

Nevada Revised Statutes

2009



Chapter 116 Common-Interest Ownership (Uniform Act)

Chapter 116A Common-Interest Communities: Regulation of Community Managers and Other Personnel

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CHAPTER 116

COMMON-INTEREST OWNERSHIP (UNIFORM ACT)

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CHAPTER 116

COMMON-INTEREST OWNERSHIP (UNIFORM ACT)

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WESTLAW Topic Nos. 89A, 154, 233.

C.J.S. Estates §§ 1, 145, 146.

C.J.S. Landlord and Tenant §§ 792.21-792.43.

ARTICLE 1**GENERAL PROVISIONS****PART I****DEFINITIONS AND OTHER GENERAL PROVISIONS**

NRS 116.001 Short title. This chapter may be cited as the Uniform Common-Interest Ownership Act.

(Added to NRS by 1991, 535)—(Substituted in revision for NRS 116.1101)

NRS 116.003 Definitions. As used in this chapter and in the declaration and bylaws of an association, unless the context otherwise requires, the words and terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1991, 535; A 2003, 1302, 2221; 2005, 2586; 2009, 1608)

NRS 116.005 “Administrator” defined. “Administrator” means the Real Estate Administrator.

(Added to NRS by 1999, 2993; A 2003, 1302, 2221)—(Substituted in revision for NRS 116.110305)

NRS 116.007 “Affiliate of a declarant” defined.

1. “Affiliate of a declarant” means any person who controls, is controlled by or is under common control with a declarant.

2. A person “controls” a declarant if the person:

(a) Is a general partner, officer, director or employer of the declarant;

(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the declarant;

(c) Controls in any manner the election of a majority of the directors of the declarant; or

(d) Has contributed more than 20 percent of the capital of the declarant.

3. A person “is controlled by” a declarant if the declarant:

(a) Is a general partner, officer, director or employer of the person;

(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the person;

(c) Controls in any manner the election of a majority of the directors of the person; or

(d) Has contributed more than 20 percent of the capital of the person.

4. Control does not exist if the powers described in this section are held solely as security for an obligation and are not exercised.

(Added to NRS by 1991, 535)—(Substituted in revision for NRS 116.11031)

NRS 116.009 “Allocated interests” defined. “Allocated interests” means the following interests allocated to each unit:

1. In a condominium, the undivided interest in the common elements, the liability for common expenses, and votes in the association;
 2. In a cooperative, the liability for common expenses and the ownership and votes in the association; and
 3. In a planned community, the liability for common expenses and votes in the association.
- (Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.110313)

NRS 116.011 “Association” and “unit-owners’ association” defined. “Association” or “unit-owners’ association” means the unit-owners’ association organized under NRS 116.3101. (Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.110315)

ATTORNEY GENERAL’S OPINIONS.

A unit-owners’ association may engage in collection activity on its own behalf without being licensed as a collection agency. A unit-owners’ association (see former NRS 116.110315; cf. NRS 116.011 and 116.3102), through its officers and regular employees, may engage in collection activity, including the filing and foreclosure of liens for unpaid assessments, without first being licensed as a collection agency pursuant to NRS ch. 649. Licensure as a collection agency is not required unless the collection is on behalf of another (see NRS 649.020). (See also NRS 649.075.) (N.B., NRS 649.020 was amended in 2005 to include community managers of unit-owners’ associations within the definition of “collection agency” under certain circumstances.) AGO 99-38 (12-1-1999)

NRS 116.013 “Certificate” defined. “Certificate” means a certificate for the management of a common-interest community or the management of an association of a condominium hotel issued by the Division pursuant to chapter 116A of NRS. (Added to NRS by 2003, 2208; A 2005, 2587; 2007, 2268)

NRS 116.015 “Commission” defined. “Commission” means the Commission for Common-Interest Communities and Condominium Hotels created by NRS 116.600. (Added to NRS by 2003, 2208; A 2007, 2268)

NRS 116.017 “Common elements” defined. “Common elements” means:

1. In a condominium or cooperative, all portions of the common-interest community other than the units, including easements in favor of units or the common elements over other units; and
2. In a planned community, any real estate within the planned community owned or leased by the association, other than a unit.

(Added to NRS by 1991, 536; A 1993, 2356)—(Substituted in revision for NRS 116.110318)

NRS 116.019 “Common expenses” defined. “Common expenses” means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves. (Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.11032)

NRS 116.021 “Common-interest community” defined.

1. “Common-interest community” means real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.
2. The term does not include an agreement described in NRS 116.1209.
3. For purposes of this section, “ownership of a unit” does not include holding a leasehold interest of less than 20 years in a unit, including options to renew.

(Added to NRS by 1991, 536; A 2009, 1608)—(Substituted in revision for NRS 116.110323)

NRS 116.023 “Community manager” defined. “Community manager” means a person who provides for or otherwise engages in the management of a common-interest community or the management of an association of a condominium hotel.

(Added to NRS by 2003, 2208; A 2007, 2268)

NRS 116.025 “Complaint” defined. “Complaint” means a complaint filed by the Administrator pursuant to NRS 116.765.

(Added to NRS by 2003, 2208)

NRS 116.027 “Condominium” defined. “Condominium” means a common-interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common-interest community is not a condominium unless the undivided interests in the common elements are vested in the units’ owners.

(Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.110325)

NRS 116.029 “Converted building” defined. “Converted building” means a building that at any time before creation of the common-interest community was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.110328)

NRS 116.031 “Cooperative” defined. “Cooperative” means a common-interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of the member’s ownership in the association to exclusive possession of a unit.

(Added to NRS by 1991, 536)—(Substituted in revision for NRS 116.110333)

NRS 116.033 “Dealer” defined. “Dealer” means a person in the business of selling units for his or her own account.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110333)

NRS 116.035 “Declarant” defined. “Declarant” means any person or group of persons acting in concert who:

1. As part of a common promotional plan, offers to dispose of his or her or its interest in a unit not previously disposed of; or
2. Reserves or succeeds to any special declarant’s right.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110335)

NRS 116.037 “Declaration” defined. “Declaration” means any instruments, however denominated, that create a common-interest community, including any amendments to those instruments.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110338)

NRS 116.039 “Developmental rights” defined. “Developmental rights” means any right or combination of rights reserved by a declarant in the declaration to:

1. Add real estate to a common-interest community;
2. Create units, common elements or limited common elements within a common-interest community;
3. Subdivide units or convert units into common elements; or
4. Withdraw real estate from a common-interest community.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.11034)

NRS 116.041 “Dispose” and “disposition” defined. “Dispose” or “disposition” means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110343)

NRS 116.043 “Division” defined. “Division” means the Real Estate Division of the Department of Business and Industry.

(Added to NRS by 2003, 1301, 2208)

NRS 116.045 “Executive board” defined. “Executive board” means the body, regardless of name, designated in the declaration to act on behalf of the association.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110345)

NRS 116.047 “Financial statement” defined. “Financial statement” means a financial statement of an association that is prepared and presented in accordance with the requirements established by the Commission pursuant to NRS 116.31142.

(Added to NRS by 1997, 3110; A 2005, 2587)

NRS 116.049 “Governing documents” defined. “Governing documents” means:

1. The declaration for the common-interest community;
2. The articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents that are used to organize the association for the common-interest community;
3. The bylaws and rules of the association; and
4. Any other documents that govern the operation of the common-interest community or the association.

(Added to NRS by 1997, 3111; A 2005, 2587)

NRS 116.051 “Hearing panel” defined. “Hearing panel” means a hearing panel appointed by the Commission pursuant to NRS 116.675.

(Added to NRS by 2003, 2208)

NRS 116.053 “Identifying number” defined. “Identifying number” means a symbol, address or legally sufficient description of real estate which identifies only one unit in a common-interest community.

(Added to NRS by 1991, 537; A 1993, 2356)—(Substituted in revision for NRS 116.110348)

NRS 116.055 “Leasehold common-interest community” defined. “Leasehold common-interest community” means a common-interest community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the common-interest community or reduce its size.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.11035)

NRS 116.057 “Liability for common expenses” defined. “Liability for common expenses” means the liability for common expenses allocated to each unit pursuant to NRS 116.2107.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110353)

NRS 116.059 “Limited common element” defined. “Limited common element” means a portion of the common elements allocated by the declaration or by operation of subsection 2 or 4 of NRS 116.2102 for the exclusive use of one or more but fewer than all of the units.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110355)

NRS 116.0605 “Major component of the common elements” defined. “Major component of the common elements” means any component of the common elements, including, without limitation, any amenity, improvement, furnishing, fixture, finish, system or equipment, that may, within 30 years after its original installation, require repair, replacement or restoration in excess of routine annual maintenance which is included in the annual operating budget of an association.

(Added to NRS by 2005, 2581)

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Associations ⇌ 1.

Condominium ⇌ 6.

Landlord and Tenant ⇌ 350.

WESTLAW Topic Nos. 41, 89A, 233.

C.J.S. Associations §§ 1-5, 8-11, 82-84.

C.J.S. Estates §§ 198, 211-219, 221, 230.

C.J.S. Landlord and Tenant § 1437.

NRS 116.061 “Management of a common-interest community” defined. “Management of a common-interest community” means the physical, administrative or financial maintenance and management of a common-interest community, or the supervision of those activities, for a fee, commission or other valuable consideration.

(Added to NRS by 2003, 2209)

NRS 116.063 “Master association” defined. “Master association” means an organization described in NRS 116.212, whether or not it is also an association described in NRS 116.3101.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110358)

NRS 116.064 “Nonresidential condominium” defined. “Nonresidential condominium” means a condominium in which all units are restricted exclusively to nonresidential use.

(Added to NRS by 2009, 1607)

NRS 116.065 “Offering” defined. “Offering” means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a common-interest community not located in this State, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common-interest community is located. The verb “offer” has a similar meaning.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.11036)

NRS 116.067 “Ombudsman” defined. “Ombudsman” means the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels.

(Added to NRS by 2003, 2209; A 2007, 2268)

NRS 116.069 “Party to the complaint” defined. “Party to the complaint” means the Division and the respondent.

(Added to NRS by 2003, 2209)

NRS 116.073 “Person” defined. “Person” includes a government and governmental subdivision or agency.

(Added to NRS by 1991, 537)—(Substituted in revision for NRS 116.110363)

NRS 116.075 “Planned community” defined. “Planned community” means a common-interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

(Added to NRS by 1991, 538)—(Substituted in revision for NRS 116.110368)

NRS 116.077 “Proprietary lease” defined. “Proprietary lease” means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

(Added to NRS by 1991, 538)—(Substituted in revision for NRS 116.110373)

NRS 116.079 “Purchaser” defined. “Purchaser” means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than a leasehold interest (including options to renew) of less than 20 years, or as security for an obligation.

(Added to NRS by 1991, 538)—(Substituted in revision for NRS 116.110375)

NRS 116.081 “Real estate” defined. “Real estate” means any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests that by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. “Real estate” includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(Added to NRS by 1991, 538)—(Substituted in revision for NRS 116.110378)

NRS 116.083 “Residential use” defined. “Residential use” means use as a dwelling or for personal, family or household purposes by ordinary customers, whether rented to particular persons or not. Such uses include marina boat slips, piers, stable or agricultural stalls or pens, campground spaces or plots, parking spaces or garage spaces, storage spaces or lockers and garden plots for individual use, but do not include spaces or units primarily used to derive commercial income from, or provide service to, the public.

(Added to NRS by 1991, 538; A 1999, 3355)—(Substituted in revision for NRS 116.11038)

NRS 116.085 “Respondent” defined. “Respondent” means a person against whom:

1. An affidavit has been filed pursuant to NRS 116.760.
2. A complaint has been filed pursuant to NRS 116.765.

(Added to NRS by 2003, 2209)

NRS 116.087 “Security interest” defined. “Security interest” means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or contract for retention of title intended as security for an obligation.

(Added to NRS by 1991, 538)—(Substituted in revision for NRS 116.110383)

NRS 116.089 “Special declarant’s rights” defined. “Special declarant’s rights” means rights reserved for the benefit of a declarant to:

1. Complete improvements indicated on plats or in the declaration (NRS 116.2109) or, in a cooperative, to complete improvements described in the public offering statement pursuant to subsection 2 of NRS 116.4103;
2. Exercise any developmental right (NRS 116.211);
3. Maintain sales offices, management offices, signs advertising the common-interest community and models (NRS 116.2115);

4. Use easements through the common elements for the purpose of making improvements within the common-interest community or within real estate which may be added to the common-interest community (NRS 116.2116);
 5. Make the common-interest community subject to a master association (NRS 116.212);
 6. Merge or consolidate a common-interest community with another common-interest community of the same form of ownership (NRS 116.2121); or
 7. Appoint or remove any officer of the association or any master association or any member of an executive board during any period of declarant's control (NRS 116.31032).
- (Added to NRS by 1991, 538; A 2009, 1608)—(Substituted in revision for NRS 116.110385)

NRS 116.091 "Time share" defined. "Time share" means the right to use and occupy a unit on a recurrent periodic basis according to an arrangement allocating this right among various owners of time shares whether or not there is an additional charge to the owner for occupying the unit.

(Added to NRS by 1991, 539)—(Substituted in revision for NRS 116.110388)

NRS 116.093 "Unit" defined. "Unit" means a physical portion of the common-interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to paragraph (e) of subsection 1 of NRS 116.2105. If a unit in a cooperative is owned by the unit's owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by the unit's owner, the interest in that unit which is owned, sold, conveyed, encumbered or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(Added to NRS by 1991, 539)—(Substituted in revision for NRS 116.11039)

NRS 116.095 "Unit's owner" defined. "Unit's owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration until that unit is conveyed to another person. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated (NRS 116.2107) until that unit has been conveyed to another person.

(Added to NRS by 1991, 539)—(Substituted in revision for NRS 116.110393)

NRS 116.1104 Provisions of chapter may not be varied by agreement, waived or evaded; exceptions. Except as expressly provided in this chapter, its provisions may not be varied by agreement, and rights conferred by it may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

(Added to NRS by 1991, 539)

NRS 116.11045 Provisions of chapter do not invalidate or modify tariffs, rules and standards of public utility; consistency of governing documents.

1. The provisions of this chapter do not invalidate or modify the tariffs, rules and standards of a public utility.

2. The governing documents of an association must be consistent and not conflict with the tariffs, rules and standards of a public utility. Any provision of the governing documents which conflicts with the tariffs, rules and standards of a public utility is void and may not be enforced against a purchaser.

3. As used in this section, "public utility" has the meaning ascribed to it in NRS 704.020.

(Added to NRS by 2009, 974)

NRS 116.1105 Categorization of property in certain common-interest communities. In a cooperative, unless the declaration provides that the interest of a unit's owner in a unit and its allocated interests is real estate for all purposes, that interest is personal property.
(Added to NRS by 1991, 539; A 2005, 1231)

REVISER'S NOTE.

Ch. 337, Stats. 2005, which amended this section by removing provisions regarding the assessment and taxation of real property within a common-interest community and which enacted new provisions in NRS 361.233 regarding such assessment and taxation, contains the following provision not included in NRS:

"The Legislature hereby finds and declares that:

1. The organization of real property into any form of a common-interest community creates a uniform set of circumstances for the purposes of assessment and taxation which differ from those regarding other forms of ownership in which there is no similar commonality of interest, in that the value of the common elements of each type of common-interest community is necessarily represented in the separate valuation of each individual unit within such a community;
2. By virtue of their payment of the taxes and special assessments imposed upon the value of their individual units in a common-interest community, the owners of those units pay taxes and special assessments upon the value of the common elements of the community; and
3. Since the common elements of a common-interest community are therefore collectively taxed through the separate assessment and taxation of the individual units of the community, any additional assessment and taxation of the common elements of the community constitutes an unconstitutional double taxation of that property."

NEVADA CASES.

Former provisions of section were unconstitutional and void insofar as they precluded taxation of common elements in planned community. The former provisions of NRS 116.1105 (cf. NRS 361.233), which provided that no separate tax or assessment could be rendered against certain common elements of a condominium or planned community, were unconstitutional and void insofar as they precluded the taxation of common elements in a planned community because they violated the requirement of a uniform and equal rate of assessment and taxation of all property as set forth in Nev. Art. 10, § 1. Although the former provisions of NRS 116.1105 (cf. NRS 361.233) applied to both condominiums and planned communities, in condominiums, undivided interests in common elements are vested in the units' owners (see former NRS 116.110325; cf. NRS 116.027) and therefore would be taxable, while in planned communities, common elements are owned or leased by the association (see former NRS 116.110318; cf. NRS 116.017) and therefore would not be taxable. *Sun City Summerlin Community Ass'n v. State*, Dep't of Taxation, 113 Nev. 835, 944 P.2d 234 (1997), cited, AGO 2000-04 (1-28-2000)

NRS 116.1106 Applicability of local ordinances, regulations and building codes.

1. A building code may not impose any requirement upon any structure in a common-interest community which it would not impose upon a physically identical development under a different form of ownership.
2. In condominiums and cooperatives, no zoning, subdivision or other law, ordinance or regulation governing the use of real estate may prohibit the condominium or cooperative as a form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.
3. Except as otherwise provided in subsections 1 and 2, the provisions of this chapter do not invalidate or modify any provision of any building code or zoning, subdivision or other law, ordinance, rule or regulation governing the use of real estate.
4. The provisions of this section do not prohibit a local government from imposing different requirements and standards regarding design and construction on different types of structures in common-interest communities. For the purposes of this subsection, a townhouse in a planned community is a different type of structure from other structures in common-interest communities, including, without limitation, other structures that are or will be owned as condominiums or cooperatives.

(Added to NRS by 1991, 540; A 2005, 2587)

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Zoning and Planning ⇌ 11.1.

WESTLAW Topic No. 414.

C.J.S. Zoning and Land Planning §§ 46, 48-55, 60-61.

NRS 116.1107 Eminent domain.

1. If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit's owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit's owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

2. Except as otherwise provided in subsection 1, if part of a unit is acquired by eminent domain, the award must compensate the unit's owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(b) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

3. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

4. The judicial decree must be recorded in every county in which any portion of the common-interest community is located.

5. The provisions of this section do not authorize an association to exercise the power of eminent domain pursuant to chapter 37 of NRS, and an association may not exercise the power of eminent domain, as provided in NRS 37.0097.

(Added to NRS by 1991, 540; A 2009, 2877)

NRS 116.1108 Supplemental general principles of law applicable. The principles of law and equity, including the law of corporations, the law of unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

(Added to NRS by 1991, 541)

NRS 116.11085 Provisions of chapter prevail over conflicting provisions governing certain business entities generally. If a matter governed by this chapter is also governed by chapter 78, 81, 82, 86, 87, 87A, 88 or 88A of NRS and there is a conflict between the provisions of this chapter and the provisions of those other chapters, the provisions of this chapter prevail.

(Added to NRS by 2003, 2221; A 2005, 2587; 2007, 485)

NRS CROSS REFERENCES.

Business associations, NRS chs. 78-88A

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Condominium ⇌ 1.
 Landlord and Tenant ⇌ 350.
 WESTLAW Topic Nos. 89A, 233.
 C.J.S. Estates §§ 193-195, 200, 203.
 C.J.S. Landlord and Tenant § 792.21.

NRS 116.1109 Construction against implicit repeal; uniformity of application and construction.

1. This chapter being a general act intended as a unified coverage of its subject matter, no part of it may be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

2. This chapter must be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(Added to NRS by 1991, 541)

NRS 116.1112 Unconscionable agreement or term of contract.

1. The court, upon finding as a matter of law that a contract or clause of a contract was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause to avoid an unconscionable result.

2. Whenever it is claimed, or appears to the court, that a contract or any clause of a contract is or may be unconscionable, the parties, to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to:

- (a) The commercial setting of the negotiations; and
- (b) The effect and purpose of the contract or clause.

(Added to NRS by 1991, 541)

NEVADA CASES.

Contracts of adhesion. An adhesion contract has been defined as a standardized contract form offered to consumers of goods and services essentially on a "take it or leave it" basis, without affording the consumer a realistic opportunity to bargain, and under such conditions that the consumer cannot obtain the desired product or service except by acquiescing to the form of the contract. The distinctive feature of an adhesion contract is that the weaker party has no choice as to its terms. (See also NRS 104.2302, 104A.2108, 116.1112, 118A.230, 123A.080 and 644.403.) *Obstetrics & Gynecologists v. Pepper*, 101 Nev. 105, 693 P.2d 1259 (1985), cited, *Calloway v. City of Reno*, 113 Nev. 564, at 577, 939 P.2d 1020 (1997), *Kindred v. Second Judicial Dist. Court*, 116 Nev. 405, at 411, 996 P.2d 903 (2000), *Burch v. Second Judicial Dist. Court*, 118 Nev. 438, at 442, 49 P.3d 647 (2002), see also *Sievers v. Diversified Mortgage Investors*, 95 Nev. 811, at 816, 603 P.2d 270 (1979), *Farmers Ins. Exch. v. Young*, 108 Nev. 328, at 334, 832 P.2d 376 (1992) (dissenting opinion), *Mallin v. Farmers Ins. Exch.*, 108 Nev. 788, at 808, 839 P.2d 105 (1992) (dissenting opinion), *Farmers Ins. Group v. Stonik*, 110 Nev. 64, at 67, 867 P.2d 389 (1994), *United Nat'l Ins. Co. v. Frontier Ins. Co.*, 120 Nev. 678, at 684, 99 P.3d 1153 (2004)

Unconscionable contract or clause. Both procedural and substantive unconscionability generally must be present for a court to refuse to enforce a contract or clause as unconscionable. If the procedural unconscionability is great, less evidence of substantive unconscionability may be required to establish unconscionability. (See NRS 104.2302, 104A.2108, 116.1112, 118A.230, 123A.080 and 644.403.) *Burch v. Second Judicial Dist. Court*, 118 Nev. 438, 49 P.3d 647 (2002), cited, *D.R. Horton, Inc. v. Green*, 120 Nev. 549, at 553, 96 P.3d 1159 (2004)

Test to determine procedural unconscionability. A contract clause is procedurally unconscionable when a party lacks a meaningful opportunity to agree to the terms of the clause either because of unequal bargaining power (i.e., adhesion contract) or because the clause and its effects are not readily ascertainable upon a review of the contract. Procedural unconscionability often involves the use of fine print or complicated, incomplete or misleading language that fails to inform a reasonable person of the consequences of the contractual language. *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 96 P.3d 1159 (2004)

Arbitration provision was unconscionable under the circumstances. Homebuyers sought declaratory relief alleging that the mandatory arbitration provision which was contained in their purchase agreements with the developer was unenforceable. District court found that the mandatory arbitration provision was unconscionable. Upon review, the supreme court held that the district court did not err in