

Creating a Common-Interest Community

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Agenda



- Introduction
- Declarant
- Declarant Control
- Declaration
- Public Offering Statement
- Termination of Control
- Insurance
- Warranties
- Legal Action

Introduction

Creation of a common-interest community (CIC) begins with the declarant. While the community continues to be developed by the declarant, or while the declarant continues to sell units, the declarant may retain special rights in relation to the community. This period is known as “Declarant’s Control”.



Declarant

NRS 116.035 & NRS 116.089

- Any person(s) who offer units for sale; or
- Reserves/succeeds the right to:
 - Complete improvements indicated on plats or the declaration, or
 - In a cooperative, to complete improvements described in the public offering statement;
 - Exercise any developmental rights;
 - Maintain sales/management offices, signs advertising the CIC and models;
 - Use easements through the common elements for the purpose of making improvements within the CIC;
 - Make the CIC subject to a master association;
 - Merge or consolidate multiple CICs; or
 - Appoint or remove officer(s) or board member(s).



Declarant

- Works with local entities (city/county) to determine what must be built in accordance with laws and municipal codes.
 - Examples: Roads, utilities, drainage areas etc.
- Works with the city in determining max unit caps based on total land to be developed.
- Works with an attorney to draft the associations governing documents and public offering statement.



Declarant Control: Developmental Rights

NRS 116.039

- Any right(s) reserved by a declarant in the declaration to:
 - Add real estate to a CIC;
 - Create units, common elements or limited common elements;
 - Subdivide units or convert units into common elements; or
 - Withdraw real estate from a CIC.



Declarant Control: Successor

NRS 116.31043

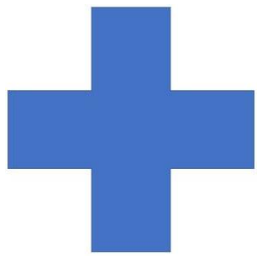
- If a successor declarant succeeds only to a right in the declaration to maintain models, sales offices, and signs, then
 - the successor declarant may not exercise any other special declarant's right.
- In this case, the successor declarant is not subject to any liability or obligation, except to provide a public offering statement.



Declarant Control: Adding Real Estate

NRS 116.2122

- If originally reserved in the declaration, the declarant may amend the declaration [to add real estate] at any time during as many years as are specified in the declaration;
 - But the amount of real estate added may not exceed 10% of the real estate described in the declaration.
- The declarant may not in any event increase the number of units in the planned community beyond the maximum number stated in the original declaration.



Declarant Control: Transfer of Special Declarant's Rights

NRS 116.3104

- A special declarant's right may be transferred only by an instrument evidencing the transfer recorded in every county that the CIC is located.
 - The instrument is not effective unless executed by the transferee (successor declarant).
- A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranties imposed upon the transferor by this chapter.



Declarant Control: Appointing Board Members

NRS 116.31187 & NRS 116.31034

- The association's bylaws must provide for terms of office that are staggered, except for members who are appointed by the declarant.
- The term of office of a member of the executive board may not exceed 3 years, except for members who are appointed by the declarant.
- Board members who are related or reside together may own 75% or more of the units in the association and may constitute a majority of the total number of seats on the executive board, only if they are appointed by the declarant.
- Any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board through a removal election.



Declarant Control: Maintaining the CIC

NRS 116.3107 & NRS 116.3115

- Until the association makes an assessment for common expenses, the declarant shall pay all common expenses in connection with real estate subject to developmental rights.
- Once declarant control begins to shift to the association:
 - To the extent provided by the declaration, the association has the duty to provide for the maintenance, repair and replacement of the common elements, and
 - Each unit's owner has the duty to provide for the maintenance, repair and replacement of their unit.



Knowledge Check



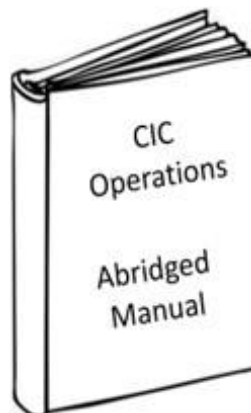
1. Any person(s) who offers units for sale or reserves the right to develop the community is known as the:

A) DeclarantB) ContractorC) RealtorD) Developer
2. True/False: The declarant may not increase the number of units in a planned community beyond the maximum number stated in the original declaration.
3. During declarant's control, who is responsible for the maintenance of the CIC?
4. Can unit owners recall/remove a board member who was appointed by the declarant?

Declaration: Contents

NRS 116.2105

- AKA CC&Rs: Any instrument(s) that create a common-interest community, including any amendments to those instruments. NRS 116.037
- The declaration **must** contain:
 - The name(s) of the CIC;
 - Whether the CIC is a condominium/cooperative/planned community;
 - The name of every county in which any part of the CIC exists;
 - A legally sufficient description of the real estate included in the CIC;
 - A statement of the maximum number of units that the declarant reserves the right to create;
 - In a condominium or planned community, a description of the boundaries of each unit created by the declarant, including the unit's identifying number;
 - A description of any limited common elements and any real estate that is or must become common elements;
 - A description of any real estate that may be allocated subsequently as limited common elements;



Declaration: Contents

NRS 116.2105

- The declaration must contain:
 - A description of any developmental rights and other special declarants' rights, with a legally sufficient description of real estate and a time limit to which each of those rights applies and must be exercised;
 - If any developmental rights may be exercised with respect to different parcels of real estate at different times, a statement to that effect, including:
 - Either a statement fixing the boundaries and regulating the order in which those portions may be developed or a statement that no assurances are made in those regards; and
 - A statement whether, if any portion of the real estate is developed subject to that developmental right, that right must be exercised in all or in any other portion of the remainder of that real estate;



Declaration: Contents continued

NRS 116.2105

- The declaration must contain:
 - Any other conditions or limitations under which developmental and other special declarant's rights may be exercised or will lapse;
 - An allocation to each unit of the allocated interests;
 - Any restrictions:
 - On use, occupancy and alienation of the units; and
 - On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on sale, condemnation or casualty to the unit or to the CIC, or on termination of the CIC;
 - The file number and book or other information for recorded easements and licenses;



Declaration: Contents continued

NRS 116.2105

TABLE OF CONTENTS

	Page
ARTICLE 1 - DEFINITIONS	2
ARTICLE 2 - OWNERS' PROPERTY RIGHTS; EASEMENTS	8
Section 2.1 Ownership of Unit; Owners' Easements of Enjoyment	8
Section 2.2 Easements for Parking	10
Section 2.3 Easements for Vehicular and Pedestrian Traffic	10
Section 2.4 Easement Right of Declarant Incident to Cosmetic, Marketing and/or Sales Activities	11
Section 2.5 Easements for Public Service Use	11
Section 2.6 Easements for Water, Sewage, Utility and Irrigation Purposes	11
Section 2.7 Additional Reservations of Easements	12
Section 2.8 Encroachments	12
Section 2.9 Easement Data	13
Section 2.10 Owners' Right of Ingress and Egress	13
Section 2.11 No Transfer of Interest in Common Elements	13
Section 2.12 Ownership of Common Elements	13
Section 2.13 Common Recreational Area	13
Section 2.14 Limited Common Elements	13
Section 2.15 HVAC	13
Section 2.16 Assigned Parking Spaces	14
Section 2.17 Cable Television	14
Section 2.18 Waiver of Use	14
Section 2.19 Alteration of Units	14
Section 2.20 Taxes	14
Section 2.21 Additional Provisions for Benefit of Disabled Persons	14
Section 2.22 Avigation Easements	15
Section 2.23 Master Metered Water	15
Section 2.24 Boundaries of Units	15
Section 2.25 Compliance with Applicable Law	16
ARTICLE 3 - HOMEOWNERS ASSOCIATION	16
Section 3.1 Organization of Association	16
Section 3.2 Duties, Powers and Rights	16
Section 3.3 Membership	16
Section 3.4 Transfer of Membership	16
Section 3.5 Articles and Bylaws	17
Section 3.6 Board of Directors	18
Section 3.7 Declarant's Control of Board	18
Section 3.8 Control of Board by Owners	19
Section 3.9 Election of Directors	19
Section 3.10 Board Meetings	19
Section 3.11 Attendance by Owners at Board Meetings; Executive Sessions	20
Section 3.12 General Record of Violations of Governing Documents	21
Section 3.13 Board of Directors and ARC Discretion	21
ARTICLE 4 - MEMBERS' VOTING RIGHTS; MEMBERSHIP MEETINGS	21
Section 4.1 Owners' Voting Rights	21
Section 4.2 Transfer of Voting Rights	22
Section 4.3 Meetings of the Membership	22
Section 4.4 Meeting Notices; Agendas; Minutes	22
Section 4.5 Record Date	23
Section 4.6 Proxies	23
Section 4.7 Quorums	24

- The declaration must contain:
 - The following as required by each provision:
 - Leasehold CIC (if applicable) per NRS 116.2106;
 - Limited common elements per NRS 116.2108;
 - Plats per NRS 116.2109;
 - Use for purposes of sale (sales office) per NRS 116.2115;
 - Easement rights per NRS 116.2116; and
 - Period of declarant's control per NRS 116.31032
 - Any other matters the declarant considers appropriate.

Declaration: Allocation of Interests

NRS 116.2107

- The declaration must allocate to each unit:
 - In a condominium - a fraction or percentage of undivided interests in the common elements, the common expenses, and a portion of the votes in the association;
 - In a cooperative – a proportionate ownership, a fraction or percentage of the common expenses and a portion of the votes in the association; and
 - In a planned community – a fraction or percentage of the common expenses and a portion of the votes in the association.

$$\frac{\text{Total \# units}}{\text{Total \# units}} = 100\%$$

Declaration: Allocation of Interests continued

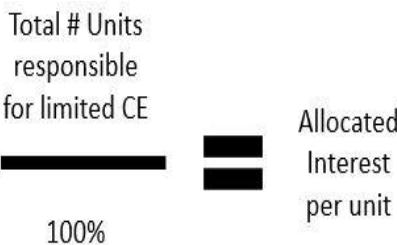
NRS 116.2107

- The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant.
- If units may be added to or withdrawn from the CIC, the declaration must state the formulas used to reallocate the allocated interests among all units after the addition or withdrawal.

Total # Units responsible for limited CE

100%

Allocated Interest per unit



Declaration: Allocation of Interests continued

NRS 116.2107

- The declaration may provide:
 - That different allocations of votes are made to the units on particular matters;
 - For cumulative voting, only for the purpose of electing members of the executive board; and
 - For class voting on specified issues affecting the class if necessary, to protect valid interests of the class.
 - A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed by NRS 116 nor may units constitute a class because they are owned by a declarant.
 - The sum of the liabilities for common expenses allocated to all the units must each equal one if stated as a fraction, or 100% if stated as a percentage. In the event of discrepancy, the allocated interest prevails.
- Total #
of Units
owned
by
specific
owner

×

Allocated
interest
per unit

=

Total
votes per
unit
owner

Public Offering Statement

NRS 116.4103

- Document prepared by the declarant and furnished to the first owner (other than a declarant) or first purchaser of a unit prior to conveyance.
- Statement must include:
 - The name and address of the declarant and community, and
 - identify the community as a condominium, cooperative or planned community.
 - A general description of the community, including
 - the estimated number of units, and
 - the types, number and declarant's schedule of commencement/completion of construction of any buildings and amenities



Public Offering Statement continued

NRS 116.4103

- Statement must include:
 - Copies of:
 - The declaration,
 - Bylaws,
 - Collection policy,
 - All rules and regulations,
 - Any restrictions on leasing and renting, and
 - Any current or expected fees or charges to be paid by the owners for the use of common elements.
 - A description of any services or subsidies being provided by the declarant or
 - expenses which the declarant pays and expect may become a common expense of the association.



Public Offering Statement continued

NRS 116.4103

- Statement must include:
 - Any fee due at closing, including transfer fees, together with a description of the purpose and method of calculating the fee.
 - The terms and significant limitations of any warranties provided by the declarant.
 - A statement of any unsatisfied judgement or pending legal action against the association.
 - A current balance sheet and current budget for the association, including
 - a statement of the reserves and monthly assessments.
 - The information sheet.



Public Offering Statement: Subject to Development

NRS 116.4104

- If a community is subject to developmental rights, the statement must also include:
 - The maximum number of units that may be created.
 - A statement of how many or what percentage of the units will be restricted exclusively to residential use.
 - General descriptions of all other improvements that may be made.
 - Assurances that any additions will maintain the overall look of the community.
 - A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to any units created in the future, or
 - a statement of any variations otherwise.



Knowledge Check



1. The Declaration is also known as:
A) Bylaws B) DNC C) CC&R D) Articles
2. True/False: The declaration must specify the maximum number of units that may be created by the declarant.
3. True/False: The declaration may contain a restriction on the amount for which a unit may be sold.
4. True/False: The declaration must detail any formulas used to calculate the allocation of interests to each unit.
5. Are the association's governing documents required to be included with the public offering statement?

Declarant's Control

NRS 116.31032(2)

- For associations of 999 or less:
 - Not later than 60 days after **25%** of units which may be created have been conveyed to unit owners
 - 1 member, not less than 25%, of board must be elected by unit owners other than declarant.
- For associations larger than 999:
 - Not later than 60 days after **15%** of units which may be created have been conveyed to unit owners
 - 1 member, not less than 25%, of board must be elected by unit owners other than declarant.
- Regardless of association size, not later than 60 days after **50%** of units which may be created have been conveyed to unit owners
 - not less than 1/3 of board must be elected by unit owners other than declarant.



Declarant's Control continued

NRS 116.31032(2)

- Declarant's control terminates:
 - Not later than 60 days after:
 - 75% of units in a community with 999 units or less have been conveyed to unit owners;
 - 90% of units in a community with more than 999 have been conveyed to unit owners.
 - 5 years after all declarants have **ceased to offer units for sale**;
 - 5 years after all declarants **last exercised the right to add new units**; **or**
 - The day the declarant provides notice to unit owners and **records an instrument voluntarily surrendering** all rights to control activities of the association.



Termination of Control: Delivery of Property

NRS 116.31038

- The declarant shall deliver all property to the association including:
 - The original or certified copy of the recorded declaration, the articles, the bylaws, any rules or regulations, minutes and all other records of the association.
 - An accounting for money of the association and audited financial statements for each fiscal year and any additional period from the date of the last audit of the association to the date the period of the declarant's control ends.
 - The financial statements must fairly and accurately report the association's financial position.
 - The declarant shall pay the costs of the additional audit and deliver it within 210 days after the date the declarant's control ends.
- The association's money or control thereof.



Termination of Control: Delivery of Property continued

NRS 116.31038

- The declarant shall deliver all property to the association including:
 - The declarant's tangible personal property that has been represented as association property.
 - A copy of any plans and specifications used in the construction of the improvements in the CIC which were completed within 2 years before the declaration was recorded.
 - All insurance policies in which the units' owners and the association are named insured.
 - Copies of any certificates of occupancy that may have been issued other than units in a planned community.
 - Any renewable permits and approvals issued by governmental bodies applicable to the CIC.



Termination of Control: Delivery of Property continued

NRS 116.31038

- The declarant shall deliver all property to the association including:
 - Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective.
 - A roster of owners and mortgagees of units and their addresses and telephone numbers, if known, as shown on the declarant's records.
 - Contracts of employment or service in which the association is a contracting party.



Termination of Control: After Turnover

NRS 116.4119

- Except for improvements labeled “NEED NOT BE BUILT,” the declarant shall complete all improvements depicted on any site plan or other graphic representation.
- The declarant is subject to liability for the prompt repair and restoration of any portion of the CIC affected by the exercise of developmental rights, sales offices & easement rights.



Insurance

NRS 116.3113

- Commencing not later than the time the first unit is sold to a person other than a declarant, the association shall maintain all of the following:
 - Property Insurance:
 - Insuring against risks of typical direct physical loss of the common elements (80% of the actual cash value of the insured property)
 - Commercial general liability insurance:
 - Insurance for medical payments; bodily injury and property damage (amount determined by the executive board, but not less than any amount stated in the declaration)



Insurance continued

NRS 116.3113

- Commencing not later than the time the first unit is sold to a person other than a declarant, the association shall maintain all of the following:
 - Crime insurance:
 - Coverage for dishonest acts by members of the executive board and the officers, employees, agents, directors and volunteers of the association (at least 3 months of aggregate assessments, plus reserve funds, or \$5m, whichever is less)
 - Errors and Omissions (Directors & Officers) policy:
 - Coverage must extend to board members, officers, employees, agents, volunteers, and the community manager and its employees (amount not less than \$1m)



Warranties: Implied

NRS 116.4114

- These are not expressly stated but are understood to exist by conformity of law.
- A declarant warrants:
 - That, except for normal wear and tear, a unit will be in at least as good condition at the time of delivery as it was at the time of contracting.
 - That a unit and the common elements in the community are suitable for the ordinary uses of real estate of their type and that any improvements will be:
 - Free from defective materials; and
 - Constructed according to sound standards of engineering.
- Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.



Warranties: Express

NRS 116.4113

- Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:
 - Any affirmation of fact or promise that relates to the unit creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;
 - Any model or description of the physical characteristics of the CIC creates an express warranty that the CIC will reasonably conform to that model or description;
 - Any description of the quantity or extent of the real estate comprising the CIC creates an express warranty that the CIC will conform to that description, subject to customary tolerances; and
 - A provision that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful.



Warranties: Express continued

NRS 116.4113

- Neither formal words nor a specific intention to make a warranty is necessary to create an express warranty of quality.
 - However, a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.
- Any conveyance of a unit transfers to the purchaser all express warranties of quality.
- A warranty created by this section may be excluded or modified by agreement of the parties.



Warranties: Exclusion or Modification

NRS 116.4115

- Warranties of quality may be excluded or modified by agreement of the parties by expression of a disclaimer, such as
 - “as is,”
 - “with all faults,” or
 - Other language that calls the purchaser’s attention to the exclusion.
- A declarant may disclaim liability in an instrument signed by the purchaser for a specified defect or failure to comply with a law IF
 - the defect or failure became a part of the basis for the bargain.



Warranties: Statute of Limitations

NRS 116.4116

- A judicial proceeding for breach of any warranty **MUST** be commenced within 6 years after the cause of action accrues,
 - but the parties may agree to reduce the period to not less than 2 years.
 - With respect to a unit that may be occupied for residential use, an agreement to reduce the period must be evidenced by a separate instrument executed by the purchaser.



Warranties: Statute of Limitations continued

NRS 116.4116

- A cause of action for breach of warranty of quality accrues:
 - At the time the purchaser enters into possession; or
 - At the time common elements are completed.
- During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce any warranty claims involving the common elements.
 - Only members of the executive board elected by unit owners other than the declarant may serve on the committee.
 - Any attorney's fees incurred are common expenses and must be added to the annual budget.



Legal Action: Torts and Contract Liability

NRS 116.3111

- Only the declarant is liable for that declarant's torts in connection with any part of the CIC which the declarant is responsible to maintain.
- If a wrong occurs during any period of declarant's control and the association gives the declarant reasonable notice of an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit's owner for all tort losses not covered by insurance.
 - Whenever the declarant is liable to the association under NRS 116, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association.
- Any statute of limitations affecting the association's right of action against a declarant is tolled until the period of declarant's control terminates.



Legal Action: Civil Action for Damages

NRS 116.4117

- If a declarant, community manager or any other person subject to NRS 116 fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages may bring a civil action for damages or other appropriate relief.



Legal Action: Civil Action for Damages continued

NRS 116.4117

- A civil action for damages or other appropriate relief may be brought:
 - By the association against:
 - A declarant;
 - A community manager; or
 - A unit owner
 - By a unit's owner against:
 - The association;
 - The declarant; or
 - Another unit's owner of the association.
 - By a class of units' owners constituting at least 10% of the total number of voting members of the association against a community manager.



Knowledge Check



1. Is there a specific timeframe or formula used to determine when unit owners start electing board members?
2. Is the declarant required to complete all improvements depicted on any site plan?
3. Is the association required to maintain any insurance?
4. What is the difference between an express warranty and an implied warranty?
5. What is the default statute of limitations for civil action regarding a breach of warranty?

Conclusion!



- Introduction
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Questions?

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