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NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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LV9999-010

September 4, 2026

VIA ELECTRONIC MAIL ONLY

publiccomments@red.nv.gov

Nevada Commission for Common-Interest
Communities and Condominium Hotels
-Nevada Real Estate Division
3300 W. Sahara Avenue, Suite 350
Las Vegas, NV 89102

Attn: Shareece Bates

Re: Public Common RE: LCB File No. R091-25
Nevada Commission for Common-Interest Communities and Condominium
Hotels ("Commission")
-Nevada Real Estate Division ("Division")
CAI Legislative Action Committee Comments Regarding Section 2 (Health,
Safety, Welfare)

Dear Commissioners:

On behalf of the Community Associations Institute's Legislative Action Committee for Nevada ("LAC"), the below comments and enclosed proposed changes to Section 2 of LCB File R091-25 are provided on behalf of LAC as public comments for the September 8, 2026, workshop to solicit comments regarding Section 2 of R091-25 ("Section 2"). Section 2 relates to criteria to be 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 common-interest community.

As discussed below, LAC recommends the following revisions to Section 2 on four points: (1) employ the term "unit" in lieu of "dwelling;" (2) remove reference to 24 CFR 100.600(a)(2) and, instead, incorporate pertinent language from that federal regulation into Section 2; (3) remove the public nuisance requirement in Section 2 and revise the nuisance criteria used to determine whether a health, safety or welfare threat is presented; and (4) delete any appurtenant lawfulness of the underlying governing document violation as a criterion for determining whether a health, safety or welfare threat is presented.

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First, LAC suggests to eliminate the use of the term “dwelling” and replace it with “unit.” The term “dwelling” does not appear anywhere in NRS 116 or NAC 116 and, in any event, it is not a defined term in NRS 116.005 through 116.095. For less ambiguity, LAC suggests using the statutory defined term of “unit.” Doing so would also eliminate any potential confusion of a what actually constitutes a dwelling and whether Section 2 only applies to the dwelling as opposed to any other portion of a unit.

Second, Section 2 states that conduct that does *not* constitute an imminent threat of causing a substantial adverse effect on the health, safety or welfare of owners or residents violation includes use of foul, abusive language that does *not* also constitute ‘hostile environment harassment’ as that term is defined in 24 C.F.R. §100.600(a)(2). That federal regulation is a regulation of the United States Department of Housing and Urban Development (“HUD”) relating to the enforcement of the federal Fair Housing Act (“FHA”). For reference, that term is defined in that federal regulation as follows:

Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.

The concern with Section 2 referencing the above federal regulation is that it lends itself to arguments that there must first be a finding by HUD that such harassment existed before such foul, abusive language can be considered as a health, safety or welfare violation under Section 2.

Moreover, because that federal regulation is pertinent to the Fair Housing Act, it would only be pertinent where discrimination on the basis of a FHA protected class¹ is also at issue. In other words, it may be shown that a governing document violation involving foul, profane or abusive language is otherwise creating a ‘hostile environment harassment,’ but if it is not directed at a member of a protected class, then such conduct is not a violation of that federal regulation. Thus, it cannot be determined to be a health, safety or welfare violation. Governing document violations involving foul, profane or abusive language in associations may or may not be related to a protected class member and, thus, may or may not have anything to do with the FHA.

¹ The protected classes under the federal Fair Housing Act are race, color, national origin, religion, sex, familial status, and disability.

LAC suggests, instead, to use pertinent aspects of the hostile environment harassment language from the federal regulation as the basis for Section 2 and not have to rely on or consult the federal regulation at all. The enclosed changes to Section 2 reflect that approach.

Third, Section 2 states that governing document violation for nuisances cannot be the basis for a determination of whether a health, safety or welfare threat is presented unless such nuisance also constitutes a public nuisance under state or local law. The problem that this language poses is that it would carry a conviction requirement, as associations lack the jurisdiction to determine whether a public nuisance under state or local law has occurred. That is, a person would have to be found to be in violation of a public nuisance statute or local code by the appropriate governmental authorities before an association would be able to assert a nuisance violation as the basis for a determination that a health, safety or welfare threat was also present.

From the current draft of Section 2 and previous versions of Section 2 issued by the Nevada Real Estate Division, there appears to be an emphasis on restricting associations from relying on governing document nuisance violations in determining whether a health, safety or welfare threat was also present in such violation. The approach has been to tie governing document nuisances to public nuisances under state or local law. Again, LAC's position is that such an approach is not workable for the reasons set forth above.

As an alternative, the more workable approach is to simply have Section 2 say that a governing document nuisance cannot be determined to pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community violation if the nuisance does not also present "in a manner that directly, immediately or actually endangers a unit's owner, a resident of the common-interest community or an invitee of a unit's owner or a tenant." If a governing document nuisance violation is not of the nature that directly, immediately or actually endangers a unit's owner, a resident of the common-interest community or an invitee of a unit's owner or a tenant, then it cannot be determined to be a violation that imminently threatens the health, safety, or welfare of the owners or residents.

Fourth, Section 2 also states that if the governing document violation at issue is otherwise lawful under the laws of Nevada, it cannot be determined to be a violation that imminently threatens the health, safety, or welfare of the owners or residents. Again, this puts associations (and the Commission) in a position to first determine whether some action would be lawful or not unlawful under any state law. This is neither feasible or practical for the reasons noted above, and leads to results that frustrate the entire purpose of the proposed Section 2. For example, a resident driving 80 miles per hour in the community with private streets near people jogging and walking their dogs is not unlawful because speeding and other traffic laws typically do not apply to private community streets; it is strictly a governing document enforcement matter. Yet, Section 2 as proposed would hold that associations cannot treat such speeding as a threat to health, safety or welfare of the residents because speeding on a private street is lawful/not unlawful, as far as the State of Nevada is concerned.

LAC's proposed change to this aspect of Section 2 is to eliminate it entirely. Moreover, that aspect of Section 2 is not necessary anyway, as the other parameters as set forth in Section 2 and the proposed changes as submitted herewith on behalf of LAC significantly limit the universe of potential violations that can be determined to pose an imminent threat to the health, safety, or welfare of the owners or residents. The keystone to the entire exercise of drafting Section 2 is in ensuring that executive boards of directors are determining the presence of threats to health, safety or welfare of the owners and residents only when a governing document violation is of a nature or manner that directly, immediately or actually endangers a unit's owner, a resident of the common-interest community or an invitee of a unit's owner or a tenant. Section 2 does not need to rely on other regulations or other state or local laws in order to achieve that.

LAC believes that the enclosed revisions to Section 2 accomplish the goals behind Section 2 as proposed while providing clarity and the requisite authority for boards of directors to make those determinations. LAC thanks the Commission and the Division for its attention to these matters.

Very truly yours,

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

/s/ Gregory P. Kerr

GREGORY P. KERR

GPK:
Encls. (Proposed Changes to Section 2 of R091-25)

cc: Community Associations Institute, Legislative Action Committee for Nevada

R091-25, Sec. 2.

1. A violation of a provision of the governing documents of an association poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community if the violation involves conduct that includes:

(a) A failure to exercise reasonable care;

(b) Intentional, willful or malicious interference with the use or enjoyment of a ~~dwelling unit~~ or a common element;

(c) Willful or grossly negligent destruction or damage of any real or personal property located in a ~~dwelling unit~~ or common element;

(d) A violation of a housing or health code, law or regulation concerning the health, safety, sanitation or fitness for habitation of a ~~dwelling~~ unit; or

(e) Harassment that is sufficiently severe or pervasive to interfere with personal physical safety, or use and enjoyment of a unit or common element;

~~(f)~~ (e) The commission of any other act which is substantially similar to the conduct described in paragraphs (a) to ~~(ed)~~, inclusive,

----in a manner that directly, immediately or actually endangers a unit's owner, a resident of the common-interest community or an invitee of a unit's owner or a tenant.

2. A violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community if the sole basis for imposing the violation is conduct that:

(a) Uses foul, profane or abusive language in a manner that does not constitute ~~hostile environment harassment as described in 24 C.F.R. 100.600(a)(2); harassment as set forth in paragraph (e) of subsection 1 of this regulation;~~

(b) Voices opposition to or support for any matter that affects the common-interest community; or

(c) Constitutes a nuisance under the governing documents of the association but does not constitute a ~~public~~ nuisance that directly, immediately or actually endangers a unit's owner, a resident of the common-interest community or an invitee of a unit's owner or a tenant under the laws of this State or a violation of an ordinance, rule or regulation that designates such conduct as a public nuisance.; ~~or~~

~~(d) Is a violation of the governing documents of the association but is otherwise lawful under the laws of this State.~~

3. When determining the amount of a fine to be imposed in accordance with the procedures set forth in NRS 116.31031, an executive board may consult with any appropriate professional for assistance in evaluating the nature, context, severity, scope, frequency or duration of the violation or any other factor relevant to the determination of the executive board.