

2. If a purchaser elects to cancel a contract pursuant to subsection 1, the purchaser may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

3. If a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 fails to provide a purchaser to whom a unit is conveyed with a current public offering statement, the purchaser is entitled to actual damages, rescission or other relief, but if the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to rescission.

(Added to NRS by 1991, 574; A 1993, 2376; 2003, 2247)

#### **NRS 116.4109 Resales of units.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The unit's owner or his or her authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his or her

authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

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

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

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

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

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

(Added to NRS by 1991, 575; A 1993, 2376; 1997, 3124; 2001, 2494; 2003, 2247; 2005, 2614; 2009, 1102, 1617, 2810, 2819)

**WEST PUBLISHING CO.**

Associations ⇐ 1.

Condominium ⇐ 15.

Landlord and Tenant ⇐ 359.

WESTLAW Topic Nos. 41, 89A, 233.

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

C.J.S. Estates §§ 232-234.

C.J.S. Landlord and Tenant §§ 965, 1437.

**NRS 116.41095 Required form of information statement.** The information statement required by NRS 116.4103 and 116.4109 must be in substantially the following form:

**BEFORE YOU PURCHASE PROPERTY IN A  
COMMON-INTEREST COMMUNITY  
DID YOU KNOW . . .**

**1. YOU GENERALLY HAVE 5 DAYS TO CANCEL THE PURCHASE AGREEMENT?**  
When you enter into a purchase agreement to buy a home or unit in a common-interest community, in most cases you should receive either a public offering statement, if you are the original purchaser of the home or unit, or a resale package, if you are not the original purchaser. The law generally provides for a 5-day period in which you have the right to cancel the purchase agreement. The 5-day period begins on different starting dates, depending on whether you receive a public offering statement or a resale package. Upon receiving a public offering statement or a resale package, you should make sure you are informed of the deadline for exercising your right to cancel. In order to exercise your right to cancel, the law generally requires that you hand deliver the notice of cancellation to the seller within the 5-day period, or mail the notice of cancellation to the seller by prepaid United States mail within the 5-day

period. For more information regarding your right to cancel, see Nevada Revised Statutes 116.4108, if you received a public offering statement, or Nevada Revised Statutes 116.4109, if you received a resale package.

**2. YOU ARE AGREEING TO RESTRICTIONS ON HOW YOU CAN USE YOUR PROPERTY?**

These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions. The CC&Rs become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you. The CC&Rs, together with other "governing documents" (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property. By purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the CC&Rs, and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you. Certain provisions in the CC&Rs and other governing documents may be superseded by contrary provisions of chapter 116 of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the Internet address <http://www.leg.state.nv.us/nrs/>.

**3. YOU WILL HAVE TO PAY OWNERS' ASSESSMENTS FOR AS LONG AS YOU OWN YOUR PROPERTY?**

As an owner in a common-interest community, you are responsible for paying your share of expenses relating to the common elements, such as landscaping, shared amenities and the operation of any homeowners' association. The obligation to pay these assessments binds you and every future owner of the property. Owners' fees are usually assessed by the homeowners' association and due monthly. You have to pay dues whether or not you agree with the way the association is managing the property or spending the assessments. The executive board of the association may have the power to change and increase the amount of the assessment and to levy special assessments against your property to meet extraordinary expenses. In some communities, major components of the common elements of the community such as roofs and private roads must be maintained and replaced by the association. If the association is not well managed or fails to provide adequate funding for reserves to repair, replace and restore common elements, you may be required to pay large, special assessments to accomplish these tasks.

**4. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU COULD LOSE YOUR HOME?**

If you do not pay these assessments when due, the association usually has the power to collect them by selling your property in a nonjudicial foreclosure sale. If fees become delinquent, you may also be required to pay penalties and the association's costs and attorney's fees to become current. If you dispute the obligation or its amount, your only remedy to avoid the loss of your home may be to file a lawsuit and ask a court to intervene in the dispute.

**5. YOU MAY BECOME A MEMBER OF A HOMEOWNERS' ASSOCIATION THAT HAS THE POWER TO AFFECT HOW YOU USE AND ENJOY YOUR PROPERTY?**

Many common-interest communities have a homeowners' association. In a new development, the association will usually be controlled by the developer until a certain number of units have been sold. After the period of developer control, the association may be controlled by property owners like yourself who are elected by homeowners to sit on an executive board and other boards and committees formed by the association. The association, and its executive board, are responsible for assessing homeowners for the cost of operating the association and the common or shared elements of the community and for the day to day operation and management of the community. Because homeowners sitting on the executive board and other boards and committees of the association may not have the experience or professional background required to understand and carry out the responsibilities of the association properly, the association may hire professional community managers to carry out these responsibilities.

Homeowners' associations operate on democratic principles. Some decisions require all homeowners to vote, some decisions are made by the executive board or other boards or committees established by the association or governing documents. Although the actions of the association and its executive board are governed by state laws, the CC&Rs and other documents that govern the common-interest community, decisions made by these persons will affect your use and enjoyment of your property, your lifestyle and freedom of choice, and your cost of living in the community. You may not agree with decisions made by the association or its governing bodies even though the decisions are ones which the association is authorized to make. Decisions may be made by a few persons on the executive board or governing bodies that do not necessarily reflect the view of the majority of homeowners in the community. If you do not agree with decisions made by the association, its executive board or other governing bodies, your remedy is typically to attempt to use the democratic processes of the association to seek the election of members of the executive board or other governing bodies that are more responsive to your needs. If you have a dispute with the association, its executive board or other governing bodies, you may be able to resolve the dispute through the complaint, investigation and intervention process administered by the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, the Nevada Real Estate Division and the Commission for Common-Interest Communities and Condominium Hotels. However, to resolve some disputes, you may have to mediate or arbitrate the dispute and, if mediation or arbitration is unsuccessful, you may have to file a lawsuit and ask a court to resolve the dispute. In addition to your personal cost in mediation or arbitration, or to prosecute a lawsuit, you may be responsible for paying your share of the association's cost in defending against your claim.

**6. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE PURCHASERS OF YOUR PROPERTY WITH INFORMATION ABOUT LIVING IN YOUR COMMON-INTEREST COMMUNITY?**

The law requires you to provide a prospective purchaser of your property with a copy of the community's governing documents, including the CC&Rs, association bylaws, and rules and regulations, as well as a copy of this document. You are also required to provide a copy of the association's current year-to-date financial statement, including, without limitation, the most recent audited or reviewed financial statement, a copy of the association's operating budget and information regarding the amount of the monthly assessment for common expenses, including the amount set aside as reserves for the repair, replacement and restoration of common elements. You are also required to inform prospective purchasers of any outstanding judgments or lawsuits pending against the association of which you are aware. For more information regarding these requirements, see Nevada Revised Statutes 116.4109.

**7. YOU HAVE CERTAIN RIGHTS REGARDING OWNERSHIP IN A COMMON-INTEREST COMMUNITY THAT ARE GUARANTEED YOU BY THE STATE?**

Pursuant to provisions of chapter 116 of Nevada Revised Statutes, you have the right:

- (a) To be notified of all meetings of the association and its executive board, except in cases of emergency.
- (b) To attend and speak at all meetings of the association and its executive board, except in some cases where the executive board is authorized to meet in closed, executive session.
- (c) To request a special meeting of the association upon petition of at least 10 percent of the homeowners.
- (d) To inspect, examine, photocopy and audit financial and other records of the association.
- (e) To be notified of all changes in the community's rules and regulations and other actions by the association or board that affect you.

**8. QUESTIONS?**

Although they may be voluminous, you should take the time to read and understand the documents that will control your ownership of a property in a common-interest community. You may wish to ask your real estate professional, lawyer or other person with experience to explain

anything you do not understand. You may also request assistance from the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, Nevada Real Estate Division, at (telephone number).

Buyer or prospective buyer's initials: \_\_\_\_\_  
Date: \_\_\_\_\_

(Added to NRS by 1997, 3114; A 1999, 3013; 2003, 2248; 2005, 2616; 2007, 2269; 2009, 1738)

**WEST PUBLISHING CO.**

Associations ⇨ 1.  
Condominium ⇨ 4, 15.  
Landlord and Tenant ⇨ 352, 359.  
WESTLAW Topic Nos. 41, 89A, 233.  
C.J.S. Associations §§ 1-5, 8-11, 82-84.  
C.J.S. Estates §§ 198, 207-209, 232-234, 244.  
C.J.S. Landlord and Tenant §§ 965, 1437.

**NRS 116.411 Escrow of deposits; furnishing of bond in lieu of deposit.**

1. Except as otherwise provided in subsections 2, 3 and 4, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 must be placed in escrow and held either in this State or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until:
  - (a) Delivered to the declarant at closing;
  - (b) Delivered to the declarant because of the purchaser's default under a contract to purchase the unit;
  - (c) Released to the declarant for an additional item, improvement, optional item or alteration, but the amount so released:
    - (1) Must not exceed the lesser of the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for the purpose; and
    - (2) Must be credited upon the purchase price; or
  - (d) Refunded to the purchaser.
2. A deposit or advance payment made for an additional item, improvement, optional item or alteration may be deposited in escrow or delivered directly to the declarant, as the parties may contract.
3. In lieu of placing a deposit in escrow pursuant to subsection 1, the declarant may furnish a bond executed by the declarant as principal and by a corporation qualified under the laws of this State as surety, payable to the State of Nevada, and conditioned upon the performance of the declarant's duties concerning the purchase or reservation of a unit. Each bond must be in a principal sum equal to the amount of the deposit. The bond must be held until:
  - (a) Delivered to the declarant at closing;
  - (b) Delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or
  - (c) Released to the declarant for an additional item, improvement, optional item or alteration, but the amount so released must not exceed the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for that purpose, whichever is less.
4. Pursuant to subsection 1, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 is deemed to be placed in escrow and held in this State when the escrow holder has:

- (a) The legal right to conduct business in this State;
  - (b) A registered agent in this State pursuant to subsection 1 of NRS 14.020; and
  - (c) Consented to the jurisdiction of the courts of this State by:
    - (1) Maintaining a physical presence in this State; or
    - (2) Executing a written instrument containing such consent, with respect to any suit or claim, whether brought by the declarant or purchaser, relating to or arising in connection with such sale or the escrow agreement related thereto.
- (Added to NRS by 1991, 575; A 1993, 2377; 1995, 1420; 2009, 2931)

**NRS 116.4111 Release of liens.**

1. In the case of a sale of a unit where delivery of a public offering statement is required pursuant to subsection 3 of NRS 116.4102, a seller:

(a) Before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on real estate that a declarant has the right to withdraw from the common-interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

- (1) In a condominium, that unit and its interest in the common elements; and
- (2) In a cooperative or planned community, that unit and any limited common elements assigned thereto; or

(b) Shall provide a surety bond against the lien as provided for liens on real estate in NRS 108.2413 to 108.2425, inclusive.

2. Before conveying real estate to the association, the declarant shall have that real estate released from:

(a) All liens the foreclosure of which would deprive units' owners of any right of access to or easement of support of their units; and

(b) All other liens on that real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

(Added to NRS by 1991, 575; A 2003, 2618)

**NRS 116.4112 Converted buildings.**

1. A declarant of a common-interest community containing converted buildings, and any dealer who intends to offer units in such a common-interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a converted building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession. If, during the 6-month period before the recording of a declaration, a majority of the tenants or any subtenants in possession of any portion of the property described in such declaration has been required to vacate for reasons other than nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, a rebuttable presumption is created that the owner of such property intended to offer the vacated premises as units in a common-interest community at all times during that 6-month period.

2. For 60 days after delivery or mailing of the notice described in subsection 1, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that 60-day period, the offeror may not offer to dispose of an interest in that unit during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a converted building if that unit will be

restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

3. If a seller, in violation of subsection 2, conveys a unit to a purchaser for value who has no knowledge of the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes any right a tenant may have under subsection 2 to purchase that unit if the deed states that the seller has complied with subsection 2, but the conveyance does not affect the right of a tenant to recover damages from the seller for a violation of subsection 2.

4. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of NRS 40.251 and 40.280, the notice also constitutes a notice to vacate specified by those sections.

5. This section does not permit termination of a lease by a declarant in violation of its terms. (Added to NRS by 1991, 576; A 2007, 1280)

#### NEVADA CASES.

**“Inference” and “rebuttable presumption” contrasted.** An “inference” and a “rebuttable presumption” are not the same things. A “rebuttable presumption” is a rule of law by which the finding of a basic fact gives rise to a presumed fact’s existence, unless the presumption is rebutted. In contrast, an “inference” is a logical and reasonable conclusion of a fact not presented by direct evidence but which, by process of logic and reason, a trier of fact may conclude exists from the established facts. Although an inference may give rise to a rebuttable presumption in appropriate cases, an inference simply allows the trier of fact to determine, based on other evidence, that a fact exists. An inference is permissible, not required, and it does not shift the burden of proof. *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006)

#### NRS 116.4113 Express warranties of quality.

1. Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any affirmation of fact or promise that relates to the unit, its use or rights appurtenant thereto, improvements to the common-interest community that would directly benefit the unit or the right to use or have the benefit of facilities not located in the common-interest community creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or description of the physical characteristics of the common-interest community, including plans and specifications of or for improvements, creates an express warranty that the common-interest community will reasonably conform to the model or description;

(c) Any description of the quantity or extent of the real estate comprising the common-interest community, including plats or surveys, creates an express warranty that the common-interest community will conform to the description, subject to customary tolerances; and

(d) A provision that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful.

2. Neither formal words, such as “warranty” or “guarantee,” nor a specific intention to make a warranty is necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

3. Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

4. A warranty created by this section may be excluded or modified by agreement of the parties.

(Added to NRS by 1991, 577; A 1993, 2770)

#### NRS 116.4114 Implied warranties of quality.

1. A declarant and any dealer warrant that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

2. A declarant and any dealer impliedly warrant that a unit and the common elements in the common-interest community are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him or her, or made by any person before the creation of the common-interest community, will be:

- (a) Free from defective materials; and
- (b) Constructed in accordance with applicable law, according to sound standards of engineering and construction, and in a workmanlike manner.

3. In addition, a declarant and any dealer warrant to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

4. Warranties imposed by this section may be excluded or modified as specified in NRS 116.4115.

5. For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

6. Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

(Added to NRS by 1991, 577)

**NRS 116.4115 Exclusion or modification of warranties of quality.**

1. Except as limited by subsection 2 with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

- (a) May be excluded or modified by agreement of the parties; and
- (b) Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

2. With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

(Added to NRS by 1991, 578)

**NRS 116.4116 Statute of limitations for warranties.**

1. A judicial proceeding for breach of any obligation arising under NRS 116.4113 or 116.4114 must be commenced within 6 years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than 2 years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

2. Subject to subsection 3, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the time the common element is completed or, if later, as to:

(1) A common element that may be added to the common-interest community or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; or

(2) A common element within any other portion of the common-interest community, at the time the first unit is conveyed to a purchaser in good faith.

3. If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the common-interest community, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(Added to NRS by 1991, 578)

**NRS 116.4117 Effect of violations on rights of action; civil action for damages for failure or refusal to comply with provisions of chapter or governing documents; attorney's fees.**

1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

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

(a) By the association against:

- (1) A declarant;
- (2) A community manager; or
- (3) A unit's owner.

(b) By a unit's owner against:

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

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

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

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

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

(Added to NRS by 1991, 578; A 1993, 2377; 1997, 3125; 2009, 2812, 2898)

**NEVADA CASES.**

**Assessment of attorney's fees against member of homeowner's association was error.** In an action brought against the members of a homeowner's association to enjoin the members from acting as directors of the association, where district court indicated that it would not assess attorney's fees against individual members of the association if the members took no further action in the case, district court erred in assessing an attorney's fees against a member of the association pursuant to NRS 116.4117, even though the member subsequently filed an answer in the case, because the association forced the member to act contrary to district court's instructions to desist from taking further action in the case by serving the member with notice of intent to default and the member acted properly by filing an answer. *Eversole v. Sunrise Villas VIII Homeowners Ass'n*, 112 Nev. 1255, 925 P.2d 505 (1996)

**NRS 116.4118 Labeling of promotional material.** No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT."

(Added to NRS by 1991, 579)

**NRS 116.4119 Declarant's obligation to complete and restore.**

1. Except for improvements labeled "NEED NOT BE BUILT," the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to NRS 116.2109, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

2. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common-interest community, of any portion of the

common-interest community affected by the exercise of rights reserved pursuant to or created by NRS 116.211 to 116.2113, inclusive, 116.2115 or 116.2116.

(Added to NRS by 1991, 579)

**NRS 116.412 Substantial completion of units.** In the case of a sale of a unit in which delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed, until the declaration is recorded and the unit is substantially completed, in accordance with local ordinances.

(Added to NRS by 1991, 579; A 1993, 2377)

## ADMINISTRATION AND ENFORCEMENT OF CHAPTER

### ADMINISTRATIVE REGULATIONS.

Administration and enforcement, NAC 116.500-116.635  
Fees of Real Estate Division, NAC 116.505, 116.515

## GENERAL PROVISIONS

### REVISER'S NOTE.

Ch. 385, Stats. 2003, which created the Commission for Common-Interest Communities (now the Commission for Common-Interest Communities and Condominium Hotels) and which transferred certain responsibilities and duties to that Commission, contains the following provisions not included in NRS:

"Sec. 89. 1. Notwithstanding the provisions of this act and except as otherwise provided in subsection 2, during the period from October 1, 2003, until January 1, 2004, the Real Estate Commission, the Real Estate Administrator, the Ombudsman for Owners in Common-Interest Communities and the Real Estate Division of the Department of Business and Industry shall continue to exercise all the powers and perform all the duties that, before October 1, 2003, were assigned to them pursuant to the provisions of chapter 116 of NRS.

2. During the period described in subsection 1, the Commission for Common-Interest Communities [now the Commission for Common-Interest Communities and Condominium Hotels], the Real Estate Administrator, the Ombudsman for Owners in Common-Interest Communities [now the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels] and the Real Estate Division of the Department of Business and Industry may exercise any power and perform any duty assigned to them pursuant to the provisions of chapter 116 of NRS, as amended by this act, if the exercise of the power or the performance of the duty is necessary as an organizational, preparatory or preliminary measure to prepare them to carry out those provisions.

\* \* \*

Sec. 91. 1. Any administrative regulations adopted by an officer or an agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency remain in force until amended by the officer or agency to which the responsibility for the adoption of the regulations has been transferred.

2. Any contracts or other agreements entered into by an officer or agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency are binding upon the officer or agency to which the responsibility for the administration of the provisions of the contract or other agreement has been transferred. Such contracts and other agreements may be enforced by the officer or agency to which the responsibility for the enforcement of the provisions of the contract or other agreement has been transferred.

3. Any action taken by an officer or agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency remains in effect as if taken by the officer or agency to which the responsibility for the enforcement of such actions has been transferred."

**NRS 116.600 Commission for Common-Interest Communities and Condominium Hotels: Creation; appointment and qualifications of members; terms of office; compensation.**

1. The Commission for Common-Interest Communities and Condominium Hotels is hereby created.

2. The Commission consists of seven members appointed by the Governor. The Governor shall appoint to the Commission:

(a) One member who is a unit's owner residing in this State and who has served as a member of an executive board in this State;

(b) Two members who are units' owners residing in this State but who are not required to have served as members of an executive board;

(c) One member who is in the business of developing common-interest communities in this State;

(d) One member who holds a certificate;

(e) One member who is a certified public accountant licensed to practice in this State pursuant to the provisions of chapter 628 of NRS; and

(f) One member who is an attorney licensed to practice in this State.

3. Each member of the Commission must be a resident of this State. At least four members of the Commission must be residents of a county whose population is 400,000 or more.

4. Each member of the Commission must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of the member's appointment.

5. After the initial terms, each member of the Commission serves a term of 3 years. Each member may serve not more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.

6. While engaged in the business of the Commission, each member is entitled to receive:

(a) A salary of not more than \$80 per day, as established by the Commission; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

(Added to NRS by 2003, 2209; A 2005, 2619; 2007, 2272; 2009, 2899)

#### **NRS CROSS REFERENCES.**

Residency requirements, NRS 232A.020

Vacancies, NRS 232A.020

#### **REVISER'S NOTES.**

Ch. 385, Stats. 2003, the source of this section, contains the following provision not included in NRS:

"As soon as practicable after July 1, 2003, the Governor shall appoint to the Commission for Common-Interest Communities [now the Commission for Common-Interest Communities and Condominium Hotels]:

1. One member whose term begins on October 1, 2003, and expires on October 1, 2004.

2. Two members whose terms begin on October 1, 2003, and expire on October 1, 2005.

3. Two members whose terms begin on October 1, 2003, and expire on October 1, 2006."

Ch. 491, Stats. 2009, which amended this section, contains the following provision not included in NRS:

"The Governor shall appoint to the Commission for Common-Interest Communities and Condominium Hotels pursuant to NRS 116.600, as amended by section 30 of this act:

1. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2010; and

2. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2011."

#### **WEST PUBLISHING CO.**

States ⇐ 45-51, 56.

WESTLAW Topic No. 360.

C.J.S. States §§ 61, 79-80, 82-85, 87, 91-92, 102-108, 123, 136.

### **NRS 116.605 Commission for Common-Interest Communities and Condominium Hotels: Courses of instruction for members.**

1. The Division shall employ one or more training officers who are qualified by training and experience to provide to each member of the Commission courses of instruction concerning rules

of procedure and substantive law appropriate for members of the Commission. Such courses of instruction may be made available to the staff of the Division as well as to community managers.

2. The training officer shall:

(a) Prepare and make available a manual containing the policies and procedures to be followed by executive boards and community managers; and

(b) Perform any other duties as directed by the Division.

3. Each member of the Commission must attend the courses of instruction described in subsection 1 not later than 6 months after the date that the member is first appointed to the Commission.

(Added to NRS by 2003, 2209; A 2009, 2899)

**REVISER'S NOTE.**

Ch. 491, Stats. 2009, which amended this section, contains the following provision not included in NRS:

"The manual described in subsection 2 of NRS 116.605, as amended by section 31 of this act, must be prepared and made available by October 1, 2010."

**WEST PUBLISHING CO.**

States ⇌ 71.

WESTLAW Topic No. 360.

C.J.S. States § 123.

**NRS 116.610 Commission for Common-Interest Communities and Condominium Hotels: Election of officers; meetings; quorum.**

1. At the first meeting of each fiscal year, the Commission shall elect from its members a Chair, a Vice Chair and a Secretary.

2. The Commission shall meet at least once each calendar quarter and at other times on the call of the Chair or a majority of its members.

3. A majority of the members of the Commission constitutes a quorum for the transaction of all business.

(Added to NRS 2003, 2210)

**NRS CROSS REFERENCES.**

Meetings, NRS ch. 241

**WEST PUBLISHING CO.**

States ⇌ 46, 71.

WESTLAW Topic No. 360.

C.J.S. States §§ 61, 80, 84, 102, 123.

**NRS 116.615 Administration of chapter; regulations of Commission and Real Estate Administrator; delegation of authority; publications.**

1. The provisions of this chapter must be administered by the Division, subject to the administrative supervision of the Director of the Department of Business and Industry.

2. The Commission and the Division may do all things necessary and convenient to carry out the provisions of this chapter, including, without limitation, prescribing such forms and adopting such procedures as are necessary to carry out the provisions of this chapter.

3. The Commission, or the Administrator with the approval of the Commission, may adopt such regulations as are necessary to carry out the provisions of this chapter.

4. The Commission may by regulation delegate any authority conferred upon it by the provisions of this chapter to the Administrator to be exercised pursuant to the regulations adopted by the Commission.

5. When regulations are proposed by the Administrator, in addition to other notices required by law, the Administrator shall provide copies of the proposed regulations to the Commission not later than 30 days before the next meeting of the Commission. The Commission shall approve, amend or disapprove any proposed regulations at that meeting.

6. All regulations adopted by the Commission, or adopted by the Administrator with the approval of the Commission, must be published by the Division, posted on its website and offered for sale at a reasonable fee.

(Added to NRS by 2003, 2210; A 2005, 2619)

**WEST PUBLISHING CO.**

Associations ⇌ 1.

Condominium ⇌ 1.

Landlord and Tenant ⇌ 350.

WESTLAW Topic Nos. 41, 89A, 233.

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

C.J.S. Estates §§ 193-195, 198-203.

C.J.S. Landlord and Tenant § 1437.

**NRS 116.620 Employment of personnel by Real Estate Division; duties of Attorney General; legal opinions by Attorney General.**

1. Except as otherwise provided in this section and within the limits of legislative appropriations, the Division may employ experts, attorneys, investigators, consultants and other personnel as are necessary to carry out the provisions of this chapter.

2. The Attorney General shall act as the attorney for the Division in all actions and proceedings brought against or by the Division pursuant to the provisions of this chapter.

3. The Attorney General shall render to the Commission and the Division opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof, that may be submitted to the Attorney General by the Commission or the Division.

(Added to NRS by 2003, 2210)

**WEST PUBLISHING CO.**

States ⇌ 50, 65.

WESTLAW Topic No. 360.

C.J.S. States §§ 85, 120, 123.

**NRS 116.623 Petitions for declaratory orders or advisory opinions: Regulations; scope; contents of petition; filing; period for response.**

1. The Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of:

(a) Any provision of this chapter or chapter 116A or 116B of NRS;

(b) Any regulation adopted by the Commission, the Administrator or the Division; or

(c) Any decision of the Commission, the Administrator or the Division or any of its sections.

2. Declaratory orders disposing of petitions filed pursuant to this section have the same status as agency decisions.

3. A petition filed pursuant to this section must:

(a) Set forth the name and address of the petitioner; and

(b) Contain a clear and concise statement of the issues to be decided by the Division in its declaratory order or advisory opinion.

4. A petition filed pursuant to this section is submitted for consideration by the Division when it is filed with the Administrator.

5. The Division shall:

(a) Respond to a petition filed pursuant to this section within 60 days after the date on which the petition is submitted for consideration; and

(b) Upon issuing its declaratory order or advisory opinion, mail a copy of the declaratory order or advisory opinion to the petitioner.

(Added to NRS by 2009, 2876)

**NRS 116.625 Ombudsman for Owners in Common-Interest Communities and Condominium Hotels: Creation of office; appointment; qualifications; powers and duties.**

1. The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels is hereby created within the Division.

2. The Administrator shall appoint the Ombudsman. The Ombudsman is in the unclassified service of the State.

3. The Ombudsman must be qualified by training and experience to perform the duties and functions of office.

4. In addition to any other duties set forth in this chapter, the Ombudsman shall:

(a) Assist in processing claims submitted to mediation or arbitration pursuant to NRS 38.300 to 38.360, inclusive;

(b) Assist owners in common-interest communities and condominium hotels to understand their rights and responsibilities as set forth in this chapter and chapter 116B of NRS and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities;

(c) Assist members of executive boards and officers of associations to carry out their duties;

(d) When appropriate, investigate disputes involving the provisions of this chapter or chapter 116B of NRS or the governing documents of an association and assist in resolving such disputes; and

(e) Compile and maintain a registration of each association organized within the State which includes, without limitation, the following information:

(1) The name, address and telephone number of the association;

(2) The name of each community manager for the common-interest community or the association of a condominium hotel and the name of any other person who is authorized to manage the property at the site of the common-interest community or condominium hotel;

(3) The names, mailing addresses and telephone numbers of the members of the executive board of the association;

(4) The name of the declarant;

(5) The number of units in the common-interest community or condominium hotel;

(6) The total annual assessment made by the association;

(7) The number of foreclosures which were completed on units within the common-interest community or condominium hotel and which were based on liens for the failure of the unit's owner to pay any assessments levied against the unit or any fines imposed against the unit's owner; and

(8) Whether the study of the reserves of the association has been conducted pursuant to NRS 116.31152 or 116B.605 and, if so, the date on which it was completed.

(Added to NRS by 1997, 3112; A 1999, 2997; 2003, 1302, 2222; 2007, 2273)

**ADMINISTRATIVE REGULATIONS.**

"Annual assessment" interpreted, NAC 116.525

**NRS 116.630 Account for Common-Interest Communities and Condominium Hotels: Creation; administration; sources; uses.**

1. There is hereby created the Account for Common-Interest Communities and Condominium Hotels in the State General Fund. The Account must be administered by the Administrator.

2. Except as otherwise provided in subsection 3, all money received by the Commission, a hearing panel or the Division pursuant to this chapter or chapter 116B of NRS, including, without limitation, the fees collected pursuant to NRS 116.31155 and 116B.620, must be deposited into the Account.

3. If the Commission imposes a fine or penalty, the Commission shall deposit the money collected from the imposition of the fine or penalty with the State Treasurer for credit to the State General Fund. If the money is so deposited, the Commission may present a claim to the State

Board of Examiners for recommendation to the Interim Finance Committee if money is required to pay attorney's fees or the costs of an investigation, or both.

4. The interest and income earned on the money in the Account, after deducting any applicable charges, must be credited to the Account.

5. The money in the Account must be used solely to defray:

(a) The costs and expenses of the Commission and the Office of the Ombudsman; and

(b) If authorized by the Commission or any regulations adopted by the Commission, the costs and expenses of subsidizing proceedings for mediation and arbitration conducted pursuant to NRS 38.300 to 38.360, inclusive.

(Added to NRS by 1997, 3113; A 1999, 8, 2998; 2003, 2223; 2007, 2274)

**NRS 116.635 Immunity.** The Commission and its members, each hearing panel and its members, the Administrator, the Ombudsman, the Division, and the experts, attorneys, investigators, consultants and other personnel of the Commission and the Division are immune from any civil liability for any decision or action taken in good faith and without malicious intent in carrying out the provisions of this chapter.

(Added to NRS by 2003, 2211)

**WEST PUBLISHING CO.**

States ⇌ 78, 79.

WESTLAW Topic No. 360.

C.J.S. States §§ 125-126, 202.

**NRS 116.640 Service of notice and other information upon Commission.** Any notice or other information that is required to be served upon the Commission pursuant to the provisions of this chapter may be delivered to the principal office of the Division.

(Added to NRS by 2003, 2210)

**WEST PUBLISHING CO.**

States ⇌ 65.

WESTLAW Topic No. 360.

C.J.C. States § 120.

**NRS 116.643 Authority for Commission or Real Estate Administrator to adopt regulations requiring additional disclosures for sale of unit.** The Commission, or the Administrator with the approval of the Commission, may adopt regulations to require any additional disclosures in the case of a sale of a unit as it deems necessary.

(Added to NRS by 2009, 2908)

**NRS 116.645 Authority for Real Estate Division to conduct business electronically; regulations; fees; use of unsworn declaration; exclusions.**

1. The Administrator may adopt regulations which establish procedures for the Division to conduct business electronically pursuant to title 59 of NRS with persons who are regulated pursuant to this chapter and with any other persons with whom the Division conducts business. The regulations may include, without limitation, the establishment of fees to pay the costs of conducting business electronically with the Division.

2. In addition to the process authorized by NRS 719.280, if the Division is conducting business electronically with a person and a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the Division may allow the person to substitute a declaration that complies with the provisions of NRS 53.045 to satisfy the legal requirement.

3. The Division may refuse to conduct business electronically with a person who has failed to pay money which the person owes to the Division or the Commission.

(Added to NRS by 2003, 1301)

**WEST PUBLISHING CO.**

Brokers ⇌ 3.  
 WESTLAW Topic No. 65.  
 C.J.S. Brokers §§ 14-24.

**GENERAL POWERS AND DUTIES OF COMMISSION****NRS 116.660 Issuance and enforcement of subpoenas.**

1. To carry out the purposes of this chapter, the Commission, or any member thereof acting on behalf of the Commission or acting on behalf of a hearing panel, may issue subpoenas to compel the attendance of witnesses and the production of books, records and other papers.

2. If any person fails to comply with a subpoena issued by the Commission or any member thereof pursuant to this section within 20 days after the date of service of the subpoena, the Commission may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 20 days after the date of service of the order, and show cause why the person has not complied with the subpoena. A certified copy must be served upon the person subpoenaed.

4. If it appears to the court that the subpoena was regularly issued by the Commission or any member thereof pursuant to this section, the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order the person shall be dealt with as for contempt of court.

(Added to NRS by 1999, 2996; A 2003, 2222)—(Substituted in revision for NRS 116.11145)

**NRS 116.662 Witnesses: Payment of fees and mileage.**

1. Each witness who is subpoenaed and appears at a hearing is entitled to receive for his or her attendance the same fees and mileage allowed by law to a witness in a civil case.

2. The fees and mileage for the witness:

(a) Must be paid by the party at whose request the witness is subpoenaed; or

(b) If the appearance of the witness is not requested by any party but the witness is subpoenaed at the request of the Commission or a hearing panel, must be paid by the Division.

(Added to NRS by 2005, 2586)

**WEST PUBLISHING CO.**

Associations ⇌ 1.  
 Condominium ⇌ 1.  
 Landlord and Tenant ⇌ 350.  
 WESTLAW Topic Nos. 41, 89A, 233.  
 C.J.S. Associations §§ 1-5, 8-11, 82-84.  
 C.J.S. Estates §§ 193-195, 198-203.  
 C.J.S. Landlord and Tenant § 1437.

**NRS 116.665 Conducting hearings and other proceedings; collection of information; development and promotion of educational guidelines; accreditation of programs of education and research.**

1. The Commission shall conduct such hearings and other proceedings as are required by the provisions of this chapter.

2. The Commission shall collect and maintain or cause to be collected and maintained accurate information relating to:

(a) The number and kind of common-interest communities in this State;

(b) The effect of the provisions of this chapter and any regulations adopted pursuant thereto on the development and construction of common-interest communities, the residential lending market for units within common-interest communities and the operation and management of common-interest communities;