (f) May regulate the use, maintenance, repair, replacement and modification of common elements.
- (g) May cause additional improvements to be made as a part of the common elements.
- (h) May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:
 - (1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to [NRS 116.3112](#); and
 - (2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to [NRS 116.3112](#).
- (i) May grant easements, leases, licenses and concessions through or over the common elements.
- (j) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of [NRS 116.2102](#), and for services provided to the units' owners, including, without limitation, any services provided pursuant to [NRS 116.310312](#).
- (k) May impose charges for late payment of assessments pursuant to [NRS 116.3115](#).
- (l) May impose construction penalties when authorized pursuant to [NRS 116.310305](#).
- (m) May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in [NRS 116.31031](#).
- (n) May impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by [NRS 116.4109](#), for preparing and furnishing the documents and certificate required by that section.
- (o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.
- (p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.
- (q) May exercise any other powers conferred by the declaration or bylaws.
- (r) May exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) May direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to [NRS 487.038](#), or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of [NRS 487.038](#) and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) May exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.

3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

4. The executive board's decision under subsection 3 not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

5. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on the owner of any property in the common-interest community that is exempt from taxation pursuant to [NRS 361.125](#). For the purposes of this subsection, "assessment" does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to [NRS 361.125](#).

NRS 116.745 “Violation” defined. As used in [NRS 116.745](#) to [116.795](#), inclusive, unless the context otherwise requires, “violation” means a violation of:

1. Any provision of this chapter except [NRS 116.31184](#);
2. Any regulation adopted pursuant to this chapter; or
3. Any order of the Commission or a hearing panel.

(Added to NRS by [2003, 2213](#); A [2005, 2620](#); [2013, 2530](#))

NRS 116.41095 Required form of information statement. The information statement required by [NRS 116.4103](#) and [116.4109](#) must be in substantially the following form:

BEFORE YOU PURCHASE PROPERTY IN A
COMMON-INTEREST COMMUNITY
DID YOU KNOW . . .

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

When you enter into a purchase agreement to buy a home or unit in a common-interest community, in most cases you should receive either a public offering statement, if you are the original purchaser of the home or unit, or a resale package, if you are not the original purchaser. The law generally provides for a 5-day period in which you have the right to cancel the purchase agreement. The 5-day period begins on different starting dates, depending on whether you receive a public offering statement or a resale package. Upon receiving a public offering statement or a resale package, you should make sure you are informed of the deadline for exercising your right to cancel. In order to exercise your right to cancel, the law generally requires that you hand deliver the notice of cancellation to the seller within the 5-day period, or mail the notice of cancellation to the seller by prepaid United States mail within the 5-day period. For more information regarding your right to cancel, see Nevada Revised Statutes 116.4108, if you received a public offering statement, or Nevada Revised Statutes 116.4109, if you received a resale package.

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

These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions. The CC&Rs become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you. The CC&Rs, together with other "governing documents" (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property. By purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the CC&Rs, and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you. Certain provisions in the CC&Rs and other governing documents may be superseded by contrary provisions of [chapter 116](#) of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the Internet address <http://www.leg.state.nv.us/nrs/>.

3. YOU WILL HAVE TO PAY OWNERS' ASSESSMENTS FOR AS LONG AS YOU OWN YOUR PROPERTY?

As an owner in a common-interest community, you are responsible for paying your share of expenses relating to the common elements, such as landscaping, shared amenities and the operation of any homeowners' association. The obligation to pay these assessments binds you and every future owner of the property. Owners' fees are usually assessed by the homeowners' association and due monthly. You have to pay dues whether or not you agree with the way the association is managing the property or spending the assessments. The executive board of the association may have the power to change and increase the amount of the assessment and to levy special assessments against your property to meet extraordinary expenses. In some communities, major components of the common elements of the community such as roofs and private roads must be maintained and replaced by the association. If the association is not well managed or fails to provide adequate funding for reserves to repair, replace and restore common elements, you may be required to pay large, special assessments to accomplish these tasks.

4. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU COULD LOSE YOUR HOME?

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

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

Many common-interest communities have a homeowners' association. In a new development, the association will usually be controlled by the developer until a certain number of units have been sold. After the period of developer control, the association may be controlled by property owners like yourself who are elected by homeowners to sit on an executive board and other boards and committees formed by the association. The association, and its executive board, are responsible for assessing homeowners for the cost of operating the association and the common or shared elements of the community and for the day to day operation and management of the community. Because homeowners sitting on the executive board and other boards and committees of the association may not have the experience or professional background required to understand and carry out the responsibilities of the association properly, the association may hire professional community managers to carry out these responsibilities.

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

NRS 116.41095 Required form of information statement.

6. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE PURCHASERS OF YOUR PROPERTY WITH INFORMATION ABOUT LIVING IN YOUR COMMON-INTEREST COMMUNITY?

The law requires you to provide a prospective purchaser of your property with a copy of the community's governing documents, including the CC&Rs, association bylaws, and rules and regulations, as well as a copy of this document. You are also required to provide a copy of the association's current year-to-date financial statement, including, without limitation, the most recent audited or reviewed financial statement, a copy of the association's operating budget and information regarding the amount of the monthly assessment for common expenses, including the amount set aside as reserves for the repair, replacement and restoration of common elements. You are also required to inform prospective purchasers of any outstanding judgments or lawsuits pending against the association of which you are aware. For more information regarding these requirements, see Nevada Revised Statutes 116.4109.

7. YOU HAVE CERTAIN RIGHTS REGARDING OWNERSHIP IN A COMMON-INTEREST COMMUNITY THAT ARE GUARANTEED YOU BY THE STATE?

Pursuant to provisions of [chapter 116](#) of Nevada Revised Statutes, you have the right:

- (a) To be notified of all meetings of the association and its executive board, except in cases of emergency.
- (b) To attend and speak at all meetings of the association and its executive board, except in some cases where the executive board is authorized to meet in closed, executive session.
- (c) To request a special meeting of the association upon petition of at least 10 percent of the homeowners.
- (d) To inspect, examine, photocopy and audit financial and other records of the association.
- (e) To be notified of all changes in the community's rules and regulations and other actions by the association or board that affect you.

8. QUESTIONS?

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

Buyer or prospective buyer's initials:_____

Date:_____

NRS 116.310312 Power of executive board to enter grounds of unit to conduct certain maintenance or remove or abate public nuisance; notice of security interest and hearing required; imposition of fines and costs; lien against unit; limitation on liability.

1. A person who holds a security interest in a unit must provide the association with the person's contact information as soon as reasonably practicable, but not later than 30 days after the person:

(a) Files an action for recovery of a debt or enforcement of any right secured by the unit pursuant to [NRS 40.430](#); or

(b) Records or has recorded on his or her behalf a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to [NRS 107.080](#).

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in [NRS 116.31031](#), the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.

(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community or public streets;

(2) Threatens the health or safety of the residents of the common-interest community;

(3) Results in blighting or deterioration of the unit or surrounding area; and

(4) Adversely affects the use and enjoyment of nearby units.

3. If a unit is vacant and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in [NRS 116.31031](#), the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance as described in subsection 2 if the unit's owner refuses or fails to do so.

4. The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges. The lien may be foreclosed under [NRS 116.31162](#) to [116.31168](#), inclusive.

5. A lien described in subsection 4 bears interest from the date that the charges become due at a rate determined pursuant to [NRS 17.130](#) until the charges, including all interest due, are paid.

NRS 116.310312 Power of executive board to enter grounds of unit to conduct certain maintenance or remove or abate public nuisance; notice of security interest and hearing required; imposition of fines and costs; lien against unit; limitation on liability.

6. Except as otherwise provided in this subsection, a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of [NRS 116.3116](#). If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

7. A person who purchases or acquires a unit at a foreclosure sale pursuant to [NRS 40.430](#) or a trustee's sale pursuant to [NRS 107.080](#) is bound by the governing documents of the association and shall maintain the exterior of the unit in accordance with the governing documents of the association. Such a unit may only be removed from a common-interest community in accordance with the governing documents pursuant to this chapter.

8. Notwithstanding any other provision of law, an association, its directors or members of the executive board, employees, agents or community manager who enter the grounds of a unit pursuant to this section are not liable for trespass.

9. As used in this section:

(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

(b) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

(2) On which the owner has failed to maintain the exterior to the standards set forth in the governing documents the association; and

(3) On which the owner has failed to pay assessments for more than 60 days.

(Added to NRS by [2009, 1007](#))

NRS 116.31031 Power of executive board to impose fines and other sanctions for violations of governing documents; limitations; procedural requirements; continuing violations; collection of past due fines; statement of balance owed.

1. Except as otherwise provided in this section, if a unit's owner or a tenant or an invitee of a unit's owner or a tenant violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or the invitee of the unit's owner or the tenant from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or the invitee of the unit's owner or the tenant from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or the invitee of the unit's owner or the tenant for each violation, except that:

(1) A fine may not be imposed for a violation that is the subject of a construction penalty pursuant to [NRS 116.310305](#); and

(2) A fine may not be imposed against a unit's owner or a tenant or invitee of a unit's owner or a tenant for a violation of the governing documents which involves a vehicle and which is committed by a person who is delivering goods to, or performing services for, the unit's owner or tenant or invitee of the unit's owner or the tenant.

Ê If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. The limitations on the amount of the fine do not apply to any charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

2. The executive board may not impose a fine pursuant to subsection 1 against a unit's owner for a violation of any provision of the governing documents of an association committed by an invitee of the unit's owner or the tenant unless the unit's owner:

(a) Participated in or authorized the violation;

(b) Had prior notice of the violation; or

(c) Had an opportunity to stop the violation and failed to do so.

3. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

4. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the alleged violation, the unit's owner and, if different, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the alleged violation; and

(b) Within a reasonable time after the discovery of the alleged violation, the unit's owner and, if different, the person against whom the fine will be imposed has been provided with:

(1) Written notice:

(I) Specifying in detail the alleged violation, the proposed action to cure the alleged violation, the amount of the fine, and the date, time and location for a hearing on the alleged violation; and

(II) Providing a clear and detailed photograph of the alleged violation, if the alleged violation relates to the physical condition of the unit or the grounds of the unit or an act or a failure to act of which it is possible to obtain a photograph; and

(2) A reasonable opportunity to cure the alleged violation or to contest the alleged violation at the hearing.

NRS 116.31031 Power of executive board to impose fines and other sanctions for violations of governing documents; limitations; procedural requirements; continuing violations; collection of past due fines; statement of balance owed.

For the purposes of this subsection, a unit's owner shall not be deemed to have received written notice unless written notice is mailed to the address of the unit and, if different, to a mailing address specified by the unit's owner.

5. The executive board must schedule the date, time and location for the hearing on the alleged violation so that the unit's owner and, if different, the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

6. The executive board must hold a hearing before it may impose the fine, unless the fine is paid before the hearing or unless the unit's owner and, if different, the person against whom the fine will be imposed:

- (a) Executes a written waiver of the right to the hearing; or
- (b) Fails to appear at the hearing after being provided with proper notice of the hearing.

7. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without providing the opportunity to cure the violation and without the notice and an opportunity to be heard required by paragraph (b) of subsection 4.

8. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on alleged violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

9. A member of the executive board shall not participate in any hearing or cast any vote relating to a fine imposed pursuant to subsection 1 if the member has not paid all assessments which are due to the association by the member. If a member of the executive board:

- (a) Participates in a hearing in violation of this subsection, any action taken at the hearing is void.
- (b) Casts a vote in violation of this subsection, the vote is void.

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

11. Any past due fine must not bear interest, but may include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

12. If requested by a person upon whom a fine was imposed, not later than 60 days after receiving any payment of a fine, an association shall provide to the person upon whom the fine was imposed a statement of the remaining balance owed.

(Added to NRS by [1997, 3112](#); A [1999, 3001](#); [2003, 2228, 2268](#); [2005, 2592](#); [2009, 2797, 2880, 2913](#); [2011, 2431](#); [2013, 267](#))

NRS 116.310305 Power of executive board to impose construction penalties for failure of unit's owner to adhere to certain schedules relating to design, construction, occupancy or use of unit or improvement.

1. A unit's owner shall adhere to a schedule required by the association for:
 - (a) The completion of the design of a unit or the design of an improvement to a unit;
 - (b) The commencement of the construction of a unit or the construction of an improvement to a unit;
 - (c) The completion of the construction of a unit or the construction of an improvement to the unit; or
 - (d) The issuance of a permit which is necessary for the occupancy of a unit or for the use of an improvement to a unit.
2. The association may impose and enforce a construction penalty against a unit's owner who fails to adhere to a schedule as required pursuant to subsection 1 if:
 - (a) The right to assess and collect a construction penalty is set forth in:
 - (1) The declaration;
 - (2) Another document related to the common-interest community that is recorded before the date on which the unit's owner acquired title to the unit; or
 - (3) A contract between the unit's owner and the association;
 - (b) The association has included notice of the maximum amount of the construction penalty and schedule as part of any public offering statement or resale package required by this chapter; and
 - (c) The unit's owner receives notice of the alleged violation which informs the unit's owner that he or she has a right to a hearing on the alleged violation.
3. For the purposes of this chapter, a construction penalty is not a fine.
(Added to NRS by [2003, 2221, 2266](#); A [2011, 2430](#))

NRS 116.310312 Power of executive board to enter grounds of unit to conduct certain maintenance or remove or abate public nuisance; notice of security interest and hearing required; imposition of fines and costs; lien against unit; limitation on liability.

1. A person who holds a security interest in a unit must provide the association with the person's contact information as soon as reasonably practicable, but not later than 30 days after the person:

(a) Files an action for recovery of a debt or enforcement of any right secured by the unit pursuant to [NRS 40.430](#); or

(b) Records or has recorded on his or her behalf a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to [NRS 107.080](#).

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in [NRS 116.31031](#), the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.

(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community or public streets;

(2) Threatens the health or safety of the residents of the common-interest community;

(3) Results in blighting or deterioration of the unit or surrounding area; and

(4) Adversely affects the use and enjoyment of nearby units.

3. If a unit is vacant and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in [NRS 116.31031](#), the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance as described in subsection 2 if the unit's owner refuses or fails to do so.

4. The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges. The lien may be foreclosed under [NRS 116.31162](#) to [116.31168](#), inclusive.

NRS 116.310312 Power of executive board to enter grounds of unit to conduct certain maintenance or remove or abate public nuisance; notice of security interest and hearing required; imposition of fines and costs; lien against unit; limitation on liability.

5. A lien described in subsection 4 bears interest from the date that the charges become due at a rate determined pursuant to [NRS 17.130](#) until the charges, including all interest due, are paid.

6. Except as otherwise provided in this subsection, a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of [NRS 116.3116](#). If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

7. A person who purchases or acquires a unit at a foreclosure sale pursuant to [NRS 40.430](#) or a trustee's sale pursuant to [NRS 107.080](#) is bound by the governing documents of the association and shall maintain the exterior of the unit in accordance with the governing documents of the association. Such a unit may only be removed from a common-interest community in accordance with the governing documents pursuant to this chapter.

8. Notwithstanding any other provision of law, an association, its directors or members of the executive board, employees, agents or community manager who enter the grounds of a unit pursuant to this section are not liable for trespass.

9. As used in this section:

(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

(b) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

(2) On which the owner has failed to maintain the exterior to the standards set forth in the governing documents the association; and

(3) On which the owner has failed to pay assessments for more than 60 days.

(Added to NRS by [2009, 1007](#))