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NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

Via Email:sbates@red.nv.gov
publiccomments@red.nv.gov

August 16, 2026

Commission for Common-Interest Communities
c/o Nevada Real Estate Division
Nevada State Business Center
3300 W. Sahara Avenue, Suite 350
Las Vegas, NV 89102

Re: LCB File No. R091-25 — Opposition to Section 2, Health, Safety and Welfare Violations

Dear Commissioners:

I respectfully oppose Section 2 of the Second Revised Proposed Regulation, LCB File No. R091-25, in its present form. The operative language still does not faithfully implement that statutory standard.

While the revised language is an effort to narrow the prior proposal, it still leaves individual executive boards substantial discretion to classify ordinary violations as HSW violations.

The significance of an HSW designation extends beyond the amount of the fine. Nevada law generally restricts nonjudicial foreclosure based upon fines or penalties, but NRS 116.31162(6) contains an exception involving certain HSW violations. Thus, classification of a violation as HSW can potentially affect not only the amount an owner may be fined, but whether that fine can contribute to foreclosure of the owner's home. That consequence makes objective criteria, severity standards, meaningful fine limitations and written findings even more important. An extraordinary classification carrying potential home-loss consequences should not depend upon broad or discretionary standards applied differently from one association to another.

Section 2 provides that the listed conduct qualifies if it occurs:

"in a manner that directly, immediately or actually endangers" an owner, resident or invitee.

This added language appears intended to respond to the concern previously raised that broad categories of misconduct are not themselves criteria for determining whether the statutory HSW threshold has been met. My May comments specifically objected that negligence, intentional interference, property damage and code violations were being used as HSW gateways without requiring a determination that the particular violation actually posed the threat described by the statute. The new language is therefore a step in the right direction, but the use of **"or"** leaves the central problem unresolved. "Immediately" remains only one alternative means of qualification rather than a necessary element of an **imminent** threat.

The use of **"or"** is significant. It makes "directly," "immediately," and "actually" alternative grounds rather than cumulative requirements. Under the proposed wording, conduct could arguably qualify because it "actually" endangers someone even though the danger is not immediate, or because it "directly" endangers someone even though the danger is not imminent.

That is not the standard established by NRS 116.31031.

The statutory use of the present-tense word *"poses"* is also important. As previously noted in my May opposition, NRS 116.31031 focuses on a violation that presently poses an imminent threat of substantial harm. It does not ask merely whether some conduct was dangerous at an earlier point in time. A completed act may have been wrongful, negligent or even dangerous when it occurred without continuing to satisfy the extraordinary HSW standard. The regulation should therefore distinguish an existing or ongoing qualifying danger from completed misconduct that no longer poses the statutory threat.

The Legislature did not authorize enhanced treatment merely whenever conduct presents some actual or direct danger. It required an **imminent threat of causing a substantial adverse effect** on health, safety or welfare. Both concepts matter: the threatened harm must be sufficiently immediate to be *imminent*, and sufficiently serious to be *substantial*.

Accordingly, while the revised language is an effort to narrow the prior proposal, it still leaves individual executive boards substantial discretion to classify ordinary violations as HSW violations. At minimum, the regulation should require that the conduct **directly and immediately** create the qualifying danger. The Commission should also separately define what makes the threatened adverse effect "substantial."

This distinction is particularly important because as I noted in the opening an HSW designation removes the violation from the ordinary statutory limitations applicable to fines. The threshold therefore should be clear, objective and demanding—not dependent upon which of several alternative descriptions of danger a board chooses to invoke.

The Legislative Counsel's Digest confirms that NRS 116.31031 directs the Commission to regulate three distinct matters: the criteria for determining whether an HSW violation exists, **the severity of such violations, and limitations on the amounts of the fines.**

Section 2 still does not adequately accomplish that mandate.

1. "Substantial adverse effect" remains undefined.

The revised proposal gives some attention to the concept of imminence, but it provides no meaningful criteria for determining when the threatened adverse effect is **"substantial."**

Those are separate statutory requirements. An immediate risk is not necessarily a substantial risk. Minor conditions can conceivably present some immediate possibility of harm without creating the type of serious danger that should remove a violation from the ordinary statutory fine limitations.

The regulation should therefore define what constitutes a substantial adverse effect. The standard should be tied to objectively serious consequences such as a material risk of death or significant bodily injury, substantial impairment of health, significant fire or structural danger, loss of habitability, obstruction of emergency access, serious sanitation hazards, or comparable material threats.

Without such a standard, individual boards will be left to decide for themselves what "substantial" means.

2. "Failure to exercise reasonable care" is far too broad to serve as an HSW category.

Section 2(1)(a) identifies simply: **"A failure to exercise reasonable care."** That is essentially a negligence standard.

Almost any alleged violation of governing documents can be characterized as a failure to exercise reasonable care. The relevant inquiry under NRS 116.31031 should not be whether an owner acted negligently. It should be whether the particular condition creates an imminent threat of a substantial adverse effect on health, safety or welfare.

The regulation should identify the nature and seriousness of the danger, not merely the degree of care allegedly exercised by the owner. The concluding danger language narrows paragraph (a) somewhat, but because that language itself uses the disjunctive "directly, immediately or actually," the underlying category remains unnecessarily broad and invites inconsistent application.

3. The proposal still establishes no actual criteria for determining the severity of an HSW violation.

This is a particularly significant omission because *severity* is one of the subjects the Legislature expressly directed the Commission to regulate. Section 2(3) states that an executive board *may consult with an appropriate professional* when considering the "nature, context, severity, scope, frequency or duration" of a violation, or any other factor the board considers relevant.

That is not a severity standard. It merely provides a list of matters an individual board may consider.

There are no defined levels of severity. There is no objective test distinguishing a moderately serious violation from an extremely serious one. There are no aggravating or mitigating criteria. There is no requirement that a board explain how it determined the severity of the violation.

The Legislature directed the **Commission** to establish criteria governing severity. Section 2 instead effectively leaves that determination to each individual association.

4. Most importantly, Section 2 establishes no limitation whatsoever on the amount of an HSW fine.

Section 2 contains no such limitation. What is drafted is not a limitation. **It is a blank check.**

This was one of the principal objections raised to the prior proposal. The May comments noted that the operative regulation contained no actual dollar cap and warned that without a regulatory limitation, similarly situated owners could face dramatically different fines depending entirely upon the association involved. That problem remains.

Indeed, subsection 3 now permits a board to consider the "nature, context, severity, scope, frequency or duration" of a violation and even "any other factor relevant to the determination of the executive board." That language expands board discretion; it does not limit it.

The distinction matters because the Legislature did not merely direct the Commission to tell boards what factors they could consider. It expressly directed the Commission to establish "limitations on the amounts of the fines." The Legislative Counsel's Digest again acknowledges that requirement.

The Commission should therefore establish actual maximum fines, tied to objective levels of severity. Without such limits, the very regulatory safeguard the Legislature required remains absent.

5. HSW treatment should address a presently existing danger, and correction or abatement should be the first objective.

The statute provides that the violation **"poses"** an imminent threat of causing a substantial adverse effect. That present-tense formulation matters. As explained in my prior comments, the HSW exception should distinguish genuine ongoing or imminent conditions from completed misconduct, ordinary covenant violations, nuisance disputes, or conduct that may have been wrongful but does not presently pose the statutory threat.

That distinction becomes particularly important once the condition has been corrected.

If an alleged violation truly creates an imminent threat of substantial harm, the primary enforcement objective should be to eliminate that danger. Yet Section 2 contains no provision addressing prompt correction or abatement of an ongoing hazardous condition and does not explain how HSW treatment interacts with the statutory notice-and-cure process.

An HSW designation should not become simply an enhanced punishment category for completed conduct. Dangerous conduct can be wrongful and subject to otherwise lawful enforcement even after the danger has passed. But the extraordinary HSW treatment authorized by NRS 116.31031 should turn on whether the violation **presently poses** the required imminent and substantial threat.

The regulation should therefore require an association to identify whether the qualifying danger remains ongoing and, where correction is reasonably possible, pursue prompt correction or abatement. Once the dangerous condition has been cured or otherwise ceases to exist, the board should be required to address that fact when determining whether continued HSW treatment or an enhanced fine remains justified.

A regulation governing genuine health and safety threats should make correction of the danger the first objective, with any resulting fine proportionate to the actual severity and duration of the qualifying condition.

6. The regulation should require specific written findings before an association may invoke the HSW exception.

The consequences of an HSW designation are significant. The board should therefore be required to make written findings identifying:

1. The specific conduct constituting the violation;
2. The particular health, safety or welfare danger created;
3. Why the threat is **imminent**;
4. Why the threatened adverse effect is **substantial**;
5. The severity of the violation;
6. Whether the dangerous condition remains ongoing or has been cured; and
7. How the amount of the fine corresponds to the severity of the violation and the applicable regulatory limitation.

Without written findings, there is little meaningful protection against an association simply labeling a covenant violation a "health and safety" matter in order to impose a substantially greater fine.

7. The catch-all provision remains unnecessarily expansive.

Section 2(1)(e) includes "any other act which is substantially similar" to the conduct described in the preceding paragraphs. A substantial-similarity provision may be appropriate if the underlying categories are narrowly and objectively defined. But one of those underlying categories is simply a "failure to exercise reasonable care." A catch-all tied to such a broad standard further expands the discretion of individual boards.

If the Commission wishes to retain a catch-all provision, it should first identify concrete categories of serious physical danger and require the allegedly similar conduct to pose a comparable degree of risk.

Conclusion

Section 2 is improved from the earlier proposal in that it attempts to narrow the HSW standard. But the revised language still does not require the essential elements of the statutory standard with sufficient clarity.

By providing that conduct may qualify if it "directly, immediately **or** actually endangers" someone, the regulation makes immediacy only one of several alternative grounds rather than a required component of an **imminent** threat.

More fundamentally, the Legislature required regulations addressing:

(1) the criteria for determining whether an HSW violation exists;
(2) the severity of such violations; and
(3) limitations on the amounts of the fines.

The current proposal responds partially to the first by adding a danger requirement, but because "immediately" is only one alternative in the phrase "directly, immediately or actually," it still does not require imminence. It leaves severity largely to the discretion of individual executive boards and omits the required limitations on fine amounts altogether.

The revised draft also still fails to distinguish a violation that presently *"poses"* the statutory threat from completed misconduct that may have been dangerous at an earlier time but no longer creates an ongoing HSW condition.

These are not peripheral matters. They are the protections necessary to prevent the extraordinary HSW exception from swallowing the ordinary statutory limitations on HOA fines.

I therefore respectfully request that the Commission not adopt Section 2 in its present form and direct that it be revised to:

- require that the violation **directly and immediately** create the qualifying danger;
- define **"substantial adverse effect"**;
- replace or substantially narrow the "failure to exercise reasonable care" standard;
- establish objective severity criteria;
- establish explicit maximum fine limitations tied to severity;
- require prompt correction or abatement of an ongoing danger where reasonably possible; and
- require written findings demonstrating why an alleged violation satisfies each element of the HSW standard and why the resulting fine is authorized.

The objective should be straightforward: a genuine emergency or serious health and safety hazard should be treated accordingly, but an ordinary covenant violation should not become an unlimited-fine violation merely because an association labels it a health, safety or welfare matter.

Respectfully submitted,

Michael Kosor