

Via Electronic Mail

April 3, 2026

Nevada Common-Interest Community Task Force
c/o Nevada Real Estate Division
Office of the Ombudsman for Owners in Common-Interest Communities and Condominium
Hotels
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Las Vegas, Nevada 89102
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Re: Recommendation to Reform NRS 116.760(1) for Claims Arising During Declarant Control

Chair Sanchez and Members of the Task Force:

I write to recommend the Task Force consider a targeted but important reform to Nevada's administrative enforcement framework for common-interest communities. Specifically, I urge the Task Force to recommend amendment or clarification of NRS 116.760(1) so that the statute's one-year administrative filing limit does not unfairly bar investigation of claims arising during declarant control. NRS 116.760(1) presently requires an aggrieved person to file an affidavit with the Division within one year after the person discovers or reasonably should have discovered the alleged violation.

Nevada's general statute of limitations allows 3 years for an action upon a liability created by statute under NRS 11.190(3)(a), yet the administrative complaint process under NRS 116.760(1) can cut off state investigation in 1 year from discovery or reasonable discovery. If administrative enforcement was intended to reduce dependence on private litigation, it is fair to ask why the public enforcement path is subject to the shorter fuse.

The problem is not simply one of timing alone. It is one of structure. Nevada has already recognized, in a related context, that declarant control can make timely pursuit of claims unrealistic. NRS 116.3111(3) provides that any statute of limitation affecting the association's right of action against a declarant under that section is tolled until the period of declarant control terminates. That reflects an important legislative judgment: an association controlled by a declarant is not realistically positioned to investigate and pursue claims against the declarant as though it were fully independent.

Yet Nevada's administrative complaint process does not clearly reflect the same reality. Under the current structure, owners and associations may still face dismissal of an administrative complaint as untimely even where the challenged conduct occurred during declarant control, the board was not meaningfully independent, records were not realistically accessible, and there was little or no internal incentive to challenge the arrangement while the declarant remained in control. The practical result is that the period when oversight is most needed may become the period least likely to receive meaningful administrative review.

That result is in tension with the purpose of Nevada’s administrative enforcement path. The Ombudsman and Division complaint process exists because lawmakers recognized that enforcement of Chapter 116 should rest with the state, not depend primarily on private civil litigation financed by owners. If the administrative process cuts off investigation before owners are realistically able to use it, then the state has shifted enforcement back into the very model lawmakers were trying to avoid. Owners face cost, delay, asymmetry of information, and the chilling effect of fee exposure. Administrative review is supposed to provide a lower-cost public mechanism for addressing statutory violations without forcing every owner into court. If the one-year filing rule is applied without clearly accounting for declarant control, the system risks recreating through procedure the same access-to-justice failure administrative oversight was supposed to reduce.

Some may respond that the existing discovery-based standard already solves the problem. It does not. The phrase “reasonably should have discovered” can be applied far too narrowly in the HOA context, especially during declarant control. What appears obvious years later may not have been practically discoverable at the time. Owners may know a burden exists without understanding the legal defect. Documents may be incomplete, inaccessible, or styled in ways that obscure their significance. Most importantly, a declarant-controlled board has little incentive to investigate or challenge its own prior acts.

For these reasons, I recommend that the Task Force endorse one of the following reforms:

First, and preferably, amend NRS 116.760(1) to provide that, for claims arising from acts or omissions occurring during declarant control, the one-year filing period is tolled until declarant control terminates.

Second, if the Legislature is unwilling to adopt explicit tolling, amend the statute or adopt implementing guidance establishing a rebuttable presumption that a complaint is timely if filed within one year after transition from declarant control, unless the Division can show the violation was genuinely and practically discoverable earlier.

Third, at minimum, direct NRED to issue formal guidance clarifying that declarant control is a central factor in determining when a violation was “reasonably” discoverable under NRS 116.760(1).

The strongest reform is the first. It would align the administrative complaint process with the policy already reflected in NRS 116.3111(3). Claims tied to declarant-controlled conduct should not expire administratively before the association is realistically free to investigate and challenge them.

A concise formulation the Task Force could adopt is:

The Task Force recommends amendment of Nevada’s administrative complaint framework for common-interest communities to ensure that the one-year filing period under NRS 116.760(1) does not unfairly bar investigation of claims arising during declarant control. Nevada law already recognizes in NRS 116.3111(3) that declarant control may justify tolling of claims against a

declarant. The administrative process should reflect the same practical reality by tolling, suspending, or presumptively extending the filing period for violations occurring during declarant control until the association is realistically free to discover and challenge them.

This recommendation is modest, but important. It would not open the door to limitless stale grievances. It would simply ensure that the state's administrative oversight structure does not punish owners and associations for failing to challenge a declarant-controlled system while it was still under the declarant's control.

Thank you for your consideration of this recommendation.

Sincerely,

/s/ signed

Mike Kosor
HOA homeowner and Founder
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