

# Community Insights

SUMMER  
2021

A NEWSLETTER FROM THE COMMON-  
INTEREST COMMUNITIES AND  
CONDOMINIUM HOTELS PROGRAM

DEPARTMENT OF BUSINESS & INDUSTRY  
REAL ESTATE DIVISION







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# Ombudsman's Huddle

I am pleased to announce that the 2021, 81st session of the Nevada legislature has now adjourned, and a brief summary of all new legislation impacting NRS/NAC 116 will be provided within this newsletter. For a listing of our office's legislative update class, please see the education calendars published on our website for both [board members](#) and [community managers](#). The material itself can be found on our [training presentations web page](#), under "Legislative Updates."

This session, the Ombudsman's Office was able to utilize the passing of SB 392, which in 2019 allowed the Director of the Department of Business and Industry (B&I) to establish a task force to study issues of concern to Nevada CICs. This task force, significantly comprised of the B&I Director, NRED Administrator, CIC Ombudsman, a representative from the Attorney General's Office, etc., quickly took on its assigned task and recommended the enactment of SB 72 in 2021. A summary of the final approved language can be seen on page 8.

As this summer edition of the newsletter is devoted to recent changes to the law, bills which did not directly amend language in NRS/NAC 116, but could still impact CICs, have also been included. Our scope in this newsletter was limited to those bills addressing nonfunctional turf, housing assistance, and the transient commercial use of residential units.

Alongside trying to implement these new changes, the Division does also understand that CICs throughout Nevada are still recovering from the fallout from COVID-19. We have heard that there are associations currently facing a conflicting situation where there has been a reduction in assessment revenue because some unit owners cannot pay, while at the same time, the costs of maintenance, repair, and replacement of the common elements have been steadily increasing. These competing obligations are essentially pulling at associations from both ends.

I ask that associations facing these challenges continue to work with their licensed providers to find reasonable options and stay abreast of their funding plan. Additionally, your reserve study specialist may be able to provide guidance regarding current maintenance costs, deferments, anticipated tax and interest rates, as well as anticipated inflation. When making financial decisions for the association, it is incredibly important that members of the executive board act as fiduciaries; acting "on an informed basis, in good faith, and in the honest belief that their actions are in the best interest of the association." With this fiduciary duty at the forefront of their minds, board members should be taking the advisements of experts and making decisions for the association at properly noticed board meetings, where unit owners can hear and speak during the unit owner forums.

Association boards and community managers have done a wonderful job adapting to all of the curve balls thrown at the industry as of late, and I thank everyone for their flexibility. We all hope that things begin to stabilize soon.

**- OMBUDSMAN CHARVEZ FOGER**

# Nevada Housing Assistance

## AB 486



In an effort to ensure that tenants would not be forced out of quarantine into unpredictable living situations, and to prevent the further spread of COVID-19, both Governor Sisolak and the Centers for Disease Control (CDC) requested a temporary moratorium on residential evictions in 2020 for those who could not pay rent. Nevada's moratorium has since expired, and the national moratorium is set to expire at the end of July. At that time, landlords will again be seeking to pursue evictions from their residential properties if renters cannot pay.

Under this new law, effective immediately, courts will stop an eviction proceeding if a tenant claims to have a pending application for rental assistance, or claims and proves that their landlord refused to participate or accept such assistance. Damages may be awarded to the tenant based on the degree of harm caused by the landlord's refusal to participate. Additionally, if a landlord accepts rental assistance on behalf of a tenant in default and still pursues eviction, the tenant or governmental entity who administered the rental assistance may file a claim of wrongful eviction and a court may impose certain civil penalties on the landlord if found guilty.

This bill does allow some landlords to apply for rental assistance directly. Specifically, section 6 of the bill requires Home Means Nevada, Inc., or its successor organization, to create an electronic form which may be completed by a landlord who wishes to obtain rental assistance on behalf of a tenant who has defaulted in the payment of rent.

Overall, Assembly Bill 486 was passed this session with a primary goal of further connecting Nevada residents with rental assistance. As such, for homeowners, landlords and tenants impacted by COVID-19, resources are currently available through a number of state and local government programs, including those listed on this page.

### **RENT AND MORTGAGE PAYMENT ASSISTANCE**

Visit <https://housing.nv.gov/>.

### **RENTAL MEDIATION PROGRAM**

Under the authority of Senate Bill 1 from the 32nd Special Session of the Nevada Legislature, the Nevada Supreme Court adopted a new program to steer certain types of eviction cases into mediation in hopes that landlords and tenants could resolve disputes themselves, instead of arguing in court. Visit <http://www.homemnv.org/renter-connect/>.

### **HOME MEANS NEVADA, INC. (HMN)**

Offers a portal to access assistance for Nevada homeowners impacted by COVID-19, including foreclosure mediation programs. Visit <http://www.homemnv.org/>.

### **CARES HOUSING ASSISTANCE PROGRAM (CHAP)**

Applicants must demonstrate how COVID-19 impacted the ability of the household to pay rent. Program funds are specific to the payment of rent and security deposits. Payments for services are made directly to a landlord. Assistance may be provided for up to nine months contingent upon the availability of funds. Visit <https://chap.clarkcountynv.gov/>.

### **NEVADA HARDEST HIT FUND**

Visit <https://nahac.org/>.

### **NEVADA OUTREACH TRAINING ORGANIZATION**

Provides rent payment assistance to those who qualify when funding is available. Visit <https://www.nevadaoutreach.org/>.

### **COMMERCIAL RENTAL ASSISTANCE GRANT (CRAG) PROGRAM**

Makes \$19M in Coronavirus Relief Funds available for commercial rental relief for Nevada small businesses if they lost revenue as a direct result of the COVID-19 pandemic. Visit <https://goed.nv.gov/>.

### **NEVADA RURAL HOUSING AUTHORITY**

The Homeowner Connect portal located at <https://nvrural.org/> provides access to information on mortgage terminology and potential mortgage assistance programs, participating mortgage servicers, assistance provided by HUD-certified non-profit housing counselors, and potential loan transfer options between homeowners and mortgage servicers.





## Nonfunctional Turf - AB 356

In the summer of 2021, it became national news that the western portion of the United States is facing severe drought. Luckily, Southern Nevada has been closely monitoring its water usage and discussing multiple conservation measures to help counter the drought's effects for years. This past legislative session, Nevada's legislature passed Assembly Bill 356 pertaining specifically to "nonfunctional turf."

AB 356 prohibits waters of the Colorado River distributed by the Southern Nevada Water Authority (SNWA) from being used to irrigate nonfunctional turf on any property not zoned exclusively for a single-family residence after January 1, 2027. While AB 356 does not directly amend NRS 116 for common-interest communities, it will impact any communities in Southern Nevada possessing such nonfunctional turf, thus far understood as grass used solely for aesthetics and not recreational use.

Moving forward, the SNWA's board of directors has been tasked with

specifically defining "functional" and "nonfunctional" turf. They will also develop a plan to identify and facilitate the removal of such turf, establishing phases for removal based on categories of water users. Any current requirement to maintain open space or drought tolerant landscaping, or the use of alternative sources of water to irrigate nonfunctional turf, will not be impacted. The Board will further be permitted to approve an extension or waiver depending on circumstances.

Additionally, the bill allows for a newly created Nonfunctional Turf Removal Advisory Committee to be appointed by the SNWA's board of directors to discuss issues related to the use and removal of nonfunctional turf by each water use sector. The committee will consist of:

- One member who represents an office park with existing nonfunctional turf;
- One member who represents an organization representing businesses;
- One member who represents an industrial or commercial business

- with existing nonfunctional turf;
- One member who represents a common-interest community with existing nonfunctional turf;
- One member who represents multi-family housing with existing nonfunctional turf;
- One member who represents an environmental organization; and
- One member who represents a local government with existing nonfunctional turf.

With this language now in place, associations in Southern Nevada should begin taking inventory of areas within their communities containing grass whose purpose is solely to beautify. Newly constructed developments will further be restricted by these prohibitions. With no end to the drought in sight, Northern Nevada may soon follow suit and look to likewise ban such ornamental turf. It is important for all common-interest communities in the state to begin thinking ahead regarding water use.





# **Transient Commercial Use of Units - AB 363**

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Assembly Bill 363 relates to transient lodging as defined in NRS 244 for the county and NRS 268 for cities. Pursuant to this bill, Clark County and the cities of Henderson, Las Vegas, and North Las Vegas in Southern Nevada will establish minimum requirements for the rental of residential units as transient lodging, including just a room for rent.

Effective July 1, 2022, unit owners seeking to rent their unit out on a transient basis will be required to obtain proper authorization via applications and fees for a permit and license through Clark County and the Secretary of State, in addition to any other city requirements. Authorized individuals must then display their permit and license inside the rental unit and include corresponding authorization and ID numbers on any listing/advertisement for the rental.

## TRANSIENT COMMERCIAL USE OF UNITS - AB 363 CONTINUED



Also required to be visible within the unit will be educational information regarding occupancy limitations, emergency phone numbers, safety information, trash requirements, parking rules, noise regulations, and any other restrictions pursuant to the county, city, or HOA (if the rental unit exists within a common-interest community).

Before granting authorization, the board of county commissioners or its designee may conduct any necessary health, safety, or fire inspections of the residential unit at a cost to the applicant. Rental units must be equipped with a fire extinguisher, smoke alarm, and carbon monoxide detector. Applicants must also maintain minimum liability coverage for the residential unit and have an “accommodations facilitator” in place to submit quarterly reports to the county and the Department of Taxation, as well as handle all subpoenas to produce materials relevant for determining whether

the unit has been rented in violation of any law. Someone responsible for the unit must be available 24/7 to respond to any issues.

Authorized individuals will only be approved for up to 5 transient rental units per state business license. If the unit is owner-occupied, the minimum period for the rental will be 1 night; 2 nights if not owner-occupied. Except for rentals in a residential multifamily dwelling, there must be a minimum distance of 660 feet between such rentals. There must also be a minimum of 2,500 feet between any such rental and a resort hotel. Maximum occupancy for the rented unit may not exceed 16 persons. Any gathering of over 16 persons in the unit will be considered a “party” and not permitted. Specific requirements will further be established for noise, trash and security for the rental and there will be an established process to report violations. Penalties could amount

to \$1,000 for a single violation and \$10,000 if renting without proper authorization (permit/license).

It is important for residents of CICs within properly zoned areas, whose governing documents and executive board do not prohibit transient use, to look at the actual language of this bill in its entirety to gain a complete understanding of what is now required. Those who have already been issued authorization from the association and their local governing body to rent their residential unit on a transient basis can continue to operate under that authorization until new requirements become effective. Next year, associations will have the benefit of further relying on the fact that local governing bodies will provide foundational guidance for these types of rentals. Complaints regarding these rentals can now also be directed to the city and county, not just the association, as they will have a process in place to handle these matters.



# 2021 Legislative Update

## ASSEMBLY BILL 237

### RESALE CHANGES

### ADDS NEW SECTION & AMENDS

#### Effective Immediately:

A person who is aggrieved by an alleged violation of the association through the imposition of unauthorized charges pertaining to the preparation and recordation of any amendments to the declaration, statements of unpaid assessments, preparing, copying, expediting, or furnishing resale documents and certificate, or the opening and closing of a unit's file, may file with the Division a written complaint that sets forth the facts constituting the alleged violation.

The Division shall review such a complaint in a timely manner, and if circumstances warrant, issue to the person who is alleged to have committed the violation a notice requesting a written response and proof of corrective action, including, without limitation, the reimbursement of any excessive fees to the aggrieved person. Failure to respond to this notice within 30 days shall be deemed to be an admission of the violation and is punishable by an administrative fine in the amount of \$250.

NRS 116.4109(4) - The Commission is no longer tasked with adopting regulations establishing the maximum amount of the fee that an association may charge for the certificate (including the expediting fee). The association may charge a unit's owner a reasonable fee to cover the cost of preparing the certificate. Such a fee must be based on the actual cost the association incurs and must not exceed \$185. To expedite the preparation of the certificate, the association may charge a fee which must not exceed \$100.

NRS 116.4109(4) - The amount of the certificate fee may increase, on an annual basis, by a percentage equal to the percentage of increase in the Consumer Price Index (All Items) published by the United States Department of Labor for the preceding calendar year, but must not increase by more than 3 percent each year.

NRS 116.4109 - An association shall not charge any fee not authorized in this section or in an amount which exceeds any limits set forth in this section.

#### Effective January 1, 2022:

NRS 116.3102(1)(o) - The reasonable fee for opening or closing any file for each unit must be based on the actual cost the association incurs to open or close the file and must not exceed \$350, however this fee must be adjusted for each calendar year by adding to the fee the product of the fee multiplied by the percentage increase in the Consumer Price Index (All Items), but must not increase by more than 3 percent each year.

NRS 116.3116(5) - The amount of the cost of the demand or intent to lien letter sent when enforcing the association's super-priority lien is now capped at \$165.

NRS 116.4101(2) - Neither a public offering statement nor a resale package need be prepared or delivered when the unit is disposed of in certain ways.

#### LEGISLATION THAT DID NOT PASS

SB 257

SB 339

AB 295

AB 313



## ASSEMBLY BILL 301

TOWING

AMENDS

### Effective October 1, 2021:

NRS 116.3102(1)(t) - An association may not direct the removal of a vehicle parked on property owned or leased by the association solely because the registration of the vehicle is expired.

NRS 116.3102 refers to 487.038, which now refers to 706.4477, making it applicable by statute to CICs.

NRS 706.4477 - If towing is requested by a person other than the owner of the motor vehicle or law enforcement:

- (a) The person requesting the towing must be the owner of the real property from which the vehicle is towed, or an authorized agent, and must sign a specific request for the towing.
- (b) The area from which the vehicle is to be towed must be appropriately posted in accordance with state or local requirements.
- (c) Notice must be given to the appropriate law enforcement agency pursuant to state and local requirements.
- (d) The operator may be directed to terminate the towing by a law enforcement officer.

NRS 706.4477 - If request for a tow from a residential complex for a parking violation is made, the owner of the real property [incl. authorized agent or contracted tow operator], must notify the owner or operator of the vehicle of the tow not less than 48 hours before the tow by affixing to the vehicle a sticker which provides the date and time after which the vehicle will be towed.

*Exceptions:* The vehicle may be immediately towed if a notice was previously affixed:

- (i) for the same or similar reason within the same residential complex;
- (ii) three or more times during the immediately preceding 6 months within the same residential complex for any reason, regardless of whether the vehicle was subsequently towed.

“Residential complex” means a group of apartments, condominiums or townhomes intended for use as residential units and for which a common parking area is provided, regardless of whether each resident or unit has been assigned a specific parking space in the common parking area.

NRS 706.4477 - The owner of a motor vehicle towed is responsible for the cost of removal and storage of the motor vehicle. New timeframes for charges and criteria for a hardship tariff for the cost of removal and storage apply. The Nevada Transportation Authority shall adopt regulations to carry out the provisions of this section.

## ASSEMBLY BILL 249

CONSTRUCTION WORK

ADDS NEW SECTION

### Effective October 1, 2021:

If the governing body of a county or city in which a CIC is located adopts an ordinance restricting the hours in which construction work may begin, during the period beginning on May 1 and ending on September 30, the executive board shall not and the governing documents must not restrict the hours that construction work may begin in the CIC to hours other than those set forth in the ordinance.

This does not preclude the executive board or the governing documents from restricting the hours that construction work may begin:

- (a) If a governing body of a county or city has not adopted an ordinance restricting the hours in which construction work may begin; or
- (b) During the period beginning on October 1 and ending on April 30.

This applies to a residential planned community containing more than 6 units.

## SENATE BILL 72

### VIOLATIONS

### AMENDS

#### Effective Immediately:

NRS 116.1201(2)(a)(3) - A limited-purpose association [defined in NRS 116.1201(6)] shall now also comply with the provisions of NRS 116.3116 to 116.31168, inclusive.

NRS 116.31031(1)(b) - The Commission shall adopt regulations establishing the criteria used in determining whether a violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the CIC, the severity of such violations and limitations on the amounts of the fines.

NRS 116.31031(1)(b) - 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 CIC as provided in the regulations adopted by the Commission, 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 per hearing against each unit's owner or tenant or invitee of the unit's owner or tenant.

NRS 116.31031(2) - Unless 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 CIC as provided in the regulations adopted by the Commission, the executive board may not impose a fine against a unit's owner or tenant for a violation of the governing documents committed by an invitee, unless the unit's owner or tenant:

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

NRS 116.31031(7) - Any additional fine connected to a continuing violation must not exceed the amount of the original fine and:

- (a) May be imposed without providing the opportunity to cure the violation and without the notice and an opportunity to be heard; and
- (b) Is not subject to any limitation on the total amount of fines or the regulations adopted pursuant thereto.

116.31085(3)(a) - An executive board may meet in executive session to consult with the attorney for the association if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive, no longer just on matters relating to proposed or pending litigation.

116.31085(4) - If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board, the hearing must be held in a meeting of the executive board pursuant to NRS 116.31083.

116.31085(4) - Any person who may be sanctioned for the alleged violation:

- (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;
- (c) Is not entitled to attend the deliberations of the executive board; and
- (d) Is entitled to receive written notice of the decision of the executive board regarding the alleged violation within a reasonable time after the decision is made. The period to cure a violation before it becomes a continuing violation as provided in subsection 7 of NRS 116.31031 shall be deemed not to commence until the date on which the notice of the decision of the executive board is provided to the person sanctioned for the violation.



## SENATE BILL 186

### ELECTRONIC NOTICE

### ADDS NEW SECTION & AMENDS

**Effective January 1, 2022:** Each CIC containing 150 or more units shall establish and maintain a secure Internet website or electronic portal that may be accessed by any unit's owner where the following must be made available:

- (a) The most recent copies of the governing documents [see definition in NRS116.049];
- (b) A copy of the annual budget of the association and any proposed budgets;
- (c) The notices and agendas for any upcoming meetings of the association; and
- (d) Any other documents required to be posted [i.e. made available without specific request, including meeting minutes, collection policy, etc.] by law or regulation.

CICs containing fewer than 150 units are encouraged to establish and maintain a secure Internet website or electronic portal.

**Effective January 1, 2023:** The Internet website or electronic portal established and maintained must provide units' owners with the ability to pay assessments electronically.

**Effective October 1, 2021:** 116.31068 - Unless any other provision of this chapter specifies the manner in which a notice, communication or other information must be given by an association, and unless a unit's owner opts out of receiving electronic communications or has not designated an email address, an association shall deliver any notice required under this chapter and any communication from or other information provided by the association to the mailing and email addresses a unit's owner designates.

NRS 116.31164 - The following persons may not purchase a foreclosed unit:

- (a) Any person who was involved in the process of foreclosing the association's lien pursuant to NRS 116.3116 to 116.31168, inclusive, including, without limitation:
  - (1) Any person who exercised discretion in any decision relating to the foreclosure of the lien and any person employed by such a person;
  - (2) A collection agency used by the association to collect an obligation relating to the unit;
  - (3) A community manager of the association and any of his or her assistants;
  - (4) A member of the executive board of the association; or
  - (5) An attorney who provided representation to any of the parties with regard to the foreclosure of the lien;
- (b) Any person who is related by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity to a person set forth in paragraph (a); or
- (c) The person conducting the sale or any entity in which that person holds an interest .

## What happened at Commission?

**NRED V. RICHARD BIANCO**

**CASE NUMBER** 2017-2427

**TYPE OF RESPONDENT** Executive Board Member

### ALLEGATIONS/VIOLATIONS

Respondent knowingly and willfully violated: NRS 116.3103(1) by failing to act in the best interest of the association; NRS 116.31153(2) by sole signing checks from the association's account to himself, his brother, and his personal assistant; and NRS 116.3103(l) through NAC 116.405 by: failing to use ordinary care by permitting his brother to be paid by the association for performing work without approval from the board; failing to comply with all applicable laws by forging board members' signatures on checks to his brother; failing to cause the association to maintain current, accurate and properly documented financial records; permitting an unlicensed company to perform camera installation throughout the association without obtaining bids; permitting an unlicensed company owned by his personal assistant and caretaker to provide services already being provided by the association's community manager without approval from the board; and impeding the Division's investigation by failing to provide documents when requested.

### DISCIPLINARY ACTIONS

Settlement—Respondent Richard Bianco agrees not to serve as a board member or officer of the association for a period of no less than 5 years from the date of the Order. He agrees that if the terms and conditions of this Stipulation and Order are not met, the Division may rescind and proceed with prosecuting the Complaint. He understands that by entering into this Stipulation and Order, he waives his right to a hearing and all other rights which may be accorded by law.

# Ombudsman Information

April through June 2021

Total Associations Registered in the State of Nevada	<b>3,507</b>
Complaints Received	<b>71</b>
Alternative Dispute Resolution (ADR) Filings	<b>73</b>
Associations Reviewed for Possible Audit	<b>45</b>
Records Requests Processed	<b>14</b>
Training Sessions Conducted	<b>41</b>
Classroom Attendees	<b>500</b>

## UPCOMING COMMISSION MEETINGS

● **AUGUST 31 - SEPTEMBER 2**

● **DECEMBER 7-9**

Further details located on the [CICCH Commission Calendar](#).

## UPCOMING HOLIDAYS

**SEPT 6** / LABOR DAY

**OCT 29** / NEVADA DAY

**NOV 11** / VETERANS DAY

**NOV 25** / THANKSGIVING DAY

**NOV 26** / FAMILY DAY

**DEC 25** / CHRISTMAS DAY (OBSERVED)

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