



# COMMUNITY INSIGHTS **Special Edition**

VOLUME VI, ISSUE I

Department of Business and Industry, Real Estate Division

Winter 2010

*Nevada  
Real Estate Division*

**OUR MISSION**

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

*Office of the  
Ombudsman*

**OUR MISSION**

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

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## 2009 Legislative Summary

NRS 116, the law governing HOAs in Nevada, was modified by 15 bills, most of which are now in effect. This special edition of the Community Insights newsletter offers a brief overview of the changes affecting homeowners associations from the 2009 Nevada Legislative Session and related information.

Changes to NRS 116 are reflected in the new law, copies of which may be purchased from the Office of the Ombudsman for \$15. This publication emphasizes key changes that affect the vast majority of associations statewide. It is distributed with the intent of bringing attention to new provisions that require action by most associations. For details on the implementation or adoption of new policies, associations are advised to consult an attorney, accountant, reserve study specialist or other appropriate professional.

## Bill Digest

**EDITOR'S NOTE:** The following summaries reflect the Real Estate Division's understanding of the changes to NRS 116 as it pertains to enforcement and administration. Some matters may be clarified further through regulations adopted by the Commission on Common-Interest Communities and Condominium Hotels, through hearings on specific complaints, or other means.

There are nearly 3,000 homeowner associations throughout the state, and the application of the law to any given association will vary depending upon its circumstances. Boards must exercise sound business judgment to determine the poli-

cies to ensure their associations are in compliance. They are advised to consult with their attorneys, CPAs or other appropriate expert on any matters in which they are in doubt.

**ASSOCIATION POWERS/  
DUTIES/ RESTRICTIONS**

AB 129 prohibits HOAs from restricting the parking of utility vehicles 20,000 lbs. or less, law enforcement vehicles and emergency service vehicles. Regarding utility vehicles, parking must be allowed  
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## Focus shifts to regulatory changes

Following numerous changes to NRS 116, several new sections of regulations are under consideration that potentially will affect the way homeowners associations and community managers conduct business.

The Real Estate Division recently presented the text of several proposed regulations at public workshops held in Las Vegas and teleconferenced to Carson City.

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## Bill Digest

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where visitors can park, on common parking areas or in the driveways of the consumer while utility services are being provided to that unit. Also, these vehicles can also be parked in these same locations by owners and tenants if they are required by their employers to have these vehicles at home in order to respond to emergencies. For law enforcement and emergency vehicles, these same parking rules apply if they are engaged in their official duties or are required by their employers to have the vehicles at their homes. Associations can require written proof of the requirement of the employer. (NRS 116.350) (Eff. 10/1/09)

AB 204 requires the HOA Board to make available to unit owners – at the time it makes the budget available – the policies for collecting fees, fines, assessments, and costs from owners and include information on the rights and responsibilities regarding these collections. (NRS 116.31151) It also allows HOAs to have a super-priority lien for 9 months of unpaid assessments and related costs (increased from 6 months). (NRS 116.3116) (Eff. 10/1/09)

AB 350 (1.7) creates a new section of law authorizing associations to charge “reasonable fees” for collecting any past due obligations. (NRS 116.3102) (Eff. 6/9/09 for regulations, 1/1/10 for all other purposes)

AB 361 authorizes associations to improve the appearance of vacant and foreclosed properties. It allows, without liability for violating trespass laws, entry on the grounds of these kinds of properties to maintain the exteriors, or abate nuisances (visible, threaten health or safety, result in blight, adversely affect the use and enjoyment of neighbors’ properties). This maintenance work can begin if -- after notice and a hearing -- the owner refuses to do so. Further, the costs for the maintenance can become a priority lien if the owner doesn’t pay the costs. In addition, people who acquire foreclosed properties, including banks, must give the association contact information within 30 days after filing an action to recover the debt (such as the first mortgage) or recording a notice of a breach of the obligation and the election to sell the unit. (NRS 116.3102, .310312 and .3116) (Eff. 10/1/09)

SB 68 relates to security walls and provides that associations must maintain them unless the governing documents provide otherwise. However, for associations created before Oct. 1, 2009, the requirements of this bill do not apply until January 2013. (Eff. 1/1/13, or earlier)

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## Bill Digest

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SB 182 (28) and SB 183 (31) prohibit the association from interrupting utility services except for nonpayment of utility charges. Before any interruption, the owner or tenant must get at least a 10-day notice. (NRS 116.345) (Eff.10/1/09)

SB 183 (28) An association's official publications (newsletters, Web sites, bulletin boards, magazines) now must provide "equal space" to opposing points of view upon request and at no cost. This equal space requirement is with respect to certain specific subject areas, including but not limited to: mentions of candidates or ballot questions, views or opinions on matters of official interest such as adoption of rules, issues on which there will be a vote, and so forth. In addition, there is protection from civil or criminal liability for the association, officers, employees and agents for any act or omission that arises out of the publication of information pursuant to this provision. (NRS 116.31175) (Eff.10/1/09)

### **BOARD MEMBERS**

AB 350 (3.5, 5.5, and 16.5) adds to the duties of executive board members to clarify that not only must they act as fiduciaries but they must act: 1) on an informed basis, 2) and in the honest belief that their actions are in the best interest of the association. (NRS 116.3103) On the other hand, board members and officers are protected from punitive damages for acts and omissions that occur in their capacity as board members and officers. (NRS 116.31036) There is an exception to the protection from punitive damages where acts are willful and establish a material failure to comply with the law (NRS 116.4117);

## **New NRS 116 on sale**

Copies of NRS 116 are available for sale through the Office of the Ombudsman, as well as the Legislative Counsel Bureau. The latest copies contain all of the changes from last year's Legislative session. The price is \$15 per copy.

In Southern Nevada, interested parties may purchase copies at the Ombudsman's Office at 2501 E. Sahara Ave, Suite 202, or at the LCB on the fourth floor of the Sawyer Building, 555 E. Washington Ave.

In Carson City, copies are available at the Real Estate Division, 788 Fairview Drive, Suite 102, or the LCB at 401 S. Carson St.

these damages can be sought not only against the association but against unit owners and the declarant as well. (Eff. 7/1/09)

SB 182 (14) also addresses executive board and officer liability. It provides that punitive damages cannot be recovered from the association, the board members or officers for acts or omissions that occur in their official capacities as board members or officers. (NRS 116.31036) (Eff. 10/1/09)

SB 182 (13) When a declarant has fully terminated control of the HOA, the owners shall elect an executive board of at least 3 members, all of whom must be owners (previously a "majority" had to be owners). Then the executive board shall elect officers, but unless the governing documents provide otherwise, officers of the association are not required to be unit owners. (NRS 116.31034) (Eff.10/1/09)

SB 182 (25) and SB 183 (29) prohibit executive board members and officers from contracting with the association to provide financing (this was added to provisions which already disallowed the providing of goods and services to the association). (NRS 116.31183 and NRS 116.31187) (Eff.10/1/09)

SB 183 (3) and SB 253 (2) provide that an executive board member who will gain personal profit or compensation from a matter before the board must:

- 1) disclose that matter to the board and
- 2) abstain from voting on that matter.

If a board member is an employee or affiliate of the declarant, those factors do not by themselves violate this provision, nor does the fact that a board member is also a unit owner constitute a violation of this provision. SB 253 also provides that executive board members must disclose if members of households or certain relatives will profit from matters before the board. (NRS 116.31084) (Eff.10/1/09)

SB 183 (14) Terms for executive board members may be increased from 2 to 3 years but there is no limitation on the number of terms -- unless the governing documents provide otherwise. (NRS 116.31034) (Eff.10/1/09)

SB 351 (9) Unless the governing documents provide that executive board vacancies must be filled by a vote of the membership, vacancies can be filled by appointment by the remaining board members. (NRS 116.3103) (Eff.10/1/09)

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## Questions? Contact Compliance

The laws are in place and hopefully, by now, most homeowner associations have implemented the necessary changes to their elections, meetings and policies. For associations uncertain of their obligations under the new laws, the Real Estate Division offers a valuable resource.

Compliance, the office within the Division charged with enforcement of NRS 116, offers regular hours to call or visit and seek answers to HOA-related questions.

Any party within an association may call statewide toll-free 877-829-9907 from 8 a.m. to 5 p.m. weekdays and ask to speak with an investigator. For more in-depth issues, investigators are available by appointment Tuesdays through Thursdays from 9-11 a.m. and 1:30-3:30 p.m. in Las Vegas, and weekdays from 8 a.m. to 1 p.m. and 2 p.m. to 5 p.m. in Carson City.

Bruce Alitt, chief investigator, encourages associations to contact his office, stating his office has helped many associations get into compliance with as little as a phone call or a letter of instruction.

“We’re in the resolution business more than the punishment business,” Alitt said. “While we have the tools to deal with serious matters, some things can be handled through simpler means.”

Ultimately, Alitt said, associations must determine policies that are proper for their particular circumstances, using the appropriate expert’s advice as needed.

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### UNIT OWNERS – RIGHTS/RESPONSIBILITIES

AB 350 (12.5) allows an owner who is retaliated against by the executive board, board members, officers, employees or agents for complaining in good faith about violations of laws or governing documents – or requesting to review association records – to bring a separate action in court to recover compensatory damages and attorney’s fees. (NOTE: The definition of retaliatory action means “taking actions that affect the unit owner’s rights as a unit owner,” according to the Commission on Common-Interest Communities at its July 31, 2007 meeting.) (NRS 116.31183) (Eff. 7/1/09)

AB 350 (13.7) (15.5) These provisions clarify that the public offering or resale package contains a statement listing all current and expected fees per unit – association fees, fines, assessments, late charges and penalties, interest rates for assessments, additional costs for collecting past due fines, and charges for opening and closing files (NRS 116.4103 and NRS 116.4109) (Eff. 7/1/09)

SB 114 prohibits CC&Rs from prohibiting or unreasonably restricting the use of solar or wind energy systems, and specifically allows the use of black solar glazing (NRS 111.239 and NRS 278.0208) (Eff.6/9/09)

SB 182 (19) provides that when the executive board receives a written complaint from an owner alleging that the board has violated NRS 116 or the governing documents, the board shall acknowledge receipt of the complaint within 10 days. The board shall also notify the owner that he or she may make a written request to

place the subject of the complaint on the agenda of the next board meeting. (NRS 116.31087) (Eff.10/1/09)

SB 182 (26) increases the number of political signs allowed on property, though the size limit remains the same (24 x 36 inches). There can now be one sign for each candidate, political party or ballot question, and an owner cannot place signs on property where there is a tenant without the tenant’s consent. All other laws governing political signs still apply. (NRS 116.325) (Eff.10/1/09)

SB 182 (27) clarifies that owners cannot be prohibited from installing drought-tolerant landscaping in their own front and back yards, but still must submit plans for architectural review, and the plans must still be compatible with the community’s style. However, executive boards shall not unreasonably deny approval. Also, “drought-tolerant landscaping” specifically is now defined to include decorative rock and artificial turf along with other landscaping that conserves water. (NRS 116.330) (Eff.10/1/09)

SB 216 Associations may not unreasonably restrict, prohibit or withhold approval for owners to add shutters to improve security or conserve energy, even if they will be attached to certain common elements or limited common elements. The owner is responsible for their maintenance. A CC&R that does not unreasonably restrict shutters and that is in the governing documents or policies is enforceable if it existed as of July 1, 2009 or was in the governing documents in effect on the close of escrow of the first sale of a unit. (NRS 116.2111) (Eff. 7/1/09)

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SB 253 (6) Unless at the time of purchase there is a rental prohibition, the association may not prohibit an owner from renting a unit. Further, unless at the time of purchase the declaration requires the owner to receive approval from the association to rent the unit, this approval cannot be required. If the declaration has a limit on the number of units that can be rented, it cannot be amended to decrease the number of units which can be rented. Even if there is a limitation on the number of rentals, an owner can seek a waiver based upon a showing of "economic hardship." Where there is a limit on the number of rental units, the units owned by the declarant cannot be counted or considered when determining the maximum number of rental units allowed. (NRS 116.335) (Eff. 10/1/09)

SB 253 (8) It is the responsibility of the owner to pay for the resale package when the property is being sold. Further, this resale package must include information on transfer fees, transaction fees, and other fees involved in unit resales. (NRS 116.4109) (Eff. 6/9/09 pursuant to AB 350)

### ELECTIONS AND VOTING

AB 251 changes procedures for elections where the number of candidates running is the same or less than the number of vacancies. In such cases, the executive board must send out a notice informing owners that those nominated will be deemed to be elected to the  
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## Regulations

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The first workshop of the year was for R-204-09, which would affect conditions under which an association could deposit funds with an out-of-state bank. The workshop was conducted by the Division with two members of the Commission on Common-Interest Communities and Condominium Hotels in attendance.

Workshops provide the opportunity for the public to view regulations and submit comment in person before adoption. Both the Division and the Commission hold scheduled workshops.

Future workshops will affect standards for receiving credentials to serve as a community manager or reserve study specialist, the way reserve studies are conducted, among several other matters. For a list of upcoming workshops and adoption hearings, visit [www.red.state.nv.us](http://www.red.state.nv.us), click on Common-Interest Communities and then Workshops and Adoptions (on the left side of the page). Visitors may also find the copies of proposed text on adjoining links.

Workshops conducted by the Commission are usually held in conjunction with regular meetings, the schedule of which may also be found online, under the heading Commission Meetings and Agendas on the Division's Web site.



**The Commission on Common-Interest Communities and Condominium Hotels holds hearings on violations of NRS 116 at a 2009 meeting.**

Regulations add specifics to laws passed by the Legislature and have the full effect of law. In time, those regulations pertaining to NRS 116, the section of law governing common-interest communities, are codified into NAC 116.

Those who wish to write to the Division or Commission regarding a proposed regulation may do so through Administrative Legal Officer Joanne Gierer at Nevada Real Estate Division, 2501 E. Sahara Ave., Las Vegas, NV, 89104.

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board unless an owner submits a nomination form within 30 days after receiving the board's notice (the nomination period). In that case, a regular election will be held with the normal balloting procedure. If no one else is nominated, then no ballots will be mailed out and the previously nominated candidates will be considered elected to the board 30 days after the date of the closing of the nomination period. (116.31034) (Eff. 7/1/09)

SB 182 (3) states that persons who knowingly, willfully and with fraudulent intent alter the outcome of executive board elections can be found guilty of a category D felony (1 to 4 year sentence, possible fine up to \$5,000). (NRS 116.31034) (Eff. 10/1/09)

SB 182 (4) provides that community managers or executive board members who ask for or receive compensation to influence a vote, opinion or action are guilty of a category D felony, along with those who offer or give such compensation. (NRS 116.31189) (Eff. 10/1/09)

SB 182 (13) prohibits an association from adopting rules or regulations that effectively prohibit or unreasonably interfere with election campaigns for the executive board. However, campaigning can be limited to 90 days before the date ballots are required to be returned. Also, candidates may request (to the secretary or officer specified in the bylaws) that the association send - 30 days before the election date - a "candidate informational statement." This statement may be limited to a single typed page and may be sent either with the ballot, or in a separate mailing, at the association's expense. This campaign material cannot contain defamatory, libelous or profane information. Further, the association, directors, officers, employees and agents are immune from criminal and civil liability for any act or omission resulting from the publication or disclosure of information regarding any individuals that occurs during this election process. (NRS 116.31034) (Eff. 10/1/09)

SB 182 (14) Removal elections: It is now easier to remove members of the executive board. If at least 35% of the voting members vote – and a majority of those voting vote in favor of removal - then the board member is removed. In a practical sense, this means that in a community of 100 voting members, if 35 vote, and 18 vote in favor of removal, then the board member is removed. (NRS 116.31036) Also, pursuant to SB 182 (16), the association cannot adopt any rule or regulation that prevents or unreasonably interferes with the collection of signatures for a petition for a special meeting for a removal election. (NRS 116.3108) (Eff. 10/1/09)

SB 183 (8) (14) (15) (18) (20) (21) provides that there cannot be delegate voting in the election or removal of executive board members. (NRS 116.31105(1)) (Eff. 10/1/09)

SB 183 (22) provides an exception to the prohibition on delegates during the period of declarant control and 2 years after declarant control is terminated. (NRS 116.1201) (Eff. 10/1/11)

SB 183 (14) requires that the association distribute the candidate disclosure statements with the ballots but the association is not obligated to distribute any disclosure if it contains information that is believed to be defamatory, libelous or profane. (NRS 116.31034) (Eff. 10/1/09)

### RECORDS

AB 350 (6.5, 7.5) provides that owners may receive a copy or summary of unit owner or executive board meeting minutes cost-free in an electronic format or, if not in electronic format, at the following costs: 25 cents per page for the first 10 pages, 10 cents per page thereafter. (NRS 116.3108, 116.31083) (Eff. 7/1/09)

AB 350 (10.5, 12.2) provides that association books and records, including the budget, must be made available at a location not to exceed 60 miles from the CIC. (NRS 116.31151, NRS 116.31175) (Eff. 7/1/09)

SB 182 (23.5) now includes attorney's contracts as records that are available for review by owners. (NOTE: It is the opinion of the Division that this applies to current contracts that were in place on the day the statute went into effect, not to past ones.) (NRS 116.31175) (Eff. 10/1/09)

SB 183 (28) provides that although books, records and other papers of the association are generally available to owners – if that document (including minutes, a reserve study, and budget) is in a draft stage and has not been placed on the agenda for final approval by the board – it does not have to be provided to the owner. (NRS 116.31175) (Eff. 10/1/09)

SB 351 (13) Regarding records which are to be made available to owners upon written request, this new law protects the privacy of an owner's architectural plans or specifications submitted for approval to the association's

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architectural review committee. (NRS 116.31175) (Eff. 10/1/09)

## MEETINGS

AB 350 (7.5) Regarding executive board meetings, on an annual basis, two of the meetings must be held outside “standard business hours.” (NRS 116.31083) (Eff. 7/1/09) NOTE: NAC 116.300 defines standard business hours as follows: “As used in this section, ‘regular business hours’ means Monday through Friday, 9 a.m. to 5 p.m., excluding state and federal holidays.”

SB 182 (17) requires audio recordings of executive board meetings (but not of the executive sessions). Within 30 days of that meeting, the audio recordings, the minutes and/or a summary of the minutes must be made available to owners, including copies. (NRS 116.31083) (Eff. 10/1/09)

SB 182 (18) now requires that if the association is taking any action on contracts with the association’s attorney, it must be done during the open portion of the executive board meeting (in the past attorney’s contracts were only allowed to be discussed in executive session). Further, these contracts can be reviewed by owners. (NRS 116.31085) (Eff. 10/1/09)

SB 183 (19) provides that executive board meetings must be held at least once every quarter, and not less than once every 100 days (previously the reference was to every 90 days). (NRS 116.31083) (Eff. 10/1/09)

SB 253 (3) provides that if the association solicits bids for an “association project”, the bids must be opened during executive board meetings. Such project is defined as including maintenance, replacement and restoration of common elements or the provision of services to the association. (NRS 116.31144) (Eff. 10/1/09)

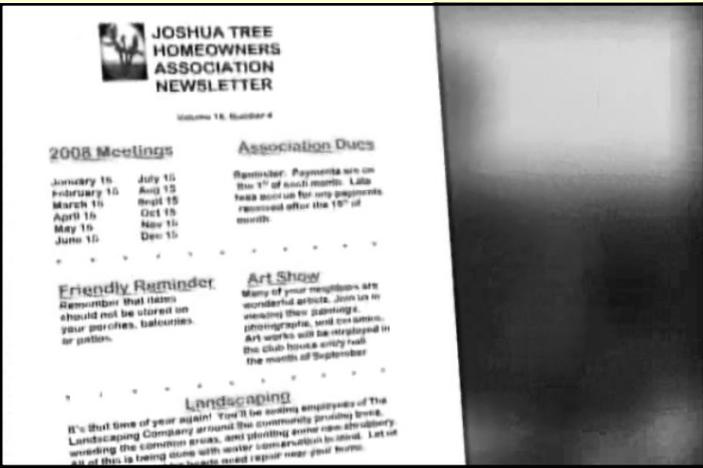
## BUDGETS/ ACCOUNTS

AB 311 (1) changes audit requirements. If the HOA budget is under \$75,000, financial statements only have to be reviewed by a CPA during the year immediately preceding the year of the reserve study (Audits are no longer required). If budgets are \$75,000 to \$150,000, there just needs to be an annual review (again, no audit). For both of these types of associations, however, 15% of the voting members can submit a written request for an audit. Further, if budgets are above \$150,000 there must be an annual audit by a CPA. (NRS 116.31144) (Eff. 10/1/09)

SB 182 (21) provides that even if the governing documents state otherwise, the executive board has authority to impose assessments to establish adequate reserves - without seeking or obtaining the approval of owners. These assessments, however, must be based on the reserve study. (NRS 116.3115) (Eff. 10/1/09)

SB 183 (26) Money in operating accounts may not be withdrawn without 2 signatures: one must be of an executive board member or an officer and the second must be of another member of an executive board, an officer or the community manager. However, there can be a withdrawal with just 1 signature for 2 limited purposes: transferring money to the reserve account at regular intervals, or making auto-

***Pass it along***



**Got a newsletter in your community? Be sure to let your community know where they can review all of recent changes. Residents may see Community Insights, as well as related publications, online at [www.red.state.nv.us](http://www.red.state.nv.us).**

SB 182 (17) also provides that there are 2 comment periods for owners. At the beginning of the meeting, comments are limited to agenda items. At the end of the meeting, comments can be on any subject. (NRS 116.31083) (Eff. 10/1/09)

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matic payments for utilities. This does NOT apply to limited-purpose associations. (NRS 116.31153) (Eff. 10/1/09)

SB 351 (3) This section provides that associations, executive boards and community managers must deposit association funds in financial institutions that are 1) in Nevada, 2) qualified to conduct business in Nevada, or 3) have consented to jurisdiction of Nevada courts and the Division, if out-of-state. In addition, except as otherwise provided by the governing documents, an association shall deposit, maintain and invest funds in:

- 1) properly insured accounts (FDIC, National Credit Union Share Insurance Fund, or Securities Investor Protection Corp.);
- 2) with a private insurer (approved under NRS 678.755); or
- 3) 3) in United States government backed securities. (NRS 116.311395) (Eff. 10/1/09)

SB 351 (12) (12.3) and (12.7) require that the association establish reserves not only for major components of the common elements but also for “any other portion of the CIC that the association is obligated to maintain, repair, replace or restore.” (NRS 116.31151) (Eff. 10/1/09)

### VIOLATIONS, ENFORCEMENT OF CC&RS

AB 350 (4.5) Past due fines can no longer accrue interest. (NRS 116.31031) However, interest can be accrued for past due assessments under AB 350 (9). (NRS 116.3115) (Eff. 7/1/09)

AB 350 (9) Past due assessments that are 60 days or more past due bear interest at a rate equal to the prime rate at the largest bank in Nevada, plus 2 percent. The official rate is posted at [www.fid.state.nv.us](http://www.fid.state.nv.us). (NRS 116.3115) (Eff. 7/1/09)

SB 182 (12) Where there are fines against an owner for violations which have been committed by tenants or invitees, the board cannot impose a fine against the owner unless the unit owner 1) participated in or authorized the violation, 2) had prior notice of the violation, or 3) had an opportunity to stop the violation and failed to do so. (NRS 116.3101) (Eff. 10/1/09)

SB 182 (18) creates additional due process protections during violation hearings. Owners must be informed that they have the right to counsel, the right to present

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## Glossary

**Assembly Bill (AB)** – One of two potential prefixes for legislation in Nevada, the other being Senate Bill (SB). Nevada has a bicameral Legislature, similar to the U.S. Congress. Legislation may originate in either the state Senate or the state Assembly. Even though it must eventually pass both houses, a bill retains its original name, which also includes a number based upon the order it was drafted (e.g., SB 183 followed right after SB 182). There is no practical difference between the two.

**Assessments (or dues)** – Each unit owner is obligated pay a share of the common expenses of the association, such as the cost of landscape maintenance, insurance, utilities and administrative costs. The amount the unit owner is obligated to pay is the assessment. This may be paid monthly, annually, or anywhere in between depending upon the HOA’s governing documents.

**Common-Interest Community (CIC)/ Homeowners Association (HOA or association)** – means real estate described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to

pay for a share of the real estate taxes, insurance premiums, maintenance or other improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration (NRS 116.021). The more familiar term “homeowners association” is used interchangeably with CIC.

**Commission on Common-Interest Communities and Condominium Hotels (Commission)** – A seven-member (as of Oct. 1, 2009) panel, appointed by the governor, charged with adopting regulations and holding hearings regarding violations of NRS 116. The commission comprises an attorney, a CPA, a community manager, a development company executive, and three homeowner association members.

**Executive Board/ Board of Directors/ Board** – These terms are used interchangeably. As the governing body of an association, it may create policy, hold hearings on violations of governing documents, and perform administrative roles. After an association transitions from developer to homeowner control, directors are

## Bill Digest

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witnesses, and the right to present information regarding any conflict of interest of anyone on the hearing panel. The Commission may be adopting regulations on these rights in the future. Also, these rights are minimum due process rights, and do not preempt any governing document provisions that provide greater protections. (NRS 116.31085) (Eff. 10/1/09)

SB 183 (12) With respect to not only owners and tenants but also invitees, there are some changes regarding fines. There can be no fines imposed against an owner, tenant or invitee regarding the delivery of goods or services by vehicle. In addition, “notice” requirements have been expanded so that fines cannot be imposed unless the owner AND, if different, the person against whom the fine will be imposed, has written notice of the violation. An owner will not be deemed to have received written notice unless it was mailed to the address of the unit AND, if different, to a mailing address specified by the owner. At the hearings, an executive board member who has not paid all assessments cannot participate in the hearing or vote. Such actions will render the board’s actions void. The party who receives the fine can request, within 60 days after paying any payment on the fine, a

statement of any remaining balance owed. (NRS 116.31031) (Eff. 10/1/09)

SB 183 (13) Associations shall establish a compliance account to account for fines, which must be separate from any account established for assessments. (NRS 116.310315) (Eff. 10/1/11)

### CREDENTIALLED PROFESSIONALS

SB 182 (24) Community managers are prohibited from taking retaliatory action against an owner who complained in good faith about violations of the law or governing documents, or recommended the selection or replacement of an attorney, community manager or vendor. These prohibitions also apply to executive board members and officers, employees and agents of the HOAs. (NRS 116.31183) (Eff. 10/1/09)

SB 182 (29) A civil suit can now be filed against a manager for failing to comply with NRS 116 or the governing documents. These suits can be filed by the association – or by a class of owners (at least 10% of the voting members). Further, managers are subject to punitive

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## Glossary

elected by the membership, although vacancies of unexpired terms may be appointed by the board (if the governing documents allow). Directors typically select officers (president, etc.) from amongst themselves, although officers are not required by law to be directors.

**Nevada Administrative Code (NAC)** – Many Nevada Revised Statutes (see below) include provisions for regulations that “fill in the details.” These details become part of the Nevada Administrative Code. Regulations have the power of law, but are subordinate to the statutes that authorize them and may be adopted only for the purposes specified by the statute. After regulations are adopted, they are later “codified” into the Nevada Administrative Code. The Commission on Common-Interest Communities and Condominium Hotels holds hearings and adopts regulations authorized by NRS 116. These become part of NAC 116.

**Nevada Revised Statutes (NRS)** – The laws passed by the Nevada Legislature, which are organized by subject into chapters. For instance, Chapter 116 of the Nevada

Revised Statutes (NRS 116) is called “Common-Interest Ownership” and directly pertains to homeowners associations. Other chapters of state law also apply to HOAs, such as the chapters affecting the towing of vehicles, pools and spas, energy efficiency and fair housing.

**Ombudsman for Owners in Common-Interest Communities and Condominium Hotels (Ombudsman)** – The office, part of the Real Estate Division, that produces this newsletter. It also educates HOA residents on their rights and responsibilities, assists in resolving HOA-related disputes, and maintains a registry of all HOAs in Nevada. Its duties are supplemented by other sections of the Division, which licenses and regulates community managers and investigates issues relating to NRS 116.

**Senate Bill (SB)** – See Assembly Bill.

**Unit Owner/ Homeowner/ Member** – These terms are used interchangeably. The members of a homeowners association are the owners, not the tenants. A more detailed definition may be found in NRS 116.095.

## Bill Digest

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damages under certain conditions. (NRS 116.4117) (Eff. 10/1/09)

SB 182 (39) provides for the issuance of temporary certificates for community management for a period of one year under certain circumstances. (NRS 116A.410) (Eff. 1/1/10)

SB 183 (39) Reserve study specialists must be registered with the Division (changed from being required to have a permit). (NRS 116A.260) (Eff. 10/1/09)

### ARBITRATORS

SB 182 (40) This provision establishes that arbitrators must provide specific information to parties, in plain English, that explains the procedures and law, including information on confirmation of awards, judgments on awards, and applicable laws and court rules regarding attorney's fees and costs. It also clarifies that in nonbinding arbitration, parties have 30 days to commence an action in court, and a year to apply to court for confirmation of the award. In binding arbitration, if a party seeks to have that award vacated, or commences an action in court, that person will be responsible for the opposing party's attorney fees and costs if a more favorable award or judgment is not received. (NRS 38.330) (Eff. 10/1/09)

### DECLARANT ISSUES

SB183 (16) provides that the declarant must provide to the association an accounting for money of the association and audited financial statements for each fiscal year and any ancillary period from the date of the last audit.

Further, the declarant must pay for this ancillary audit and must deliver it within 210 days after the date the declarant's control ends. (NRS 116.31038) (Eff. 10/1/09)

SB 183 (17) provides that, with respect to the converted building reserve deficit which the declarant must deliver to the association, it is defined as the amount necessary to replace major components within 10 years after the date of the first close of escrow of a unit (previously had been the date of the first sale). (NRS 116.310395) (Eff. 10/1/09)

### OMBUDSMAN/REAL ESTATE DIVISION

SB 182 (5) allows petitions to the Division for advisory opinions and rulings. (NRS 116.623) (Eff. 10/1/09)

SB 182 (30) adds 2 members who are unit owners to the CICCH Commission. (NRS 116.600) (Eff. 10/1/09)

SB 253 (9) The CICCH Commission now can impose administrative fines of up to \$10,000 per violation (previously the limit was \$5,000). (NRS 116A.900) (Eff. 10/1/09)

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**NOTE: This bill digest is not a legal document or legal advice. It is a summary of select laws from the 2009 Nevada Legislative session relating to common-interest communities. It is not a complete listing of all Legislative changes.**

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## *HOAs: Forms have changed — Get yours up to date*

When the law changes, so does everything else. This is true especially of all the myriad paperwork associated with a homeowner association.

Some of these changes are internal: Do your agendas list both homeowner comment periods? Do your candidate disclosures forms ask all the relevant questions? Do your resale packages contain a statement listing all current and expected fees, fines, assessments and other costs?

Just as important: Is your association using the most updated form to do business with the Office of the Ombudsman? To ensure compliance with the law, associations should check the Real Estate Division's Web site, [www.red.state.nv.us](http://www.red.state.nv.us), each time they have business with

the state. From the main page, select the gray button marked Forms on the home page, then look for the form by Type (click on the word "Type" to sort). Scroll down to the set of forms marked as Common-Interest Community.

Some of the documents affected by the 2009 Legislative Session include: Annual Association Registration, Reserve Study Summary and the Candidacy Disclosure Statement.

In addition, associations submitting payment for annual registration must remember that all HOA operating expenses now require two signatures (except limited-purpose ones), one from a director or officer AND another from a director, officer or community manager.

# Educational Opportunities expand in 2010

## *Outreach classes cover fundamentals of managing an association*

It is a duty and legal responsibility of all HOA board members to keep informed of changes to the law. While there is much to learn, the Office of the Ombudsman hopes to make this task a little easier. Our staff has created publications and classes to make learning the new material as simple and convenient as possible.

The first class dates are already under way. Basics for Board Members is presented monthly at locations throughout the state. This 3-hour presentation addresses HOA basics, such as meetings, elections, recordkeeping, and fiduciary duty. It also offers a forum for asking ques-

tions, and presents information on addressing common association challenges.

Additional classes on various HOA topics will be scheduled throughout the year. In addition, seminars taught by contracted subject matter experts are planned throughout the year. Visit [http://www.red.state.nv.us/CIC/Seminars/omb\\_seminars](http://www.red.state.nv.us/CIC/Seminars/omb_seminars) for an updated listing of class opportunities.

Registration is required as seating is limited. Contact Nicholas Haley at 486-4480 or email to [nhaley@red.state.nv.us](mailto:nhaley@red.state.nv.us) to register.



HOA residents attend the first "Basics for Board Members" class, held at the Bradley Building and teleconferenced to Carson City. The three-hour presentation covers the fundamentals of serving as a board member and incorporates changes to the law from the 2009 session. Additional dates are scheduled monthly throughout 2010, as well as classes on specific subjects.

## *Publications synthesize old, new law on meetings, elections*

Adding new law to old, the Office of the Ombudsman recently issued updated brochures on meetings, elections, and general information for Spanish speakers.

The brochures are available online at <http://www.red.state.nv.us/CIC/cic.htm> and in print form at select state offices, including the Real Estate Division at 2501 E. Sahara Ave. in Las Vegas and 788 Fairview Drive in Carson City.

*Association Meetings* explains the different kinds of meetings, the general purpose of each, and scheduling and agenda requirements. It lists the varying timelines for all types of meetings—reason alone to keep it handy.

*Association Elections* gives a start-to-finish overview of how to comply with HOA election law, including a depiction of a three-envelope system.

The Ombudsman's Spanish brochure covers the very basics of how an association works, as well as information on our office. It is useful for bridging the communication gap with residents not well versed in English.

"The brochures bring together all of the details of a particular subject within NRS 116," said Nick Haley, education and information officer for the Office of the Ombudsman. "While some of our products speak to changes in the law, the brochures take a particular topic – say elections – and present the topic as a whole. This is ultimately how all of us will come to understand these changes: within the context of the existing law."

Additional subjects are coming online. Check the Web site for updates, or ask the Ombudsman staff what's new.

## ***Frequently used links to government agencies***

Following are links to public agencies used by HOAs:

List of registered Reserve Study Specialists —  
<http://www.red.state.nv.us/CIC/rss.htm>

Nevada Secretary of State (used for HOA's corporate filing) - <http://www.nvsos.gov/online/>

Upcoming classes — [http://www.red.state.nv.us/CIC/Seminars/omb\\_seminars.pdf](http://www.red.state.nv.us/CIC/Seminars/omb_seminars.pdf)

Prime rate (basis for which associations may charge interest on assessments) —  
<http://www.fid.state.nv.us/Prime/PrimeInterestRate.pdf>

Mortgage Lending Division — <http://mld.nv.gov/>

Neighborhood Services, Henderson —  
[http://www.cityofhenderson.com/neighborhood\\_services/index.php](http://www.cityofhenderson.com/neighborhood_services/index.php)

Neighborhood Services, Las Vegas —  
<http://www.lasvegasnevada.gov/Government/neighborhoodservices.htm>

Neighborhood Services, North Las Vegas —  
<http://cityofnorthlasvegas.com/Departments/CityManager/NeighborhoodServices.shtm>

### **Real Estate Division Forms and links**

Real Estate Division — <http://www.red.state.nv.us/>

Annual Associations Registration —  
<http://www.red.state.nv.us/forms/562.pdf>

Reserve Study Summary —  
<http://www.red.state.nv.us/forms/609.pdf>

Declaration of Certification (signed by new board members) —  
<http://www.red.state.nv.us/forms/602.pdf>

Before You Purchase in a Common-Interest Community Did you Know? —  
<http://www.red.state.nv.us/forms/584.pdf>

Intervention Affidavit —  
<http://www.red.state.nv.us/forms/530.pdf>

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