

Assembly Bill No. 350—Assemblymen Munford, Kihuen, Segerblom; Aizley, Anderson, Claborn, Denis, Gansert, Hogan, McClain, Mortenson, Pierce, Settelmeyer and Stewart

CHAPTER.....

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

Legislative Counsel's Digest:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

Sections 1 and 1.5. (Deleted by amendment.)

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

1. An association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation. The Commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.

2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the



association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

3. As used in this section:

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

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

Sec. 2. (Deleted by amendment.)

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

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

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

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

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

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

(e) Make contracts and incur liabilities.

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

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

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

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



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

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

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

(k) Impose charges for late payment of assessments **⚡ pursuant to NRS 116.3115.**

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

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

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

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

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

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

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

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

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



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

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

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

Sec. 3. (Deleted by amendment.)

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

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

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

Sec. 4. (Deleted by amendment.)

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

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

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

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

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



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

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

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

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

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

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

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

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

(a) Pays the fine;

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



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

5. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

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

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

8. Any past due fine [:

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

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

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

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

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

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

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

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



~~[9. — As used in this section:~~

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

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

Sec. 5. (Deleted by amendment.)

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

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

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

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

2. The removal of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the removal of a member of the executive board is conducted by secret written ballot:

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

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

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

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



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

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

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

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

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

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

Sec. 6. (Deleted by amendment.)

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

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

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. The same number of units' owners may also call a removal election pursuant to NRS 116.31036. To call a special meeting or a removal election, the units' owners must submit a written petition which is signed by the required percentage of the



total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. If the petition calls for a removal election and:

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

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

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

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

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



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

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

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

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

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

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

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

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and



(c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

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

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

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

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

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

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 7. (Deleted by amendment.)

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

116.31083 1. A meeting of the executive board must be held at least once every 90 days ~~and~~ ***and must be held at a time other than during standard business hours at least twice annually.***

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

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



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

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

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

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 8. (Deleted by amendment.)

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

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

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

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

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a



period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements are necessary.

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

4. To the extent required by the declaration:

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

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

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

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

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

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

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

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



Sec. 10. (Deleted by amendment.)

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

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

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

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

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

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

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

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

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

(a) The budgets are available for review 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  *but not to*



exceed 60 miles from the physical location of the common-interest community; and

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

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

Secs. 11 and 12. (Deleted by amendment.)

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

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

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

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

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

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

(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction



imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

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

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

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

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

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

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

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

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

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

Sec. 12.3. (Deleted by amendment.)

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

116.31183 **1.** An executive board, a member of an executive board or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

~~(1)~~ **(a)** Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association; or

~~(2)~~ **(b)** Requested in good faith to review the books, records or other papers of the association.



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

(a) Compensatory damages; and

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

Sec. 12.7. (Deleted by amendment.)

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

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

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

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

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

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

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

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

4. A declarant, an affiliate of a declarant or any person responsible for the construction of a community or association, shall



not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board, an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed \$100 per year per such member, officer, community manager or person.

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

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

(b) Any percentage or proportion of those fines.

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

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

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

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

Secs. 13 and 13.5. (Deleted by amendment.)

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

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

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

(b) A general description of the common-interest community, including to the extent possible, the types, number and declarant's



schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common-interest community.

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

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

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

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

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

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

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

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

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

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

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

(l) *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.

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

2. A declarant is not required to revise a public offering statement more than once each calendar quarter, if the following warning is given prominence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT AS OF (insert a specified date). RECENT DEVELOPMENTS REGARDING (here refer to particular provisions of NRS 116.4103 and 116.4105) MAY NOT BE REFLECTED IN THIS STATEMENT."

Secs. 14 and 15. (Deleted by amendment.)

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

116.4109 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 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 and plans, 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; ~~and~~

(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit ~~and~~; *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, he must hand deliver the notice of cancellation to the unit's owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his 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 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 authorized agent, the association shall furnish all of the following to the unit's owner or his 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 authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his 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 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 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.

Sec. 16. (Deleted by amendment.)

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

116.4117 1. If a declarant 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 has a claim for 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 caused by 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; or
- (2) 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.

3. ~~[Punitive]~~ ***Except as otherwise provided in NRS 116.31036, punitive*** damages may be awarded for a willful and material failure



to comply with 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.

Secs. 17-19. (Deleted by amendment.)

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

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

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

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

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

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

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

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

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

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

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

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

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



- (1) *The costs for any new client or start-up costs;*
 - (2) *The fees for special or nonroutine services, such as the mailing of collection letters, the recording of liens and foreclosing of property;*
 - (3) *Reimbursable expenses;*
 - (4) *The fees for the sale or resale of a unit or for setting up the account of a new member; and*
 - (5) *The portion of fees that are to be retained by the client and the portion to be retained by the community manager;*
 - (f) *State the identity and the legal status of the contracting parties;*
 - (g) *State any limitations on the liability of each contracting party;*
 - (h) *Include a statement of the scope of work of the community manager;*
 - (i) *State the spending limits of the community manager;*
 - (j) *Include provisions relating to the grounds and procedures for termination of the community manager;*
 - (k) *Identify the types and amounts of insurance coverage to be carried by each contracting party, including, without limitation:*
 - (1) *A requirement that the community manager or his employer shall maintain insurance covering liability for errors or omissions, professional liability or a surety bond to compensate for losses actionable pursuant to this chapter in an amount of \$1,000,000 or more;*
 - (2) *An indication of which contracting party will maintain fidelity bond coverage; and*
 - (3) *A statement as to whether the client will maintain directors and officers liability coverage for the executive board;*
 - (l) *Include provisions for dispute resolution;*
 - (m) *Acknowledge that all records and books of the client are the property of the client, except any proprietary information and software belonging to the community manager;*
 - (n) *State the physical location, including the street address, of the records of the client, which must be within 60 miles from the physical location of the common-interest community;*
 - (o) *State the frequency and extent of regular inspections of the common-interest community; and*
 - (p) *State the extent, if any, of the authority of the community manager to sign checks on behalf of the client in an operating account.*
2. *In addition to any other requirements under this section, a management agreement may:*



- (a) *Provide for mandatory binding arbitration; or*
- (b) *Allow the provisions of the management agreement to apply month to month following the end of the term of the management agreement, but the management agreement may not contain an automatic renewal provision.*

3. *Not later than 10 days after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance, including, without limitation:*

- (a) *The names and addresses of all insurance companies;*
- (b) *The total amount of coverage; and*
- (c) *The amount of any deductible.*

4. *After signing a management agreement, the community manager shall provide a copy of the management agreement to each member of the executive board. Within 30 days after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement.*

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

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

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

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

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

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



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

2. Comply with all applicable:

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

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

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

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

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

6. At all times ensure that:

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

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

(1) Proper maintenance of accounting records;

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

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

(4) Facilitation of fraud detection and prevention; and

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

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

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

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



10. *Cooperate with the Division in resolving complaints filed with the Division.*

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

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

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

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

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

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

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

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

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

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



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

- (a) That the executive board approve all write-offs of debt; and*
- (b) That the community manager provide timely updates and reports as necessary.*

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

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

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

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

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

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

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

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

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

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

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

(a) That is outside his field of experience or competence without the assistance of a qualified authority unless the fact of



his inexperience or incompetence is disclosed fully to the client and is not otherwise prohibited by law; or

(b) For which he is not properly licensed.

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

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

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

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

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

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

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

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

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

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

2. *In addition to the standards of practice for community managers set forth in sections 19.5 and 19.6 of this act, the Commission shall by regulation adopt any additional standards of practice for community managers who hold certificates that the Commission deems appropriate and necessary.*

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, which total more than the amount established by the Commission by



regulation, not to exceed \$100 per year per such attorney, law firm or vendor; or

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

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

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

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

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

(b) Any percentage or proportion of those fines.

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

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



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

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

Secs. 20 and 21. (Deleted by amendment.)

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

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

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

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

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

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

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

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

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

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

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

Sec. 22. 1. This section and sections 21.3 and 21.7 of this act become effective upon passage and approval.

2. Section 1.7 of this act becomes effective upon passage and approval for the purpose of adopting regulations and on January 1, 2010, for all other purposes.

3. Sections 2.5 to 21, inclusive, of this act become effective on July 1, 2009.

