

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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Re: Amend NRS 116.3111(3) Tolling During Declarant Control To Expressly Apply to Unit Owners

Chair Sanchez and Members of the Task Force:

I write to recommend that the Task Force place on its agenda for consideration a targeted amendment to NRS 116.3111(3). The statute should be revised to make clear that tolling during declarant control applies not only to the association's right of action against a declarant, but also to actions maintained by individual unit owners under that same section.

Nevada's current text expressly tolls limitations affecting "the association's right of action against a declarant under this section" until declarant control terminates. It then adds that "[a] unit's owner is not precluded from maintaining an action contemplated by this section because he or she is a unit's owner or a member or officer of the association." As written, the statute does not expressly extend tolling to unit owners and instead invites the narrower reading that only the association receives that protection. Under that reading it is difficult to reconcile with subsection (2), expressly recognizing declarant-controlled wrongdoing may result in liability not only to the association, but also to a unit owner.

A toll is not the same thing as the absence of a bar. A unit owner may be permitted to sue and still lose the claim on limitations if tolling is read to protect only the association. The statute, read naturally, can be understood to leave unit owners outside the tolling protection during declarant control. If that is the intended rule, it is a serious policy failure. If it is not the intended rule, the statute should be amended to say so plainly.

The same structural barrier that justifies tolling for the association exists for the owner. During declarant control, the board is not meaningfully independent, records may be incomplete or inaccessible, incentives to challenge prior acts are weak or nonexistent, and owners may not be able to determine the full legal significance of what occurred until long after the challenged conduct took place. If declarant control justifies tolling because meaningful challenge is unrealistic during that period, that principle should not depend on whether the caption of the case names the association or an individual owner proceeding under the same section.

Some may argue no amendment is needed because subsection (3) already states that a unit owner is "not precluded" from maintaining an action under the section. But that response confuses capacity with timing. A unit owner may be permitted to sue and yet still lose the claim on

limitations if tolling is read to protect only the association. Clarifying the statute would not create new liability. It would simply make clear whether the timing protection applies equally to owner actions contemplated by the same section.

For that reason, I recommend that the Task Force endorse a clarifying amendment to NRS 116.3111(3). The Legislature should state expressly that any tolling applicable under that subsection extends to an action maintained by a unit owner under the section, not only to an action maintained in the name of the association.

One way to accomplish that would be to revise the statute substantially as follows:

Proposed concept: *Except as otherwise provided in subsection 4 of NRS 116.4116 with respect to warranty claims, any statute of limitation affecting the association's or a unit owner's right of action against a declarant under this section is tolled until the period of declarant's control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because he or she is a unit owner or a member or officer of the association.*

The goal is not to create new liability. It is to remove uncertainty and align the statute with its evident purpose. Subsection (2) already makes clear that declarant-controlled wrongdoing can result in liability not only to the association, but also to an individual unit owner. Subsection (3) should be amended so that the timing protection matches that substantive right.

This is a modest clarification, but an important one. It would reduce unnecessary disputes over standing and timeliness, improve coherence in Chapter 116, and better protect owners where declarant control has delayed meaningful discovery or challenge of wrongful conduct.

Thank you for your consideration of this recommendation.

Sincerely,

/s/ signed

Mike Kosor
HOA homeowner and Founder
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