



State of Nevada
Department of Business and Industry
Real Estate Division
Office of the Ombudsman for Owners in
Common-Interest Communities and
Condominium Hotels

2011 Ombudsman Legislative Summary

PREFACE

This digest highlights select changes to the Nevada Revised Statutes, Chapter 116, from the 2011 Legislative Session affecting homeowner associations, organized by subject. Most of these new statutes will be incorporated into NRS 116, NRS 116A, NAC 116 and related laws. It is not a complete listing of all HOA-related changes, but highlights the most prominent changes affecting board members, homeowners and tenants.

To see all of the bills directly relating to HOAs in their entirety, visit the Nevada Legislature Web site's Session Bill Information page: <http://leg.state.nv.us/76th2011/Reports/>. The pertinent bills are as follows:

SB 30 (EFTs, financial records) – signed 6/13/11	AB 246 (elections) – signed 5/29/11
SB 89 (HOA audits) – signed 6/2/11	AB 271 (transfer fees) – signed 5/20/11
SB 204 (rewrites NRS 116) – signed 6/15/11	AB 317 (ADR) – signed 5/29/11
SB 222 (rental restrictions) – signed 6/14/11	AB 388 (foreclosure) – signed 6/10/11
SB 403 (resale disclosure) – signed 6/13/11	

BOARD MEMBERS

SB 204 allows small CICs (12 or fewer residences) not to have an executive board. It also allows associations be organized under any form authorized by law. (NRS 116.3101) (January 1, 2012)

SB 204 clarifies the requirement of associations to adopt bylaws and budgets (changing “may” to “shall”). Conversely, it states associations are not obligated to enforce governing documents if under the circumstances the association’s legal standing doesn’t justify it, the provision contradicts law, the violation is too minor to be objectionable or to justify the enforcement expense, or it is not in the association’s best interest to enforce. This includes the power to compromise on unpaid assessments. An association may not be arbitrary or capricious, but may rule differently in different circumstances. (NRS 116.3102) (January 1, 2012)

This is not a legal document or legal advice. It is a summary of select new laws from the 2011 Nevada Legislative session pertaining to common-interest communities. It is not a complete listing. For full details on all bills, visit <http://leg.state.nv.us/76th2011/Reports/>. 7/26/11

SB 204 rewords fiduciary duty: 1. to mention officers throughout, 2. to change the standard to directors and officers of a “nonprofit corporation” (previously corporation), and 3. to specify that corporate conflict-of-interest rules apply. Also, boards may appoint directors to fill vacancies only through the unexpired portion of the term or until the next election, whichever is first. Appointees may be re-elected only for the remainder of the unexpired term thereafter. Finally, it specifies directors shall adopt budgets. (NRS 116.3103) (January 1, 2012)

SB 204 amends insurance requirements to qualify requirements “subject to reasonable deductibles.” Liability is now clarified to mean “commercial general liability” insurance. Finally, associations must now obtain crime insurance for its directors, officers and others. (NRS 116.3113) (January 1, 2012)

SB 204 Unless prohibited by the governing documents, an association may vote without a meeting provided: 1. Unit owners are notified; 2. Sent a paper or electronic ballot; 3. The ballot sets forth each proposed action and allows votes for and against; and 4 the association states the requirements for the vote to pass (quorum, minimum vote, ballot deadline and rules for owners to share information relating to the vote). Unless governing documents provide otherwise, a ballot is not revoked after delivery by death, disability or the voter’s attempt at revocation. Approval by ballot requires a quorum of ballots to be returned. (NRS 116.311) (January 1, 2012)

SB 204 Provisions stating directors are not personally liable to victims of crime in the community and that punitive damage may not be against directors, officers or the association have been moved to NRS 116.4117. (NRS 116.31036) (January 1, 2012)

SB 204 amends the liability protection provided to association directors. The association must indemnify a director for his official actions unless it is found that he acted with "willful or wanton misfeasance or with gross negligence." (NRS 116.31036) (January 1, 2012)

UNIT OWNERS AND OTHER RESIDENTS

SB 204 allows a person with a stake in a common-interest community in which substantially all of the units have become uninhabitable to seek termination of the community without having to provide notice to unit owners when it is unlikely to be effective. It also enables a court to order whatever remedies it deems in the best interest of the stakeholders. (NRS 116.2118) (January 1, 2012)

SB 204 amends the “equal space” provisions of NRS 116.31175(6) and (7). It drops “without charge” and adds “under the same terms and conditions.” It also explicitly includes closed-circuit television, as well as Web sites, newsletters and bulletin boards. (NRS 116.31175) (January 1, 2012)

AB 271 restricts private transfers fees. As of the date of enactment, private transfers fees are prohibited (Charges payable to an association are exempt.). Preexisting transfer fees must be recorded with the county before July 31, 2012 to be enforceable. Payees must provide information on the fee upon request. (NRS 111) (May 21, 2011)

AB 388 The notice of foreclosure required to be provided by a trustee has been revised to include information on the Nevada Foreclosure Mediation Program. (NRS 107.086) (July 1, 2011)

SB 222 In addition to abiding by their governing documents, associations may not require any information of a renter that is not required of an owner with the exception of a lease agreement, and may not charge a fee associated with the requirement. (NRS 116.335) (June 14, 2011)

SB 204 A unit owner is not liable solely for being a unit owner for any injury or damage related to the condition of the common elements. Such an action may be brought against the association. (NRS 116.3111) (January 1, 2012)

SB 204 requires unit owners and other security interests be noticed 30 days before the cancellation of an association insurance policy. (NRS 116.31133) (January 1, 2012)

SB 204 A court may appoint a receiver to collect rents or fees owed to a unit owner during a foreclosure or assessment collection action and may direct the receiver to pay the association for assessments. (NRS 116.3116) (January 1, 2012)

ELECTIONS

SB 204 The required percentage for a removal election to succeed is now 35 percent of the total number of voting members and a majority of votes cast. Also, the provisions for a removal election have been moved from NRS 116.3108 to NRS 116.31036. They have also been amended to require the removal election be held within 90 days of receipt of the petition. (NRS 116.31036) (January 1, 2012)

AB 246 A candidate who submits a nomination for director may request the association send a candidate information statement, or allow the candidate to campaign directly by providing a complete mailing list (names removed). The candidate must provide a written statement stating the request is for campaigning only and may not be used for any other purposes, or the request may be refused. The association may charge the regular records rates for this information, including \$5 for a compact disc. (NRS 116.31034) (July 1, 2011)

MEETINGS

SB 204 changes declaration amendment requirements. The default threshold is still a majority of allocated votes, but changes “or any larger majority” to “a different percentage” specified in the declaration, and affirms that if an amendment also requires another person’s approval, it must be obtained. Use restrictions on a unit may also not be amended without unanimous consent of those units affected and a majority of all units. If an amendment tightens restrictions on a unit, those restrictions may not be enforced against the current unit owner at time of passage. Declarants must consent to amendments of any unexpired special declarant’s rights. Finally, any consent requirement on the part of insurers or those with security interests is deemed granted if the party does not request in writing any notice of amendment, or if a written refusal is not received within 60 days of notice. (NRS 116.2117) (January 1, 2012)

SB 204 requires a process for unit owners to amend bylaws, and allows bylaws to address any “necessary or appropriate” matters, including ones that could be adopted as rules. (NRS 116.3106) (January 1, 2012)

SB 204 amends notice requirements. Unless an owner designates an address or email address in writing, an association may provide notices by hand delivery, U.S. mail or other delivery service, email or any other reasonable means. The ineffectiveness of a good-faith attempt at notice does not invalidate actions taken at a meeting. These provisions do not apply to notices regarding liens or foreclosure of a lien, or matters for which a specific notice requirement exists. (NRS 116.31083) (January 1, 2012)

SB 204 A unit owners meeting must be held at least annually at a time and place that the bylaws must specify. In addition, associations shall conduct special meetings if the president, majority of the board or specified percentage of unit owners request the secretary call such a meeting. (NRS 116.3108) (January 1, 2012)

SB 204 Quorum requirements have been amended for unit owner meetings. They may be met by attendance in person, by proxy, by absentee ballot, or any combination of the three adding up to 20 percent of the total number of voting members. This does not affect the total number of votes required to take action. For executive board meeting, a quorum is a majority of the total membership of the board at the time a vote is taken on a particular action. Unless the governing documents require a greater number, an act of the board requires a majority of those members present. Meetings must follow Robert’s Rules unless the bylaws or a resolution before the meeting provide otherwise. (NRS 116.3109) (January 1, 2012)

SB 204 allows unit owners to vote in person, by proxy or by absentee ballot, or by paper or electronic ballot for votes conducted without a meeting. The method of voting in person may be show of hands, voice vote, standing or any other means designated by the person presiding. Unless a greater number of votes is required by governing documents or NRS 116, a majority of votes cast determines an action. A unit owner may vote by absentee ballot by making the request at least three days before the meeting and absentee ballots must be counted. The association must be able to verify the ballot is valid. The bill also clarifies that proxies extend to recessed sessions. (NRS 116.311) (January 1, 2012)

RECORDS

SB 30 moves the contents of NRS 116.31177 to NRS 116.31175. It specifies that an association must provide upon request to a unit owner or the Ombudsman: 1. its current financial statement, 2. budget and 3. reserve study, among the items already found in NRS 116.31175. Records requests must be fulfilled within 14 days after receipt and the association may charge 25 cents per page for first 10 paper copies and 10 cents per page thereafter and may not charge for electronic delivery. **NOTE:** The same thing was enacted by SB 204, except that SB 204 changed the timeline to 21 days from 14 days. Since the effective dates are different, these changes will be in effect for 6 months before the others. (NRS 116.31175) (Effective July 1, 2011)

SB 403 amends the resale package requirements, stating the owner must provide the purchaser a statement from the association to include not just unpaid assessments, but all obligations including attorney fees, fines, penalties, etc. The statement must remain effective for at least 15 working days. If the association notes an error in the statement before a resale is completed, the association must deliver a corrected one to the owner and obtain written acknowledgement. Otherwise, the owner may rely upon the old one. (NRS 116.4109) (June 13, 2011)

SB 204 modifies the charges an association may impose for fulfilling a resale package request. The other documents (those that are not part of the certificate) must be provided in electronic format at no charge or, if the association is unable to do so, the association may charge as much as 25 cents per page for the first 10 pages and 10 cents per page thereafter. Also, the purchaser (previously the seller) is not liable for any assessments not set forth in these documents. (NRS 116.4109) (January 1, 2012)

SB 204 moves the contents of NRS 116.31177 to NRS 116.31175. It also extends the time limit to fulfill the financial record requests from 14 to 21 days and changes the fee schedule to 25 cents for the first 10 pages, and 10 cents per page thereafter with electronic requests provided at no charge. Finally, if the executive board fails to provide the request within the time limit, the executive board must pay a penalty of \$25 per day. (NRS 116.31175) (January 1, 2012)

GOVERNING DOCUMENTS

SB 204 redefines “common elements” to include any interests in real estate under the declaration for the benefit of members. (NRS 116.017) (January 1, 2012)

SB 204 states unit owners have a right to use common elements that are not limited common elements, subject to the governing documents. Previously, the law stated only that owners had an “easement” to use them. (NRS 116.2116) (January 1, 2012)

FISCAL MATTERS/ RESERVES

SB 30 allows associations to transfer funds electronically (without physical signatures) to pay registration fees or a federal obligation that is required to be sent electronically, if they exceed \$10,000. If associations use electronic transfers from any account, they must have a policy of internal controls to ensure proper authorization by the board as well as security. (NRS 116.31153) (Effective July 1, 2011)

SB 89 specifies that associations with an annual budget of more than \$45,000 but less than \$75,000 must review their financial statement with an independent CPA in the year before they are required to conduct a reserve study. Associations below that threshold are no longer referenced in statute. The bill also eliminates the unit owner demand for an audit for associations that already conduct annual audits. (NRS 116.31144) (effective June 2, 2011)

SB 204 modifies provisions of the federal Electronic Signatures in Global and National Commerce Act. (15 USC 7001 et seq.) (January 1, 2012)

VIOLATIONS/ ENFORCEMENT OF CC&RS

SB 204 modifies the requirements to enforce a penalty. The maximum penalty may be specified in the public offering statement or resale package, rather than in the declaration, a related recording or contract. (NRS 116.310305) (January 1, 2012)

SB 204 To impose a fine policy, the association must prepare and send via hand-delivery or U.S. mail to each address (or any other address specified by the owner) a schedule of fines. This section is moved from NRS 116.3108(5). (NRS 116.31031) (January 1, 2012)

SB 204 If damage to a unit occurs due to the willful misconduct or gross negligence of an owner, tenant or invitee, the association may assess the cost against the responsible unit, even if its insurance policy may cover the loss. The “pizza delivery” exception still applies, relieving the owner of responsibility for invitee violations under many circumstances. (NRS 116.3115) (January 1, 2012)

CREDENTIALLED PROFESSIONALS

SB 204 drops the bonding requirement for community managers. (NRS 116A.410) (January 1, 2012)

ARBITRATION

AB 317 states that parties to a nonbinding arbitration may proceed to civil action upon the final decision and award “which are dispositive of any and all issues or the claim which were submitted to nonbinding arbitration.” (NRS 38.330) (October 1, 2011)

DECLARANT ISSUES

SB 204 A declarant may record an instrument, after giving notice to unit owners, voluntarily surrendering control of the association. (NRS 116.31032) (January 1, 2012)

SB 204 creates a 2-year window for a unit owner board to terminate certain declarant contracts. (NRS 116.3105) (January 1, 2012)

SB 204 amends the requirements for public offerings statement or resale package to exclude units restricted to nonresidential use. (NRS 116.4101) (January 1, 2012)

SB 204 expands the contents of the public offering statement to add: 1. any service or subsidy they provide that they expect may become a common expense, plus the cost of the service; 2. any special fee or transfer fee payable to any party; 3. any restraints on alienation, leasing or amount a unit owner may receive for the loss of the unit under certain circumstances; and 4. certain binding arrangements with external parties over real estate costs per NRS 116.1209. It also amends financial reports to specify: 1. any current balance sheet; 2. who prepared the budget and what assumptions

were used regarding occupancy and inflation; 3. A statement on “any other reserves” than the one for major components of common elements; and 4. assessments broken down by category of expense and the project assessment for each type of unit. (NRS 116.4103) (January 1, 2012)

SB 204 The statute of limitations on warranty claims against the developer is amended such that during declarant control, the board may authorize an independent committee to enforce any warranty claims involving the common elements. Only members elected by unit owners (not the declarant) and their appointees may serve on the committee, which must be independent of declarant influence. Its costs are a common expense. The committee’s first meeting begins the period of limitation. (NRS 116.31175) (January 1, 2012)

CONTACT US

The Real Estate Division is available for questions related to compliance with the provisions of NRS 116 and NAC 116 during business hours. To speak with an investigator, call (702) 486-4480 any time from 8 a.m. to 5 p.m. Monday through Friday. Walk-ins and appointments are available from 9 to 11 a.m. and from 1:30 to 3:30 p.m. Tuesday through Thursday in Las Vegas. Office hours for appointments and calls are 8 a.m. to 1 p.m. and 2 to 5 p.m. in Carson City.

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Legislative Counsel Bureau Research Library (For copies of the statutes):
Las Vegas – 702-486-2626 or
Carson City – 775-684-6827

GLOSSARY

Assembly Bill (AB) – One of two potential prefixes for legislation in Nevada, the other being Senate Bill (SB). Nevada has a bicameral Legislature, similar to the U.S. Congress. State legislation may begin in either the state Senate or the state Assembly. Even though it must eventually be passed by both houses, it retains original name, which also includes a number based upon the order it was drafted (e.g., SB 183 followed right after SB 182).

Assessments (sometimes referred to as dues) – Each unit owner in a homeowners association is obligated pay a share of the common expenses of the association, such as the cost of landscape maintenance, insurance, utility bills and administrative costs. The amount the unit owner is obligated to pay is the assessment. This may be paid monthly, annually, or anywhere in between depending upon the association’s governing documents.

Common-Interest Community (CIC)/ Homeowners Association (HOA or association) –

Common-Interest Community means real estate described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for a share of the real estate taxes, insurance premiums, maintenance or other improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration (NRS 116.021.1). The more familiar term homeowners association is used interchangeably.

Commission on Common-Interest Communities and Condominium Hotels (Commission) –

A seven-member panel, appointed by the governor, charged with adopting regulations and holding hearings related to NRS 116. The Commission and Real Estate Division are separate entities and independent of one another, but their duties are intertwined. For example, the Division investigates violations of NRS 116 and the Commission hears the cases and decides upon any disciplinary action.

Executive Board/ Board of Directors/ Board –

These terms are used interchangeably. As the governing body of a homeowners association, it may create policy, hold hearings on violations of governing documents, and perform administrative roles. After an association transitions from developer to homeowner control, directors are typically elected by the membership. The directors, in turn, usually select officers (president, treasurer, etc.) from amongst themselves, although officers are not required by law to be directors.

Nevada Administrative Code (NAC) –

Also known as the regulations. Many bills enacted in Nevada include provisions for regulations that “fill in the details” of the statute. While regulations have the power of law, they are subordinate to the statutes that authorize them and may be adopted only for the purposes specified by the law. After regulations are adopted, they are later “codified” into the Nevada Administrative Code. The Commission is the entity generally authorized to adopt regulations for inclusion in NAC 116.

Nevada Revised Statutes (NRS) –

The laws passed by the Nevada Legislature are organized by subject into chapters of the Nevada Revised Statutes. For instance, Chapter 116 of the Nevada Revised Statutes is called “Common-Interest Ownership” and is usually referred to as NRS 116. This is the chapter that most directly affects homeowners associations, although other sections of the law may also apply, such as the chapters affecting the towing of vehicles, pools and spas, energy efficiency and fair housing.

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels

(Ombudsman) – This office, part of the Real Estate Division, has a few general duties: educate HOA residents on their rights and responsibilities, assist in resolving HOA-related disputes, and maintain a registry of all HOAs in Nevada. Its duties are supplemented by other sections of the Division, which regulate community managers and investigate issues of compliance with NRS 116. There are several Ombudsman offices in Nevada government; this guide refers only to this one.

Senate Bill (SB) – See Assembly Bill.

Unit Owner/ Homeowner/ Member – These terms are used interchangeably. The members of a homeowners association are the owners, not the tenants.