

Amendment No. CA26

Conference Committee Amendment to Assembly Bill No. 350 Second Reprint	(BDR 10-620)
Proposed by: Conference Committee	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

NCA/RRY



Date: 6/1/2009

A.B. No. 350—Makes various changes relating to common-interest communities.
(BDR 10-620)



ASSEMBLY BILL NO. 350—ASSEMBLYMEN MUNFORD, KIHUEN, SEGERBLOM; AIZLEY,
ANDERSON, CLABORN, DENIS, GANSERT, HOGAN, MCCLAIN, MORTENSON,
PIERCE, SETTELMAYER AND STEWART

MARCH 13, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to ~~common interest communities;~~
real property. (BDR 10-620)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to ~~common interest communities;~~ **real property;** revising provisions relating to **costs of collection,** interest on certain past due assessments, ~~and copies of certain documents;~~ providing that punitive damages may not be awarded against the members of the executive board or the officers of an association under certain circumstances; **establishing certain standards for management agreements; establishing the duties, responsibilities and standards of practice for community managers; making various other changes relating to common-interest communities; revising provisions relating to swimming pools;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 ~~Section 1.7 of this bill authorizes an association to charge reasonable fees for costs~~
2 ~~associated with collecting any past due obligation. Section 3.5 of this bill provides that in~~
3 ~~addition to complying with the business-judgment rule, officers and members of the~~
4 ~~executive board of an association are required to act on an informed basis, in good faith~~
5 ~~and in the honest belief that their actions are in the best interest of the association. (NRS~~
6 ~~116.3103)~~

7 ~~Existing law authorizes an executive board to impose fines for certain violations of~~
8 ~~the governing documents and to assess interest on any unpaid fines at a rate established~~
9 ~~by the association, not to exceed the legal rate per annum. (NRS 116.31031) Section 4.5~~
10 ~~of this bill eliminates the authority to charge interest on any past due fines.~~

11 Existing law provides that: (1) punitive damages may not be recovered against an
12 association, but may be recovered against persons whose activity gave rise to the damages;
13 and (2) punitive damages may be awarded for a willful and material failure to comply with
14 any provision of chapter 116 of NRS. (NRS 116.31036, 116.4117) **Sections 5.5 and 16.5** of
15 this bill provide that punitive damages may not be recovered against the members of the
16 executive board or the officers of an association for acts or omissions that occur in their
17 capacity as members or officers.

18 Existing law provides that any past due assessment for common expenses or installment
19 thereof bears interest at the rate established by the association, which must not exceed 18
20 percent per year. **Section 9** of this bill provides that the association may charge the prime rate plus
21 2 percent on such a past due assessment, beginning when the assessment is 60 days past
22 due.

23 ~~Sections 6.5 and 7.5 of this bill provide that: (1) a unit's owner may receive a copy or~~
24 ~~summary of the minutes of a meeting of the units' owners or executive board in~~
25 ~~electronic format at no cost to the unit's owner or, if the association is unable to provide~~
26 ~~a copy or summary in electronic format, in paper format at a cost not to exceed 25 cents~~
27 ~~per page for the first 10 pages, and at 10 cents per page thereafter; and (2) a meeting of~~
28 ~~the executive board must be held at a time other than during normal business hours at~~
29 ~~least twice per year. (NRS 116.3108, 116.31083)~~

30 ~~Section 10.5 of this bill requires the budget of an association to be available for~~
31 ~~review at a location not to exceed 60 miles from the common-interest community. (NRS~~
32 ~~116.31151) Section 12.2 of this bill also requires the books, records and other papers of~~
33 ~~an association to be available for review at the business office of the association or a~~
34 ~~location not to exceed 60 miles from the common-interest community. (NRS 116.31175)~~

35 ~~Section 12.5 of this bill provides that if a unit's owner is the subject of retaliatory~~
36 ~~action based on certain complaints or requests, he may bring an action to recover~~
37 ~~compensatory damages and attorney's fees and costs. (NRS 116.31183)~~

38 ~~Sections 13.7 and 15.5 of this bill require a public offering or a resale package to~~
39 ~~include a statement listing all current and expected fees for each unit. (NRS 116.4103,~~
40 ~~116.4109)~~

41 ~~Section 19.3 of this bill establishes the requirements concerning the disclosures that~~
42 ~~a community manager must make before entering into a management agreement and~~
43 ~~incorporates into statute the existing requirements contained in the Nevada~~
44 ~~Administrative Code. (NAC 116.310)~~

45 ~~Section 19.4 of this bill sets forth the requirements of a management agreement and~~
46 ~~incorporates into statute the existing requirements contained in the Nevada~~
47 ~~Administrative Code. (NAC 116.305)~~

48 ~~Section 19.5 of this bill sets forth the responsibilities and duties of a community~~
49 ~~manager, incorporates into statute many of the existing provisions of the Nevada~~
50 ~~Administrative Code and adds certain new responsibilities and duties. (NAC 116.300)~~
51 ~~Section 19.5 also provides that a community manager acts as a fiduciary at all times and~~
52 ~~must exercise ordinary and reasonable care in performing his duties.~~

53 ~~Section 19.6 of this bill incorporates into statute many of the existing provisions of~~
54 ~~the Nevada Administrative Code pertaining to standards of practice for community~~
55 ~~managers and conduct warranting disciplinary action and establishes certain new~~
56 ~~requirements, such as provisions governing the acceptance of any compensation, gift or~~
57 ~~any other item of material value by the community manager. (NAC 116.341)~~

58 ~~Section 21.3 of this bill exempts privately owned swimming pools used only by~~
59 ~~members of a private club from the definition of "public swimming pool" for purposes~~
60 ~~of supervision by the Health Authority.~~

THE PEOPLE OF] THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 1.5.** (Deleted by amendment.)

3 **Sec. 1.7.** Chapter 116 of NRS is hereby amended by adding thereto a
4 new section to read as follows:

5 1. An association may charge a unit's owner reasonable fees to cover the
6 costs of collecting any past due obligation. The Commission shall adopt

1 regulations establishing the amount of the fees that an association may charge
2 pursuant to this section.

3 2. The provisions of this section apply to any costs of collecting a past due
4 obligation charged to a unit's owner, regardless of whether the past due
5 obligation is collected by the association itself or by any person acting on behalf
6 of the association, including, without limitation, an officer or employee of the
7 association, a community manager or a collection agency.

8 3. As used in this section:

9 (a) "Costs of collecting" includes any fee, charge or cost, by whatever name,
10 including, without limitation, any collection fee, filing fee, recording fee, fee
11 related to the preparation, recording or delivery of a lien or lien rescission, title
12 search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery
13 and any other fee or cost that an association charges a unit's owner for the
14 investigation, enforcement or collection of a past due obligation. The term does
15 not include any costs incurred by an association if a lawsuit is filed to enforce
16 any past due obligation or any costs awarded by a court.

17 (b) "Obligation" means any assessment, fine, construction penalty, fee,
18 charge or interest levied or imposed against a unit's owner pursuant to any
19 provision of this chapter or the governing documents.

20 **Sec. 2.** (Deleted by amendment.)

21 **Sec. 2.5.** NRS 116.3102 is hereby amended to read as follows:

22 116.3102 1. Except as otherwise provided in subsection 2, and subject to the
23 provisions of the declaration, the association may do any or all of the following:

24 (a) Adopt and amend bylaws, rules and regulations.

25 (b) Adopt and amend budgets for revenues, expenditures and reserves and
26 collect assessments for common expenses from the units' owners.

27 (c) Hire and discharge managing agents and other employees, agents and
28 independent contractors.

29 (d) Institute, defend or intervene in litigation or administrative proceedings in
30 its own name on behalf of itself or two or more units' owners on matters affecting
31 the common-interest community.

32 (e) Make contracts and incur liabilities.

33 (f) Regulate the use, maintenance, repair, replacement and modification of
34 common elements.

35 (g) Cause additional improvements to be made as a part of the common
36 elements.

37 (h) Acquire, hold, encumber and convey in its own name any right, title or
38 interest to real estate or personal property, but:

39 (1) Common elements in a condominium or planned community may be
40 conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

41 (2) Part of a cooperative may be conveyed, or all or part of a cooperative
42 may be subjected to a security interest, only pursuant to NRS 116.3112.

43 (i) Grant easements, leases, licenses and concessions through or over the
44 common elements.

45 (j) Impose and receive any payments, fees or charges for the use, rental or
46 operation of the common elements, other than limited common elements described
47 in subsections 2 and 4 of NRS 116.2102, and for services provided to the units'
48 owners.

49 (k) Impose charges for late payment of assessments ↔ pursuant to NRS
50 116.3115.

51 (l) Impose construction penalties when authorized pursuant to NRS
52 116.310305.

1 (m) Impose reasonable fines for violations of the governing documents of the
2 association only if the association complies with the requirements set forth in NRS
3 116.31031.

4 (n) Impose reasonable charges for the preparation and recordation of any
5 amendments to the declaration or any statements of unpaid assessments, and
6 impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109,
7 for preparing and furnishing the documents and certificate required by that section.

8 (o) Provide for the indemnification of its officers and executive board and
9 maintain directors' and officers' liability insurance.

10 (p) Assign its right to future income, including the right to receive assessments
11 for common expenses, but only to the extent the declaration expressly so provides.

12 (q) Exercise any other powers conferred by the declaration or bylaws.

13 (r) Exercise all other powers that may be exercised in this State by legal
14 entities of the same type as the association.

15 (s) Direct the removal of vehicles improperly parked on property owned or
16 leased by the association, as authorized pursuant to NRS 487.038, or improperly
17 parked on any road, street, alley or other thoroughfare within the common-interest
18 community in violation of the governing documents. In addition to complying with
19 the requirements of NRS 487.038 and any requirements in the governing
20 documents, if a vehicle is improperly parked as described in this paragraph, the
21 association must post written notice in a conspicuous place on the vehicle or
22 provide oral or written notice to the owner or operator of the vehicle at least 48
23 hours before the association may direct the removal of the vehicle, unless the
24 vehicle:

25 (1) Is blocking a fire hydrant, fire lane or parking space designated for the
26 handicapped; or

27 (2) Poses an imminent threat of causing a substantial adverse effect on the
28 health, safety or welfare of the units' owners or residents of the common-interest
29 community.

30 (t) Exercise any other powers necessary and proper for the governance and
31 operation of the association.

32 2. The declaration may not impose limitations on the power of the association
33 to deal with the declarant which are more restrictive than the limitations imposed
34 on the power of the association to deal with other persons.

35 **Sec. 3.** (Deleted by amendment.)

36 **Sec. 3.5.** NRS 116.3103 is hereby amended to read as follows:

37 116.3103 1. Except as otherwise provided in the declaration, the bylaws,
38 this section or other provisions of this chapter, the executive board may act in all
39 instances on behalf of the association. In the performance of their duties, the
40 officers and members of the executive board are fiduciaries, and shall act on an
41 informed basis, in good faith and in the honest belief that their actions are in the
42 best interest of the association. The members of the executive board are required to
43 exercise the ordinary and reasonable care of directors of a corporation, subject to
44 the business-judgment rule.

45 2. The executive board may not act on behalf of the association to amend the
46 declaration, to terminate the common-interest community, or to elect members of
47 the executive board or determine their qualifications, powers and duties or terms of
48 office, but the executive board may fill vacancies in its membership for the
49 unexpired portion of any term.

50 **Sec. 4.** (Deleted by amendment.)

1 **Sec. 4.5. NRS 116.31031 is hereby amended to read as follows:**

2 116.31031 1. Except as otherwise provided in this section, if a unit's owner
3 or a tenant or guest of a unit's owner violates any provision of the governing
4 documents of an association, the executive board may, if the governing documents
5 so provide:

6 (a) Prohibit, for a reasonable time, the unit's owner or the tenant or guest of the
7 unit's owner from:

8 (1) Voting on matters related to the common-interest community.

9 (2) Using the common elements. The provisions of this subparagraph do
10 not prohibit the unit's owner or the tenant or guest of the unit's owner from using
11 any vehicular or pedestrian ingress or egress to go to or from the unit, including any
12 area used for parking.

13 (b) Impose a fine against the unit's owner or the tenant or guest of the unit's
14 owner for each violation, except that a fine may not be imposed for a violation that
15 is the subject of a construction penalty pursuant to NRS 116.310305. If the
16 violation poses an imminent threat of causing a substantial adverse effect on the
17 health, safety or welfare of the units' owners or residents of the common-interest
18 community, the amount of the fine must be commensurate with the severity of the
19 violation and must be determined by the executive board in accordance with the
20 governing documents. If the violation does not pose an imminent threat of causing a
21 substantial adverse effect on the health, safety or welfare of the units' owners or
22 residents of the common-interest community, the amount of the fine must be
23 commensurate with the severity of the violation and must be determined by the
24 executive board in accordance with the governing documents, but the amount of the
25 fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever
26 is less. The limitations on the amount of the fine do not apply to any ~~interest,~~
27 charges or costs that may be collected by the association pursuant to this section if
28 the fine becomes past due.

29 2. The executive board may not impose a fine pursuant to subsection 1 unless:

30 (a) Not less than 30 days before the violation, the person against whom the fine
31 will be imposed had been provided with written notice of the applicable provisions
32 of the governing documents that form the basis of the violation; and

33 (b) Within a reasonable time after the discovery of the violation, the person
34 against whom the fine will be imposed has been provided with:

35 (1) Written notice specifying the details of the violation, the amount of the
36 fine, and the date, time and location for a hearing on the violation; and

37 (2) A reasonable opportunity to contest the violation at the hearing.

38 3. The executive board must schedule the date, time and location for the
39 hearing on the violation so that the person against whom the fine will be imposed is
40 provided with a reasonable opportunity to prepare for the hearing and to be present
41 at the hearing.

42 4. The executive board must hold a hearing before it may impose the fine,
43 unless the person against whom the fine will be imposed:

44 (a) Pays the fine;

45 (b) Executes a written waiver of the right to the hearing; or

46 (c) Fails to appear at the hearing after being provided with proper notice of the
47 hearing.

48 5. If a fine is imposed pursuant to subsection 1 and the violation is not cured
49 within 14 days, or within any longer period that may be established by the
50 executive board, the violation shall be deemed a continuing violation. Thereafter,
51 the executive board may impose an additional fine for the violation for each 7-day

1 period or portion thereof that the violation is not cured. Any additional fine may be
2 imposed without notice and an opportunity to be heard.

3 6. If the governing documents so provide, the executive board may appoint a
4 committee, with not less than three members, to conduct hearings on violations and
5 to impose fines pursuant to this section. While acting on behalf of the executive
6 board for those limited purposes, the committee and its members are entitled to all
7 privileges and immunities and are subject to all duties and requirements of the
8 executive board and its members.

9 7. The provisions of this section establish the minimum procedural
10 requirements that the executive board must follow before it may impose a fine. The
11 provisions of this section do not preempt any provisions of the governing
12 documents that provide greater procedural protections.

13 8. Any past due fine ~~+~~

14 ~~— (a) Bears interest at the rate established by the association, not to exceed the~~
15 ~~legal rate per annum.~~

16 ~~— (b) May include any costs of collecting the past due fine at a rate established~~
17 ~~by the association. If the past due fine is for a violation that does not threaten the~~
18 ~~health, safety or welfare of the residents of the common interest community, the~~
19 ~~rate established by the association for the costs of collecting the past due fine.~~

20 ~~— (1) May not exceed \$20, if the outstanding balance is less than \$200.~~

21 ~~— (2) May not exceed \$50, if the outstanding balance is \$200 or more, but is~~
22 ~~less than \$500.~~

23 ~~— (3) May not exceed \$100, if the outstanding balance is \$500 or more, but is~~
24 ~~less than \$1,000.~~

25 ~~— (4) May not exceed \$250, if the outstanding balance is \$1,000 or more, but~~
26 ~~is less than \$5,000.~~

27 ~~— (5) May not exceed \$500, if the outstanding balance is \$5,000 or more.~~

28 ~~— (c) May~~ **must not bear interest, but may** include any costs incurred by the
29 association during a civil action to enforce the payment of the past due fine.

30 ~~[9. As used in this section:~~

31 ~~— (a) "Costs of collecting" includes, without limitation, any collection fee, filing~~
32 ~~fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost~~
33 ~~that an association may reasonably charge to the unit's owner for the collection of a~~
34 ~~past due fine. The term does not include any costs incurred by an association during~~
35 ~~a civil action to enforce the payment of a past due fine.~~

36 ~~— (b) "Outstanding balance" means the amount of a past due fine that remains~~
37 ~~unpaid before any interest, charges for late payment or costs of collecting the past~~
38 ~~due fine are added.]~~

39 **Sec. 5.** (Deleted by amendment.)

40 **Sec. 5.5.** NRS 116.31036 is hereby amended to read as follows:

41 116.31036 1. Notwithstanding any provision of the declaration or bylaws to
42 the contrary, any member of the executive board, other than a member appointed by
43 the declarant, may be removed from the executive board, with or without cause, if
44 at a removal election held pursuant to this section the number of votes cast in favor
45 of removal constitutes:

46 (a) At least 35 percent of the total number of voting members of the
47 association; and

48 (b) At least a majority of all votes cast in that removal election.

49 2. The removal of any member of the executive board must be conducted by
50 secret written ballot unless the declaration of the association provides that voting
51 rights may be exercised by delegates or representatives as set forth in NRS

1 116.31105. If the removal of a member of the executive board is conducted by
2 secret written ballot:

3 (a) The secretary or other officer specified in the bylaws of the association
4 shall cause a secret ballot and a return envelope to be sent, prepaid by United States
5 mail, to the mailing address of each unit within the common-interest community or
6 to any other mailing address designated in writing by the unit's owner.

7 (b) Each unit's owner must be provided with at least 15 days after the date the
8 secret written ballot is mailed to the unit's owner to return the secret written ballot
9 to the association.

10 (c) Only the secret written ballots that are returned to the association may be
11 counted to determine the outcome.

12 (d) The secret written ballots must be opened and counted at a meeting of the
13 association. A quorum is not required to be present when the secret written ballots
14 are opened and counted at the meeting.

15 (e) The incumbent members of the executive board, including, without
16 limitation, the member who is subject to the removal, may not possess, be given
17 access to or participate in the opening or counting of the secret written ballots that
18 are returned to the association before those secret written ballots have been opened
19 and counted at a meeting of the association.

20 3. If a member of an executive board is named as a respondent or sued for
21 liability for actions undertaken in his role as a member of the board, the association
22 shall indemnify him for his losses or claims, and undertake all costs of defense,
23 unless it is proven that he acted with willful or wanton misfeasance or with gross
24 negligence. After such proof, the association is no longer liable for the cost of
25 defense, and may recover costs already expended from the member of the executive
26 board who so acted. Members of the executive board are not personally liable to the
27 victims of crimes occurring on the property. Punitive damages may not be
28 recovered against ~~the~~ :

29 (a) ~~The association [, but may be recovered from persons whose activity gave~~
30 ~~rise to the damages.] ;~~

31 (b) *The members of the executive board for acts or omissions that occur in*
32 *their capacity as members of the executive board; or*

33 (c) *The officers of the association for acts or omissions that occur in their*
34 *capacity as officers of the association.*

35 4. The provisions of this section do not prohibit the Commission from taking
36 any disciplinary action against a member of an executive board pursuant to NRS
37 116.745 to 116.795, inclusive.

38 **Sec. 6.** (Deleted by amendment.)

39 **Sec. 6.5.** NRS 116.3108 is hereby amended to read as follows:

40 116.3108 1. A meeting of the units' owners must be held at least once each
41 year. If the governing documents do not designate an annual meeting date of the
42 units' owners, a meeting of the units' owners must be held 1 year after the date of
43 the last meeting of the units' owners. If the units' owners have not held a meeting
44 for 1 year, a meeting of the units' owners must be held on the following March 1.

45 2. Special meetings of the units' owners may be called by the president, by a
46 majority of the executive board or by units' owners constituting at least 10 percent,
47 or any lower percentage specified in the bylaws, of the total number of voting
48 members of the association. The same number of units' owners may also call a
49 removal election pursuant to NRS 116.31036. To call a special meeting or a
50 removal election, the units' owners must submit a written petition which is signed
51 by the required percentage of the total number of voting members of the association
52 pursuant to this section and which is mailed, return receipt requested, or served by a

1 process server to the executive board or the community manager for the
2 association. If the petition calls for a special meeting, the executive board shall set
3 the date for the special meeting so that the special meeting is held not less than 15
4 days or more than 60 days after the date on which the petition is received. If the
5 petition calls for a removal election and:

6 (a) The voting rights of the units' owners will be exercised by delegates or
7 representatives as set forth in NRS 116.31105, the executive board shall set the date
8 for the removal election so that the removal election is held not less than 15 days or
9 more than 60 days after the date on which the petition is received; or

10 (b) The voting rights of the units' owners will be exercised through the use of
11 secret written ballots pursuant to NRS 116.31036, the secret written ballots for the
12 removal election must be sent in the manner required by NRS 116.31036 not less
13 than 15 days or more than 60 days after the date on which the petition is received,
14 and the executive board shall set the date for the meeting to open and count the
15 secret written ballots so that the meeting is held not more than 15 days after the
16 deadline for returning the secret written ballots.

17 3. Not less than 15 days or more than 60 days in advance of any meeting of
18 the units' owners, the secretary or other officer specified in the bylaws shall cause
19 notice of the meeting to be hand-delivered, sent prepaid by United States mail to
20 the mailing address of each unit or to any other mailing address designated in
21 writing by the unit's owner or, if the association offers to send notice by electronic
22 mail, sent by electronic mail at the request of the unit's owner to an electronic mail
23 address designated in writing by the unit's owner. The notice of the meeting must
24 state the time and place of the meeting and include a copy of the agenda for the
25 meeting. The notice must include notification of the right of a unit's owner to:

26 (a) Have a copy of the minutes or a summary of the minutes of the meeting
27 provided to the unit's owner upon request ~~and, if required by the executive board,~~
28 ~~upon payment to the association of the cost of providing the copy to the unit's~~
29 ~~owner.~~, in electronic format at no charge to the unit's owner or, if the
30 association is unable to provide the copy or summary in electronic format, in
31 paper format at a cost not to exceed 25 cents per page for the first 10 pages, and
32 10 cents per page thereafter.

33 (b) Speak to the association or executive board, unless the executive board is
34 meeting in executive session.

35 4. The agenda for a meeting of the units' owners must consist of:

36 (a) A clear and complete statement of the topics scheduled to be considered
37 during the meeting, including, without limitation, any proposed amendment to the
38 declaration or bylaws, any fees or assessments to be imposed or increased by the
39 association, any budgetary changes and any proposal to remove an officer of the
40 association or member of the executive board.

41 (b) A list describing the items on which action may be taken and clearly
42 denoting that action may be taken on those items. In an emergency, the units'
43 owners may take action on an item which is not listed on the agenda as an item on
44 which action may be taken.

45 (c) A period devoted to comments by units' owners and discussion of those
46 comments. Except in emergencies, no action may be taken upon a matter raised
47 under this item of the agenda until the matter itself has been specifically included
48 on an agenda as an item upon which action may be taken pursuant to paragraph (b).

49 5. If the association adopts a policy imposing fines for any violations of the
50 governing documents of the association, the secretary or other officer specified in
51 the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United
52 States mail to the mailing address of each unit or to any other mailing address

1 designated in writing by the unit's owner, a schedule of the fines that may be
2 imposed for those violations.

3 6. The secretary or other officer specified in the bylaws shall cause minutes to
4 be recorded or otherwise taken at each meeting of the units' owners. Not more than
5 30 days after each such meeting, the secretary or other officer specified in the
6 bylaws shall cause the minutes or a summary of the minutes of the meeting to be
7 made available to the units' owners. ~~[(A)]~~ Except as otherwise provided in this
8 subsection, a copy of the minutes or a summary of the minutes must be provided to
9 any unit's owner upon request ~~[and, if required by the executive board, upon~~
10 ~~payment to the association of the cost of providing the copy to the unit's owner.]~~,
11 in electronic format at no charge to the unit's owner or, if the association is
12 unable to provide the copy or summary in electronic format, in paper format at a
13 cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page
14 thereafter.

15 7. Except as otherwise provided in subsection 8, the minutes of each meeting
16 of the units' owners must include:

- 17 (a) The date, time and place of the meeting;
18 (b) The substance of all matters proposed, discussed or decided at the meeting;
19 and
20 (c) The substance of remarks made by any unit's owner at the meeting if he
21 requests that the minutes reflect his remarks or, if he has prepared written remarks,
22 a copy of his prepared remarks if he submits a copy for inclusion.

23 8. The executive board may establish reasonable limitations on materials,
24 remarks or other information to be included in the minutes of a meeting of the
25 units' owners.

26 9. The association shall maintain the minutes of each meeting of the units'
27 owners until the common-interest community is terminated.

28 10. A unit's owner may record on audiotape or any other means of sound
29 reproduction a meeting of the units' owners if the unit's owner, before recording
30 the meeting, provides notice of his intent to record the meeting to the other units'
31 owners who are in attendance at the meeting.

32 11. The units' owners may approve, at the annual meeting of the units'
33 owners, the minutes of the prior annual meeting of the units' owners and the
34 minutes of any prior special meetings of the units' owners. A quorum is not
35 required to be present when the units' owners approve the minutes.

36 12. As used in this section, "emergency" means any occurrence or
37 combination of occurrences that:

- 38 (a) Could not have been reasonably foreseen;
39 (b) Affects the health, welfare and safety of the units' owners or residents of
40 the common-interest community;
41 (c) Requires the immediate attention of, and possible action by, the executive
42 board; and
43 (d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

44 **Sec. 7.** (Deleted by amendment.)

45 **Sec. 7.5.** NRS 116.31083 is hereby amended to read as follows:

46 116.31083 1. A meeting of the executive board must be held at least once
47 every 90 days ~~[(A)]~~ and must be held at a time other than during standard business
48 hours at least twice annually.

49 2. Except in an emergency or unless the bylaws of an association require a
50 longer period of notice, the secretary or other officer specified in the bylaws of the
51 association shall, not less than 10 days before the date of a meeting of the executive

1 board, cause notice of the meeting to be given to the units' owners. Such notice
2 must be:

3 (a) Sent prepaid by United States mail to the mailing address of each unit
4 within the common-interest community or to any other mailing address designated
5 in writing by the unit's owner;

6 (b) If the association offers to send notice by electronic mail, sent by electronic
7 mail at the request of the unit's owner to an electronic mail address designated in
8 writing by the unit's owner; or

9 (c) Published in a newsletter or other similar publication that is circulated to
10 each unit's owner.

11 3. In an emergency, the secretary or other officer specified in the bylaws of
12 the association shall, if practicable, cause notice of the meeting to be sent prepaid
13 by United States mail to the mailing address of each unit within the common-
14 interest community. If delivery of the notice in this manner is impracticable, the
15 notice must be hand-delivered to each unit within the common-interest community
16 or posted in a prominent place or places within the common elements of the
17 association.

18 4. The notice of a meeting of the executive board must state the time and
19 place of the meeting and include a copy of the agenda for the meeting or the date on
20 which and the locations where copies of the agenda may be conveniently obtained
21 by the units' owners. The notice must include notification of the right of a unit's
22 owner to:

23 (a) Have a copy of the minutes or a summary of the minutes of the meeting
24 provided to the unit's owner upon request ~~and, if required by the executive board,~~
25 ~~upon payment to the association of the cost of providing the copy to the unit's~~
26 ~~owner.~~ , in electronic format at no charge to the unit's owner or, if the
27 association is unable to provide the copy or summary in electronic format, in
28 paper format at a cost not to exceed 25 cents per page for the first 10 pages, and
29 10 cents per page thereafter.

30 (b) Speak to the association or executive board, unless the executive board is
31 meeting in executive session.

32 5. The agenda of the meeting of the executive board must comply with the
33 provisions of subsection 4 of NRS 116.3108. The period required to be devoted to
34 comments by the units' owners and discussion of those comments must be
35 scheduled for the beginning of each meeting. In an emergency, the executive board
36 may take action on an item which is not listed on the agenda as an item on which
37 action may be taken.

38 6. At least once every 90 days, unless the declaration or bylaws of the
39 association impose more stringent standards, the executive board shall review, at a
40 minimum, the following financial information at one of its meetings:

41 (a) A current year-to-date financial statement of the association;

42 (b) A current year-to-date schedule of revenues and expenses for the operating
43 account and the reserve account, compared to the budget for those accounts;

44 (c) A current reconciliation of the operating account of the association;

45 (d) A current reconciliation of the reserve account of the association;

46 (e) The latest account statements prepared by the financial institutions in which
47 the accounts of the association are maintained; and

48 (f) The current status of any civil action or claim submitted to arbitration or
49 mediation in which the association is a party.

50 7. The secretary or other officer specified in the bylaws shall cause minutes to
51 be recorded or otherwise taken at each meeting of the executive board. Not more
52 than 30 days after each such meeting, the secretary or other officer specified in the

1 bylaws shall cause the minutes or a summary of the minutes of the meetings to be
2 made available to the units' owners. ~~[A] Except as otherwise provided in this~~
3 subsection, a copy of the minutes or a summary of the minutes must be provided to
4 any unit's owner upon request ~~[and, if required by the executive board, upon~~
5 ~~payment to the association of the cost of providing the copy to the unit's owner.]~~.
6 in electronic format at no charge to the unit's owner or, if the association is
7 unable to provide the copy or summary in electronic format, in paper format at a
8 cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page
9 thereafter.

10 8. Except as otherwise provided in subsection 9 and NRS 116.31085, the
11 minutes of each meeting of the executive board must include:

- 12 (a) The date, time and place of the meeting;
13 (b) Those members of the executive board who were present and those
14 members who were absent at the meeting;
15 (c) The substance of all matters proposed, discussed or decided at the meeting;
16 (d) A record of each member's vote on any matter decided by vote at the
17 meeting; and
18 (e) The substance of remarks made by any unit's owner who addresses the
19 executive board at the meeting if he requests that the minutes reflect his remarks or,
20 if he has prepared written remarks, a copy of his prepared remarks if he submits a
21 copy for inclusion.

22 9. The executive board may establish reasonable limitations on materials,
23 remarks or other information to be included in the minutes of its meetings.

24 10. The association shall maintain the minutes of each meeting of the
25 executive board until the common-interest community is terminated.

26 11. A unit's owner may record on audiotape or any other means of sound
27 reproduction a meeting of the executive board, unless the executive board is
28 meeting in executive session, if the unit's owner, before recording the meeting,
29 provides notice of his intent to record the meeting to the members of the executive
30 board and the other units' owners who are in attendance at the meeting.

31 12. As used in this section, "emergency" means any occurrence or
32 combination of occurrences that:

- 33 (a) Could not have been reasonably foreseen;
34 (b) Affects the health, welfare and safety of the units' owners or residents of
35 the common-interest community;
36 (c) Requires the immediate attention of, and possible action by, the executive
37 board; and
38 (d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

39 **Sec. 8.** (Deleted by amendment.)

40 **Sec. 9.** NRS 116.3115 is hereby amended to read as follows:

41 116.3115 1. Until the association makes an assessment for common
42 expenses, the declarant shall pay all common expenses. After an assessment has
43 been made by the association, assessments must be made at least annually, based on
44 a budget adopted at least annually by the association in accordance with the
45 requirements set forth in NRS 116.31151. Unless the declaration imposes more
46 stringent standards, the budget must include a budget for the daily operation of the
47 association and a budget for the reserves required by paragraph (b) of subsection 2.

48 2. Except for assessments under subsections 4 to 7, inclusive:

- 49 (a) All common expenses, including the reserves, must be assessed against all
50 the units in accordance with the allocations set forth in the declaration pursuant to
51 subsections 1 and 2 of NRS 116.2107.

1 (b) The association shall establish adequate reserves, funded on a reasonable
2 basis, for the repair, replacement and restoration of the major components of the
3 common elements. The reserves may be used only for those purposes, including,
4 without limitation, repairing, replacing and restoring roofs, roads and sidewalks,
5 and must not be used for daily maintenance. The association may comply with the
6 provisions of this paragraph through a funding plan that is designed to allocate the
7 costs for the repair, replacement and restoration of the major components of the
8 common elements over a period of years if the funding plan is designed in an
9 actuarially sound manner which will ensure that sufficient money is available when
10 the repair, replacement and restoration of the major components of the common
11 elements are necessary.

12 3. Any ~~[past due]~~ assessment for common expenses or installment thereof
13 *that is 60 days or more past due* bears interest at ~~[the rate established by the~~
14 ~~association not exceeding 18 percent per year.]~~ *a rate equal to the prime rate at the*
15 *largest bank in Nevada as ascertained by the Commissioner of Financial*
16 *Institutions on January 1 or July 1, as the case may be, immediately preceding*
17 *the date the assessment becomes past due, plus 2 percent. The rate must be*
18 *adjusted accordingly on each January 1 and July 1 thereafter until the balance is*
19 *satisfied.*

20 4. To the extent required by the declaration:

21 (a) Any common expense associated with the maintenance, repair, restoration
22 or replacement of a limited common element must be assessed against the units to
23 which that limited common element is assigned, equally, or in any other proportion
24 the declaration provides;

25 (b) Any common expense or portion thereof benefiting fewer than all of the
26 units must be assessed exclusively against the units benefited; and

27 (c) The costs of insurance must be assessed in proportion to risk and the costs
28 of utilities must be assessed in proportion to usage.

29 5. Assessments to pay a judgment against the association may be made only
30 against the units in the common-interest community at the time the judgment was
31 entered, in proportion to their liabilities for common expenses.

32 6. If any common expense is caused by the misconduct of any unit's owner,
33 the association may assess that expense exclusively against his unit.

34 7. The association of a common-interest community created before January 1,
35 1992, is not required to make an assessment against a vacant lot located within the
36 community that is owned by the declarant.

37 8. If liabilities for common expenses are reallocated, assessments for common
38 expenses and any installment thereof not yet due must be recalculated in
39 accordance with the reallocated liabilities.

40 9. The association shall provide written notice to each unit's owner of a
41 meeting at which an assessment for a capital improvement is to be considered or
42 action is to be taken on such an assessment at least 21 calendar days before the date
43 of the meeting.

44 **Sec. 10.** (Deleted by amendment.)

45 **Sec. 10.5.** NRS 116.31151 is hereby amended to read as follows:

46 116.31151 1. Except as otherwise provided in subsection 2 and unless the
47 declaration of a common-interest community imposes more stringent standards, the
48 executive board shall, not less than 30 days or more than 60 days before the
49 beginning of the fiscal year of the association, prepare and distribute to each unit's
50 owner a copy of:

51 (a) The budget for the daily operation of the association. The budget must
52 include, without limitation, the estimated annual revenue and expenditures of the

1 association and any contributions to be made to the reserve account of the
2 association.

3 (b) The budget to provide adequate funding for the reserves required by
4 paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without
5 limitation:

6 (1) The current estimated replacement cost, estimated remaining life and
7 estimated useful life of each major component of the common elements;

8 (2) As of the end of the fiscal year for which the budget is prepared, the
9 current estimate of the amount of cash reserves that are necessary, and the current
10 amount of accumulated cash reserves that are set aside, to repair, replace or restore
11 the major components of the common elements;

12 (3) A statement as to whether the executive board has determined or
13 anticipates that the levy of one or more special assessments will be necessary to
14 repair, replace or restore any major component of the common elements or to
15 provide adequate funding for the reserves designated for that purpose; and

16 (4) A general statement describing the procedures used for the estimation
17 and accumulation of cash reserves pursuant to subparagraph (2), including, without
18 limitation, the qualifications of the person responsible for the preparation of the
19 study of the reserves required by NRS 116.31152.

20 2. In lieu of distributing copies of the budgets of the association required by
21 subsection 1, the executive board may distribute to each unit's owner a summary of
22 those budgets, accompanied by a written notice that:

23 (a) The budgets are available for review at the business office of the
24 association or some other suitable location within the county where the common-
25 interest community is situated or, if it is situated in more than one county, within
26 one of those counties ~~+~~ but not to exceed 60 miles from the physical location of
27 the common-interest community; and

28 (b) Copies of the budgets will be provided upon request.

29 3. Within 60 days after adoption of any proposed budget for the common-
30 interest community, the executive board shall provide a summary of the proposed
31 budget to each unit's owner and shall set a date for a meeting of the units' owners
32 to consider ratification of the proposed budget not less than 14 days or more than
33 30 days after the mailing of the summaries. Unless at that meeting a majority of all
34 units' owners, or any larger vote specified in the declaration, reject the proposed
35 budget, the proposed budget is ratified, whether or not a quorum is present. If the
36 proposed budget is rejected, the periodic budget last ratified by the units' owners
37 must be continued until such time as the units' owners ratify a subsequent budget
38 proposed by the executive board.

39 **Sec. 11.** (Deleted by amendment.)

40 **Sec. 12.** (Deleted by amendment.)

41 **Sec. 12.2.** NRS 116.31175 is hereby amended to read as follows:

42 116.31175 1. Except as otherwise provided in this subsection, the executive
43 board of an association shall, upon the written request of a unit's owner, make
44 available the books, records and other papers of the association for review at the
45 business office of the association or a designated business location not to exceed
46 60 miles from the physical location of the common-interest community and
47 during the regular working hours of the association, including, without limitation,
48 all contracts to which the association is a party and all records filed with a court
49 relating to a civil or criminal action to which the association is a party. The
50 provisions of this subsection do not apply to:

1 (a) The personnel records of the employees of the association, except for those
2 records relating to the number of hours worked and the salaries and benefits of
3 those employees;

4 (b) The records of the association relating to another unit's owner, except for
5 those records described in subsection 2; and

6 (c) A contract between the association and an attorney.

7 2. The executive board of an association shall maintain a general record
8 concerning each violation of the governing documents, other than a violation
9 involving a failure to pay an assessment, for which the executive board has imposed
10 a fine, a construction penalty or any other sanction. The general record:

11 (a) Must contain a general description of the nature of the violation and the
12 type of the sanction imposed. If the sanction imposed was a fine or construction
13 penalty, the general record must specify the amount of the fine or construction
14 penalty.

15 (b) Must not contain the name or address of the person against whom the
16 sanction was imposed or any other personal information which may be used to
17 identify the person or the location of the unit, if any, that is associated with the
18 violation.

19 (c) Must be maintained in an organized and convenient filing system or data
20 system that allows a unit's owner to search and review the general records
21 concerning violations of the governing documents.

22 3. If the executive board refuses to allow a unit's owner to review the books,
23 records or other papers of the association, the Ombudsman may:

24 (a) On behalf of the unit's owner and upon written request, review the books,
25 records or other papers of the association during the regular working hours of the
26 association; and

27 (b) If he is denied access to the books, records or other papers, request the
28 Commission, or any member thereof acting on behalf of the Commission, to issue a
29 subpoena for their production.

30 4. The books, records and other papers of an association must be maintained
31 for at least 10 years. The provisions of this subsection do not apply to:

32 (a) The minutes of a meeting of the units' owners which must be maintained in
33 accordance with NRS 116.3108; or

34 (b) The minutes of a meeting of the executive board which must be maintained
35 in accordance with NRS 116.31083.

36 5. The executive board shall not require a unit's owner to pay an amount in
37 excess of \$10 per hour to review any books, records, contracts or other papers of
38 the association pursuant to the provisions of this section.

39 **Sec. 12.3.** (Deleted by amendment.)

40 **Sec. 12.5.** NRS 116.31183 is hereby amended to read as follows:

41 116.31183 L An executive board, a member of an executive board or an
42 officer, employee or agent of an association shall not take, or direct or encourage
43 another person to take, any retaliatory action against a unit's owner because the
44 unit's owner has:

45 ~~(a)~~ (a) Complained in good faith about any alleged violation of any provision
46 of this chapter or the governing documents of the association; or

47 ~~(b)~~ (b) Requested in good faith to review the books, records or other papers of
48 the association.

49 2. In addition to any other remedy provided by law, upon a violation of this
50 section, a unit's owner may bring a separate action to recover:

51 (a) Compensatory damages; and

52 (b) Attorney's fees and costs of bringing the separate action.

1 **Sec. 12.7.** (Deleted by amendment.)

2 **Sec. 12.8.** NRS 116.31185 is hereby amended to read as follows:

3 116.31185 1. Except as otherwise provided in subsection 2, a member of an
4 executive board, an officer of an association or a community manager shall not
5 solicit or accept any form of compensation, gratuity or other remuneration that:

6 (a) Would improperly influence or would appear to a reasonable person to
7 improperly influence the decisions made by those persons; or

8 (b) Would result or would appear to a reasonable person to result in a conflict
9 of interest for those persons.

10 2. Notwithstanding the provisions of subsection 1, a member of an executive
11 board, an officer of an association, a community manager or any person working
12 for a community manager shall not accept, directly or indirectly, any gifts,
13 incentives, gratuities, rewards or other items of value from:

14 (a) An attorney, law firm or vendor, or any person working directly or
15 indirectly for the attorney, law firm or vendor, which total more than the amount
16 established by the Commission by regulation, not to exceed \$100 per year per such
17 attorney, law firm or vendor; or

18 (b) A declarant, an affiliate of a declarant or any person responsible for the
19 construction of the applicable community or association which total more than the
20 amount established by the Commission by regulation, not to exceed \$100 per year
21 per such declarant, affiliate or person.

22 3. An attorney, law firm or vendor, or any person working directly or
23 indirectly for the attorney, law firm or vendor, shall not provide, directly or
24 indirectly, any gifts, incentives, gratuities, rewards or other items of value to a
25 member of the executive board, an officer of the association, the community
26 manager or any person working for the community manager which total more than
27 the amount established by the Commission by regulation, not to exceed \$100 per
28 year per such member, officer, community manager or person.

29 4. A declarant, an affiliate of a declarant or any person responsible for the
30 construction of a community or association, shall not provide, directly or indirectly,
31 any gifts, incentives, gratuities, rewards or other items of value to a member of the
32 executive board, an officer of the association, the community manager or any
33 person working for the community manager which total more than the amount
34 established by the Commission by regulation, not to exceed \$100 per year per such
35 member, officer, community manager or person.

36 5. In addition to the limitations set forth in subsection 1, a community
37 manager shall not solicit or accept any form of compensation, fee or other
38 remuneration that is based, in whole or in part, on:

39 (a) The number or amount of fines imposed against or collected from units'
40 owners or tenants or guests of units' owners pursuant to NRS 116.31031 for
41 violations of the governing documents of the association; or

42 (b) Any percentage or proportion of those fines.

43 6. The provisions of this section do not prohibit a community manager from
44 being paid compensation, a fee or other remuneration under the terms of a contract
45 between the community manager and an association if:

46 (a) The scope of the respective rights, duties and obligations of the parties
47 under the contract comply with the standards of practice for community managers
48 set forth as sections 19.5 and 19.6 of this act and any additional standards of
49 practice adopted by the Commission by regulation pursuant to NRS 116A.400;

50 (b) The compensation, fee or other remuneration is being paid to the
51 community manager for providing management of the common-interest
52 community; and

1 (c) The compensation, fee or other remuneration is not structured in a way that
2 would violate the provisions of subsection 1 or 5.

3 **Sec. 13.** (Deleted by amendment.)

4 **Sec. 13.5.** (Deleted by amendment.)

5 **Sec. 13.7.** **NRS 116.4103 is hereby amended to read as follows:**

6 116.4103 1. Except as otherwise provided in NRS 116.41035, a public
7 offering statement must set forth or fully and accurately disclose each of the
8 following:

9 (a) The name and principal address of the declarant and of the common-interest
10 community, and a statement that the common-interest community is either a
11 condominium, cooperative or planned community.

12 (b) A general description of the common-interest community, including to the
13 extent possible, the types, number and declarant's schedule of commencement and
14 completion of construction of buildings, and amenities that the declarant anticipates
15 including in the common-interest community.

16 (c) The estimated number of units in the common-interest community.

17 (d) Copies of the declaration, bylaws, and any rules or regulations of the
18 association, but a plat or plan is not required.

19 (e) A current year-to-date financial statement, including the most recent
20 audited or reviewed financial statement, and the projected budget for the
21 association, either within or as an exhibit to the public offering statement, for 1 year
22 after the date of the first conveyance to a purchaser, and thereafter the current
23 budget of the association. The budget must include, without limitation:

24 (1) A statement of the amount included in the budget as reserves for
25 repairs, replacement and restoration pursuant to NRS 116.3115; and

26 (2) The projected monthly assessment for common expenses for each type
27 of unit, including the amount established as reserves pursuant to NRS 116.3115.

28 (f) A description of any services or subsidies being provided by the declarant
29 or an affiliate of the declarant, not reflected in the budget.

30 (g) Any initial or special fee due from the purchaser at closing, together with a
31 description of the purpose and method of calculating the fee.

32 (h) The terms and significant limitations of any warranties provided by the
33 declarant, including statutory warranties and limitations on the enforcement thereof
34 or on damages.

35 (i) A statement that unless the purchaser or his agent has personally inspected
36 the unit, the purchaser may cancel, by written notice, his contract for purchase until
37 midnight of the fifth calendar day following the date of execution of the contract,
38 and the contract must contain a provision to that effect.

39 (j) A statement of any unsatisfied judgments or pending suits against the
40 association, and the status of any pending suits material to the common-interest
41 community of which a declarant has actual knowledge.

42 (k) Any current or expected fees or charges to be paid by units' owners for the
43 use of the common elements and other facilities related to the common-interest
44 community.

45 (l) **In addition to any other document, a statement describing all current and**
46 **expected fees or charges for each unit, including, without limitation, association**
47 **fees, fines, assessments, late charges or penalties, interest rates on delinquent**
48 **assessments, additional costs for collecting past due fines and charges for**
49 **opening or closing any file for each unit.**

50 (m) The information statement set forth in NRS 116.41095.

51 2. A declarant is not required to revise a public offering statement more than
52 once each calendar quarter, if the following warning is given prominence in the

1 statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT AS OF
2 (insert a specified date). RECENT DEVELOPMENTS REGARDING (here refer to
3 particular provisions of NRS 116.4103 and 116.4105) MAY NOT BE
4 REFLECTED IN THIS STATEMENT."

5 **Sec. 14.** (Deleted by amendment.)

6 **Sec. 15.** (Deleted by amendment.)

7 **Sec. 15.5.** **NRS 116.4109 is hereby amended to read as follows:**

8 116.4109 1. Except in the case of a sale in which delivery of a public
9 offering statement is required, or unless exempt under subsection 2 of NRS
10 116.4101, a unit's owner or his authorized agent shall, at the expense of the unit's
11 owner, furnish to a purchaser a resale package containing all of the following:

12 (a) A copy of the declaration, other than any plats and plans, the bylaws, the
13 rules or regulations of the association and the information statement required by
14 NRS 116.41095;

15 (b) A statement setting forth the amount of the monthly assessment for
16 common expenses and any unpaid assessment of any kind currently due from the
17 selling unit's owner;

18 (c) A copy of the current operating budget of the association and current year-
19 to-date financial statement for the association, which must include a summary of
20 the reserves of the association required by NRS 116.31152 and which must include,
21 without limitation, a summary of the information described in paragraphs (a) to (e),
22 inclusive, of subsection 3 of NRS 116.31152;

23 (d) A statement of any unsatisfied judgments or pending legal actions against
24 the association and the status of any pending legal actions relating to the common-
25 interest community of which the unit's owner has actual knowledge; ~~and~~

26 (e) A statement of any transfer fees, transaction fees or any other fees
27 associated with the resale of a unit ~~;~~ **and**

28 **(f) In addition to any other document, a statement describing all current and**
29 **expected fees or charges for each unit, including, without limitation, association**
30 **fees, fines, assessments, late charges or penalties, interest rates on delinquent**
31 **assessments, additional costs for collecting past due fines and charges for**
32 **opening or closing any file for each unit.**

33 2. The purchaser may, by written notice, cancel the contract of purchase until
34 midnight of the fifth calendar day following the date of receipt of the resale
35 package described in subsection 1, and the contract for purchase must contain a
36 provision to that effect. If the purchaser elects to cancel a contract pursuant to this
37 subsection, he must hand deliver the notice of cancellation to the unit's owner or
38 his authorized agent or mail the notice of cancellation by prepaid United States mail
39 to the unit's owner or his authorized agent. Cancellation is without penalty, and all
40 payments made by the purchaser before cancellation must be refunded promptly. If
41 the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

42 (a) Cancel the contract pursuant to this subsection; or

43 (b) Damages, rescission or other relief based solely on the ground that the
44 unit's owner or his authorized agent failed to furnish the resale package, or any
45 portion thereof, as required by this section.

46 3. Within 10 days after receipt of a written request by a unit's owner or his
47 authorized agent, the association shall furnish all of the following to the unit's
48 owner or his authorized agent for inclusion in the resale package:

49 (a) Copies of the documents required pursuant to paragraphs (a) and (c) of
50 subsection 1; and

51 (b) A certificate containing the information necessary to enable the unit's
52 owner to comply with paragraphs (b), (d) and (e) of subsection 1.

1 4. If the association furnishes the documents and certificate pursuant to
2 subsection 3:

3 (a) The unit's owner or his authorized agent shall include the documents and
4 certificate in the resale package provided to the purchaser, and neither the unit's
5 owner nor his authorized agent is liable to the purchaser for any erroneous
6 information provided by the association and included in the documents and
7 certificate.

8 (b) The association may charge the unit's owner a reasonable fee to cover the
9 cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must
10 be based on the actual cost the association incurs to fulfill the requirements of this
11 section in preparing the certificate. The Commission shall adopt regulations
12 establishing the maximum amount of the fee that an association may charge for
13 preparing the certificate.

14 (c) The association may charge the unit's owner a reasonable fee, not to exceed
15 25 cents per page, to cover the cost of copying the other documents furnished
16 pursuant to subsection 3.

17 (d) Except for the fees allowed pursuant to paragraphs (b) and (c), the
18 association may not charge the unit's owner any other fees for preparing or
19 furnishing the documents and certificate pursuant to subsection 3.

20 5. Neither a purchaser nor the purchaser's interest in a unit is liable for any
21 unpaid assessment or fee greater than the amount set forth in the documents and
22 certificate prepared by the association. If the association fails to furnish the
23 documents and certificate within the 10 days allowed by this section, the seller is
24 not liable for the delinquent assessment.

25 6. Upon the request of a unit's owner or his authorized agent, or upon the
26 request of a purchaser to whom the unit's owner has provided a resale package
27 pursuant to this section or his authorized agent, the association shall make the entire
28 study of the reserves of the association which is required by NRS 116.31152
29 reasonably available for the unit's owner, purchaser or authorized agent to inspect,
30 examine, photocopy and audit. The study must be made available at the business
31 office of the association or some other suitable location within the county where the
32 common-interest community is situated or, if it is situated in more than one county,
33 within one of those counties.

34 **Sec. 16.** (Deleted by amendment.)

35 **Sec. 16.5.** NRS 116.4117 is hereby amended to read as follows:

36 116.4117 1. If a declarant or any other person subject to this chapter fails to
37 comply with any of its provisions or any provision of the declaration or bylaws, any
38 person or class of persons suffering actual damages from the failure to comply has a
39 claim for appropriate relief.

40 2. Subject to the requirements set forth in NRS 38.310 and except as
41 otherwise provided in NRS 116.3111, a civil action for damages caused by a failure
42 or refusal to comply with any provision of this chapter or the governing documents
43 of an association may be brought:

44 (a) By the association against:

- 45 (1) A declarant; or
46 (2) A unit's owner.

47 (b) By a unit's owner against:

- 48 (1) The association;
49 (2) A declarant; or
50 (3) Another unit's owner of the association.

1 3. ~~Punitive~~ *Except as otherwise provided in NRS 116.31036, punitive*
2 damages may be awarded for a willful and material failure to comply with this
3 chapter if the failure is established by clear and convincing evidence.

4 4. The court may award reasonable attorney's fees to the prevailing party.

5 5. The civil remedy provided by this section is in addition to, and not
6 exclusive of, any other available remedy or penalty.

7 **Sec. 17.** (Deleted by amendment.)

8 **Sec. 18.** (Deleted by amendment.)

9 **Sec. 18.05.** (Deleted by amendment.)

10 **Sec. 18.1.** (Deleted by amendment.)

11 **Sec. 18.2.** (Deleted by amendment.)

12 **Sec. 18.3.** (Deleted by amendment.)

13 **Sec. 18.4.** (Deleted by amendment.)

14 **Sec. 18.5.** (Deleted by amendment.)

15 **Sec. 18.6.** (Deleted by amendment.)

16 **Sec. 18.7.** (Deleted by amendment.)

17 **Sec. 18.8.** (Deleted by amendment.)

18 **Sec. 18.9.** (Deleted by amendment.)

19 **Sec. 19.** (Deleted by amendment.)

20 **Sec. 19.05.** Chapter 116A of NRS is hereby amended by adding thereto
21 the provisions set forth as sections 19.1 to 19.6, inclusive, of this act.

22 **Sec. 19.1.** "Client" means an association that has entered into a
23 management agreement with a community manager.

24 **Sec. 19.2.** "Management agreement" means an agreement for the
25 management of a common-interest community.

26 **Sec. 19.3.** Before entering into a management agreement, a community
27 manager shall disclose in writing to the prospective client any material and
28 relevant information which he knows, or by the exercise of reasonable care and
29 diligence should know, relate to the performance of the management agreement,
30 including any matters which may affect his ability to comply with the provisions
31 of this chapter or chapter 116 or 116B of NRS. Such written disclosure must
32 include, without limitation:

33 1. Whether he, or any member of his organization, expects to receive any
34 direct or indirect compensation, gifts or profits from any person who will perform
35 services for the client and, if so, the identity of the person and the nature of the
36 services rendered.

37 2. Any affiliation with or financial interest in any person or business who
38 furnishes any goods or services to the client.

39 3. Any pecuniary relationships with any unit's owner, member of the
40 executive board or officer of the client.

41 **Sec. 19.4.** 1. Any management agreement must:

42 (a) Be in writing and signed by all parties;

43 (b) Be entered into between the client and the community manager or the
44 employer of the community manager if the community manager is acting on
45 behalf of a corporation, partnership, limited partnership, limited-liability
46 partnership, limited-liability company or other entity;

47 (c) State the term of the management agreement;

48 (d) State the basic consideration for the services to be provided and the
49 payment schedule;

50 (e) Include a complete schedule of all fees, costs, expenses and charges to be
51 imposed by the community manager, whether direct or indirect, including,
52 without limitation:

- 1 (1) The costs for any new client or start-up costs;
2 (2) The fees for special or nonroutine services, such as the mailing of
3 collection letters, the recording of liens and foreclosing of property;
4 (3) Reimbursable expenses;
5 (4) The fees for the sale or resale of a unit or for setting up the account
6 of a new member; and
7 (5) The portion of fees that are to be retained by the client and the
8 portion to be retained by the community manager;
9 (f) State the identity and the legal status of the contracting parties;
10 (g) State any limitations on the liability of each contracting party;
11 (h) Include a statement of the scope of work of the community manager;
12 (i) State the spending limits of the community manager;
13 (j) Include provisions relating to the grounds and procedures for termination
14 of the community manager;
15 (k) Identify the types and amounts of insurance coverage to be carried by
16 each contracting party, including, without limitation:
17 (1) A requirement that the community manager or his employer shall
18 maintain insurance covering liability for errors or omissions, professional
19 liability or a surety bond to compensate for losses actionable pursuant to this
20 chapter in an amount of \$1,000,000 or more;
21 (2) An indication of which contracting party will maintain fidelity bond
22 coverage; and
23 (3) A statement as to whether the client will maintain directors and
24 officers liability coverage for the executive board;
25 (l) Include provisions for dispute resolution;
26 (m) Acknowledge that all records and books of the client are the property of
27 the client, except any proprietary information and software belonging to the
28 community manager;
29 (n) State the physical location, including the street address, of the records of
30 the client, which must be within 60 miles from the physical location of the
31 common-interest community;
32 (o) State the frequency and extent of regular inspections of the common-
33 interest community; and
34 (p) State the extent, if any, of the authority of the community manager to
35 sign checks on behalf of the client in an operating account.
36 2. In addition to any other requirements under this section, a management
37 agreement may:
38 (a) Provide for mandatory binding arbitration; or
39 (b) Allow the provisions of the management agreement to apply month to
40 month following the end of the term of the management agreement, but the
41 management agreement may not contain an automatic renewal provision.
42 3. Not later than 10 days after the effective date of a management
43 agreement, the community manager shall provide each member of the executive
44 board evidence of the existence of the required insurance, including, without
45 limitation:
46 (a) The names and addresses of all insurance companies;
47 (b) The total amount of coverage; and
48 (c) The amount of any deductible.
49 4. After signing a management agreement, the community manager shall
50 provide a copy of the management agreement to each member of the executive
51 board. Within 30 days after an election or appointment of a new member to the

1 executive board, the community manager shall provide the new member with a
2 copy of the management agreement.

3 5. Any changes to a management agreement must be initiated by the
4 contracting parties. If there are any changes after the execution of a
5 management agreement, those changes must be in writing and signed by the
6 contracting parties.

7 6. Except as otherwise provided in the management agreement, upon the
8 termination or assignment of a management agreement, the community manager
9 shall, within 30 days after the termination or assignment, transfer possession of
10 all books, records and other papers of the client to the succeeding community
11 manager, or to the client if there is no succeeding community manager,
12 regardless of any unpaid fees or charges to the community manager or
13 management company.

14 7. Notwithstanding any provision in a management agreement to the
15 contrary, a management agreement may be terminated by the client without
16 penalty upon 30 days' notice following a violation by the community manager of
17 any provision of this chapter or chapter 116 of NRS.

18 Sec. 19.5. In addition to any additional standards of practice for
19 community managers adopted by the Commission by regulation pursuant to NRS
20 116A.400, a community manager shall:

21 1. Except as otherwise provided by specific statute, at all times:

22 (a) Act as a fiduciary in any client relationship; and

23 (b) Exercise ordinary and reasonable care in the performance of his duties.

24 2. Comply with all applicable:

25 (a) Federal, state and local laws, regulations and ordinances; and

26 (b) Lawful provisions of the governing documents of each client.

27 3. Keep informed of new developments in the management of a common-
28 interest community through continuing education, including, without limitation,
29 new developments in law, insurance coverage and accounting principles.

30 4. Advise a client to obtain advice from an independent expert relating to
31 matters that are beyond the expertise of the community manager.

32 5. Under the direction of a client, uniformly enforce the provisions of the
33 governing documents of the association.

34 6. At all times ensure that:

35 (a) The financial transactions of a client are current, accurate and properly
36 documented; and

37 (b) There are established policies and procedures that are designed to
38 provide reasonable assurances in the reliability of the financial reporting,
39 including, without limitation:

40 (1) Proper maintenance of accounting records;

41 (2) Documentation of the authorization for any purchase orders,
42 expenditures or disbursements;

43 (3) Verification of the integrity of the data used in business decisions;

44 (4) Facilitation of fraud detection and prevention; and

45 (5) Compliance with all applicable laws and regulations governing
46 financial records.

47 7. Prepare or cause to be prepared interim and annual financial statements
48 that will allow the Division, the executive board, the units' owners and the
49 accountant or auditor to determine whether the financial position of an
50 association is fairly presented in accordance with all applicable laws and
51 regulations.

1 8. Cause to be prepared, if required by the Division, a financial audit
2 performed by an independent certified public accountant of the records of the
3 community manager pertaining to the common-interest community, which must
4 be made available to the Division.

5 9. Make the financial records of an association available for inspection by
6 the Division in accordance with the applicable laws and regulations.

7 10. Cooperate with the Division in resolving complaints filed with the
8 Division.

9 11. Upon written request, make the financial records of an association
10 available to the units' owners electronically or during regular business hours
11 required for inspection at a reasonably convenient location, which must be within
12 60 miles from the physical location of the common-interest community, and
13 provide copies of such records in accordance with the applicable laws and
14 regulations. As used in this subsection, "regular business hours" means Monday
15 through Friday, 9 a.m. to 5 p.m., excluding legal holidays.

16 12. Maintain and invest association funds in a financial institution whose
17 accounts are insured by the Federal Deposit Insurance Corporation, National
18 Credit Union Share Insurance Fund, Securities Investor Protection Corporation,
19 or a private insurer approved pursuant to NRS 678.755, or in government
20 securities that are backed by the full faith and credit of the United States
21 Government.

22 13. Except as required under collection agreements, maintain the various
23 funds of the client in separate financial accounts in the name of the client and
24 ensure that the association is authorized to have direct access to those accounts.

25 14. Provide notice to each unit's owner that the executive board is aware of
26 all legal requirements pursuant to the applicable laws and regulations.

27 15. Maintain internal accounting controls, including, without limitation,
28 segregation of incompatible accounting functions.

29 16. Ensure that the executive board develops and approves written
30 investment policies and procedures.

31 17. Recommend in writing to each client that the client register with the
32 Division, maintain its registration and file all papers with the Division and the
33 Secretary of State as required by law.

34 18. Comply with the directions of a client, unless the directions conflict with
35 the governing documents of the client or the applicable laws or regulations of this
36 State.

37 19. Recommend in writing to each client that the client be in compliance
38 with all applicable federal, state and local laws, regulations and ordinances and
39 the governing documents of the client.

40 20. Obtain, when practicable, at least three qualified bids for any capital
41 improvement project for the client.

42 21. Develop written collection policies, approved by the executive board, to
43 comply with all applicable federal, state and local laws, regulations and
44 ordinances relating to the collection of debt. The collection policies must require:

45 (a) That the executive board approve all write-offs of debt; and

46 (b) That the community manager provide timely updates and reports as
47 necessary.

48 Sec. 19.6. In addition to the standards of practice for community managers
49 set forth in section 19.5 of this act and any additional standards of practice
50 adopted by the Commission by regulation pursuant to NRS 116A.400, a
51 community manager shall not:

1 1. Except as otherwise required by law or court order, disclose confidential
2 information relating to a client, which includes, without limitation, the business
3 affairs and financial records of the client, unless the client agrees to the
4 disclosure in writing.

5 2. Impede or otherwise interfere with an investigation of the Division by:

6 (a) Failing to comply with a request of the Division to provide documents;

7 (b) Supplying false or misleading information to an investigator, auditor or
8 any other officer or agent of the Division; or

9 (c) Concealing any facts or documents relating to the business of a client.

10 3. Commingle money or other property of a client with the money or other
11 property of another client, another association, the community manager or the
12 employer of the community manager.

13 4. Use money or other property of a client for his own personal use.

14 5. Be a signer on a withdrawal from a reserve account of a client.

15 6. Except as otherwise permitted by the provisions of the court rules
16 governing the legal profession, establish an attorney-client relationship with an
17 attorney or law firm which represents a client that employs the community
18 manager or with whom the community manager has a management agreement.

19 7. Provide or attempt to provide to a client a service concerning a type of
20 property or service:

21 (a) That is outside his field of experience or competence without the
22 assistance of a qualified authority unless the fact of his inexperience or
23 incompetence is disclosed fully to the client and is not otherwise prohibited by
24 law; or

25 (b) For which he is not properly licensed.

26 8. Intentionally apply a payment of an assessment from a unit's owner
27 towards any fine, fee or other charge that is due.

28 9. Refuse to accept from a unit's owner payment of any assessment, fine,
29 fee or other charge that is due because there is an outstanding payment due.

30 10. Collect any fees or other charges from a client not specified in the
31 management agreement.

32 11. Accept any compensation, gift or any other item of material value as
33 payment or consideration for a referral or in the furtherance or performance of
34 his normal duties unless:

35 (a) Acceptance of the compensation, gift or other item of material value
36 complies with the provisions of NRS 116.31185 or 116B.695 and all other
37 applicable federal, state and local laws, regulations and ordinances; and

38 (b) Before acceptance of the compensation, gift or other item of material
39 value, the community manager provides full disclosure to the client and the client
40 consents, in writing, to the acceptance of the compensation, gift or other item of
41 material value by the community manager.

42 Sec. 19.7. NRS 116A.010 is hereby amended to read as follows:

43 116A.010 As used in this chapter, unless the context otherwise requires, the
44 words and terms defined in NRS 116A.020 to 116A.130, inclusive, and sections
45 19.1 and 19.2 of this act have the meanings ascribed to them in those sections.

46 Sec. 19.8. NRS 116A.400 is hereby amended to read as follows:

47 116A.400 1. Except as otherwise provided in this section, a person shall not
48 act as a community manager unless the person holds a certificate.

49 2. ~~[(The)]~~ In addition to the standards of practice for community managers
50 set forth in sections 19.5 and 19.6 of this act, the Commission shall by regulation
51 ~~[provide for the]~~ adopt any additional standards of practice for community

1 managers who hold certificates ~~that~~ that the Commission deems appropriate and
2 necessary.

3 3. The Division may investigate any community manager who holds a
4 certificate to ensure that the community manager is complying with the provisions
5 of this chapter and chapters 116 and 116B of NRS and ~~that~~ any additional
6 standards of practice adopted by the Commission.

7 4. In addition to any other remedy or penalty, if the Commission or a hearing
8 panel, after notice and hearing, finds that a community manager who holds a
9 certificate has violated any provision of this chapter or chapter 116 or 116B of NRS
10 or any of the additional standards of practice adopted by the Commission, the
11 Commission or the hearing panel may take appropriate disciplinary action against
12 the community manager.

13 5. In addition to any other remedy or penalty, the Commission may:

14 (a) Refuse to issue a certificate to a person who has failed to pay money which
15 the person owes to the Commission or the Division.

16 (b) Suspend, revoke or refuse to renew the certificate of a person who has
17 failed to pay money which the person owes to the Commission or the Division.

18 6. The provisions of this section do not apply to:

19 (a) A financial institution that is engaging in an activity permitted by law.

20 (b) An attorney who is licensed to practice in this State and who is acting in
21 that capacity.

22 (c) A trustee with respect to the property of the trust.

23 (d) A receiver with respect to property subject to the receivership.

24 (e) A member of an executive board or an officer of an association who is
25 acting solely within the scope of his duties as a member of the executive board or
26 an officer of the association.

27 **Sec. 19.9. NRS 116B.695 is hereby amended to read as follows:**

28 116B.695 1. Except as otherwise provided in subsection 2, a member of an
29 executive board, an officer of an association or a community manager shall not
30 solicit or accept any form of compensation, gratuity or other remuneration that:

31 (a) Would improperly influence or would appear to a reasonable person to
32 improperly influence the decisions made by those persons; or

33 (b) Would result or would appear to a reasonable person to result in a conflict
34 of interest for those persons.

35 2. Notwithstanding the provisions of subsection 1, a member of an executive
36 board, an officer of an association or a community manager shall not accept,
37 directly or indirectly, any gifts, incentives, gratuities, rewards or other items of
38 value from:

39 (a) An attorney, law firm or vendor, or any person working directly or
40 indirectly for the attorney, law firm or vendor, which total more than the amount
41 established by the Commission by regulation, not to exceed \$100 per year per such
42 attorney, law firm or vendor; or

43 (b) A declarant, an affiliate of a declarant or any person responsible for the
44 construction of the applicable condominium hotel or association which total more
45 than the amount established by the Commission by regulation, not to exceed \$100
46 per year per such declarant, affiliate or person.

47 3. An attorney, law firm or vendor, or any person working directly or
48 indirectly for the attorney, law firm or vendor, shall not provide, directly or
49 indirectly, any gifts, incentives, gratuities, rewards or other items of value to a
50 member of the executive board or an officer of the association, the community
51 manager or any person working for the community manager which total more than

1 the amount established by the Commission by regulation, not to exceed \$100 per
2 year per such member, officer, community manager or person.

3 4. A declarant, an affiliate of a declarant or any person responsible for the
4 construction of a condominium hotel or association ~~+~~ shall not provide, directly or
5 indirectly, any gifts, incentives, gratuities, rewards or other items of value to a
6 member of the executive board or an officer of the association, the community
7 manager or any person working for the community manager which total more than
8 the amount established by the Commission by regulation, not to exceed \$100 per
9 year per such member, officer, community manager or person.

10 5. In addition to the limitations set forth in subsection 1, a community
11 manager shall not solicit or accept any form of compensation, fee or other
12 remuneration that is based, in whole or in part, on:

13 (a) The number or amount of fines imposed against or collected from units'
14 owners or tenants or guests of units' owners pursuant to this chapter for violations
15 of the governing documents of the association; or

16 (b) Any percentage or proportion of those fines.

17 6. The provisions of this section do not prohibit a community manager from
18 being paid compensation, a fee or other remuneration under the terms of a contract
19 between the community manager and an association if:

20 (a) The scope of the respective rights, duties and obligations of the parties
21 under the contract comply with the standards of practice for community managers
22 set forth in sections 19.5 and 19.6 of this act and any additional standards of
23 practice adopted by the Commission by regulation pursuant to NRS 116A.400;

24 (b) The compensation, fee or other remuneration is being paid to the
25 community manager for providing management of the association of the
26 condominium hotel; and

27 (c) The compensation, fee or other remuneration is not structured in a way that
28 would violate the provisions of subsection 1 or 5.

29 **Sec. 20.** (Deleted by amendment.)

30 **Sec. 21.** (Deleted by amendment.)

31 **Sec. 21.3.** NRS 444.065 is hereby amended to read as follows:

32 444.065 1. Except as otherwise provided in subsection 2, as used in NRS
33 444.065 to 444.120, inclusive, "public swimming pool" means any structure
34 containing an artificial body of water that is intended to be used collectively by
35 persons for swimming or bathing, regardless of whether a fee is charged for its use.

36 2. The term does not include any such structure at:

37 (a) A private residence if the structure is controlled by the owner or other
38 authorized occupant of the residence and the use of the structure is limited to
39 members of the family of the owner or authorized occupant of the residence or
40 invited guests of the owner or authorized occupant of the residence.

41 (b) A family foster home as defined in NRS 424.013.

42 (c) A child care facility, as defined in NRS 432A.024, furnishing care to 12
43 children or less.

44 (d) Any other residence or facility as determined by the State Board of Health.

45 (e) Any location if the structure is a privately-owned pool used by members
46 of a private club or invited guests of the members.

47 Sec. 21.7. Senate Bill No. 253 of this session is hereby amended by
48 adding thereto a new section to read as follows:

49 Sec. 10. 1. This section and section 8 of this act become effective
50 upon passage and approval.

51 2. Sections 1 to 7, inclusive, and 9 of this act become effective on
52 October 1, 2009.

- 1 **Sec. 22. 1. This ~~act becomes~~ section and sections 21.3 and 21.7 of this**
2 **act become effective upon passage and approval.**
3 **2. Section 1.7 of this act becomes effective upon passage and approval for**
4 **the purpose of adopting regulations and on January 1, 2010, for all other**
5 **purposes.**
6 **3. Sections 2.5 to 21, inclusive, of this act become** effective on July 1, 2009.