



# POLICY AND PROGRAM REPORT



## Housing

April 2016

There are a number of important issues that impact housing in Nevada. In recent years, some of these issues have commanded considerable legislative attention; several are likely to continue to do so in future legislative sessions.

### COMMON-INTEREST COMMUNITIES

Over the last several decades, common-interest communities, often referred to as “homeowners’ associations” because associations are formed to manage the units or homes within them, have become an important feature of everyday life in Nevada. Currently, more than 3,000 associations are registered with the State.

While most associations are nonprofit corporations, they resemble small local governments in many ways. The Nevada Legislature adopted the Uniform Common-Interest Ownership Act in 1991, which has been codified in Chapter 116 (“Common-Interest Ownership [Uniform Act]”) of *Nevada Revised Statutes* (NRS). Chapter 116 applies to most common-interest communities and their associations created within the State of Nevada.

#### *Evolution of Legislation in Nevada*

After addressing the initial legal establishment of common-interest communities in 1991, the Legislature was confronted with operational issues concerning the conduct of association business. Legislators were presented with many complaints

regarding disputes over the proper interpretation and application of the declaration (also known as the Covenants, Conditions, and Restrictions) establishing a community, and over provisions of an association’s governing documents, which include bylaws, rules, and regulations.

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Association members are supposed to have direct control over the executive board through an election process. However, members sometimes felt they were prevented from participating effectively in the governance process. For example, some boards never met or met infrequently. On occasion, critical association business was handled privately by individual board members without the knowledge of the other homeowners. Many lawmakers felt strongly that democratic principles should apply even in private associations because such organizations directly affect individuals in their most expensive and cherished possession—their homes. On the other hand, lawmakers sought to balance increases in homeowner involvement with the need for boards to operate efficiently and cost effectively.

As a result, changes were made regarding notification of matters relating to homeowners' association meetings and other ownership proceedings. After further input from stakeholders, lawmakers recognized the need to expand and modify existing protections that ensure members retained ultimate control of their associations. When lawmakers heard testimony that indicated ongoing problems with obtaining access to association information and with proper financial management, they required an association to prepare and distribute operating and reserve budgets. They also required the executive board to conduct a study of the reserves at least once every five years and have financial statements audited.

In 2005, significant legislation was enacted to regulate the professionals hired to manage associations. The Legislature required professional certification for community managers and prohibited a community manager from accepting or soliciting any form of compensation that was based on the number or amount of fines imposed against owners or their guests or any percentage or proportion of those fines.

In an attempt to provide an expeditious, inexpensive, and simple mechanism for resolving disputes between owners and associations, the Legislature required that any civil action based on a claim relating to the association's bylaws, rules, or procedures for changing assessments must be submitted to mediation or arbitration before the action is filed with a court.

To further assist unit owners residing in common-interest communities when conflicts arise with their association's board or management, the Legislature created the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels and provided a funding mechanism. Although the Ombudsman does not regulate associations, such an official can be effective through superior knowledge of the applicable laws, education of board members and homeowners, and facilitation of private dispute resolution. In 2003, in order to give homeowners an expeditious and inexpensive forum to resolve disputes, a five-member Commission for Common-Interest Communities was also created. The Commission was later authorized to petition a district court for the appointment of a receiver to take over an association in certain circumstances.

Finally, the Real Estate Commission was authorized to subpoena books, records, and other information of an association. Upon request by a homeowner, a board must make available books, records, and other papers of the association. Lawmakers also required the Commission to establish standards of practice and disciplinary procedures for persons engaged in property management for associations.

### ***Recent Legislation***

Common-interest communities continue to be one of the fastest growing forms of housing in Nevada. During the 2009 Legislative Session, State lawmakers passed more than a dozen bills directly relating to associations. These measures were addressed continuing concerns regarding governance, particularly in the areas of board member conduct, election of board members, fees and penalties, financial accountability, and the rights of homeowners.

In the 2011 Session, the Legislature considered nearly two dozen measures concerning associations but enacted only a few. Some measures amended laws concerning association formation, management, and organization, while others addressed dispute resolution and the information that must be provided to prospective buyers.

Among the highlights of the new 2011 laws was Senate Bill 204 (Chapter 389, *Statutes of Nevada*), an omnibus common-interest community bill that placed limits on an association's authority to amend a declaration, required certain associations to have an executive board, and subjected association officers and executive board members to conflict of interest rules for nonprofit corporations. The bill also revised the duties of an association concerning election requirements, enforcement actions, insurance requirements, meeting requirements, and voting by unit owners. The legislation also specified the extent to which a unit owner is liable for damages arising from the condition or use of common elements.

Mediation between and among homeowners and executive boards engendered much debate and deliberation by the Legislature in 2011. Senate Bill 254, which would have established a mandatory mediation program for certain claims of aggrieved persons and required a claimant to exhaust all administrative remedies before entering mediation, was approved by lawmakers but vetoed by the Governor.

In response to an increasing number of foreclosures by association in the wake of the recent recession, the 2013 Legislature approved S.B. 280 (Chapter 552, *Statutes of Nevada*). This measure prohibits an association from taking any action to collect a past due obligation from a unit owner, unless certain actions are taken within 60 days after an obligation is past due. Notice requirements were also established, along with a unit owner's right to contest the obligation.

Other 2013 laws addressed friction in the interactions between associations and unit owners. These measures impose additional requirements on associations when providing written notice of alleged violations of rules and revise the procedures for resolving disputes over the application, enforcement, or interpretation of the governing documents. Disputes are now required to be submitted to mediation prior to commencement of a civil action in court or, if the parties agree, to a referee program that may be established by the Real Estate Division.

Additional reforms were enacted in 2015, when the primary focus of discussions relating to common-interest communities concerned so called "super-priority liens." These are liens held by an association on the property in question for delinquent dues or other fees owed to the association by the unit's owner. In the instance of a home foreclosure, these liens had been interpreted to take

first priority over any other encumbrance on the property, leading to the odd result that associations were sometimes foreclosing on properties worth thousands or hundreds of thousands of dollars and selling them for far less than they were worth in order to recover a much smaller amount of money. In these circumstances, the homeowner was left with nothing, as was the lender to whom any mortgage was owed on the property. This interpretation was confirmed in *SFR Investments Pool 1, LLC v. U.S. Bank* (130 Nev. Adv. Op. 75, 334 P.3d 408 [2014]), when the Nevada Supreme Court determined that the foreclosure of the super-priority lien by the homeowners' association extinguishes the first mortgage lien on the unit. Several pieces of legislation were introduced in 2015 with the intention of remedying this and other inequitable situations that had arisen through the years of the economic crisis and housing downturn.

Senate Bill 306 (Chapter 266, *Statutes of Nevada 2015*) made several changes to the laws governing foreclosure by an association, as well as the process for a notice of sale. For example, the bill allowed collection costs to be included within the scope of a unit-owners' association's super-priority lien but limited the allowable collection costs. The measure also allowed a unit owner or security holder to redeem a foreclosed unit by paying certain amounts set forth in the bill. If the required amounts are paid within 60 days after a sale, the unit owner or security holder gains ownership. However, after the 60-day redemption period ends, the purchaser at the foreclosure sale has clear title. In addition, if the first security holder pays the amount of a super-priority lien within five days prior to the sale, a foreclosure will not extinguish the first security interest.

Other bills enacted in 2015 addressed the period of time within which a declarant's control of a unit-owners' association must terminate, depending upon the size of the common-interest community; revised provisions concerning who may run for or serve on the executive board; prohibited an association from pursuing a constructional defect claim on behalf of itself or units' owners, unless the claim pertains exclusively to the common elements of the association; and revised the bidding process for projects funded by associations, depending on the size of the association's budget.

## **MANUFACTURED AND MOBILE HOMES**

Manufactured homes are a major source of affordable housing for low- and moderate-income families. Approximately 70,000 of Nevada's 1.2 million housing units are mobile homes. According to the AARP, around 48 percent of manufactured homes occupied as a primary residence are owned or rented by a person age 50 or older.

The Legislature has declared that manufactured and mobile homes may pose hazards to health, life, and safety if not properly installed, manufactured, and transported. To that end, extensive regulation of the industry has been provided in Nevada law, under the administration of the Manufactured Housing Division of the Department of Business and Industry. The Division has adopted regulations consistent with federal construction and safety standards.

To protect consumers, all dealers, distributors, installers, rebuilders, salespersons, and servicepersons must be licensed by the Division, and numerous grounds exist for disciplining licensees, such as deceptive advertising, failure to honor warranties, misrepresentation or failure to disclose, substandard or unsafe workmanship, and using unlicensed personnel. A serviceperson must enter into a written

agreement with the consumer that covers the cost, schedule, and scope of the work. A separate written agreement is required before the serviceperson does any additional work or adds charges. Civil penalties of not more than \$1,000 for each violation may be assessed, to a maximum of \$1 million for any related series of violations occurring within one year.

There is a \$500,000 Account for Education and Recovery Relating to Manufactured Housing derived from licensing fees. The fund is designed to reimburse owners who have been harmed by a licensee and who have obtained a court judgment against the licensee. Actual damages of up to \$25,000 may be paid from the fund upon order of the court issuing the judgment.

The Division has authority to inspect mobile home parks and approve or disapprove specifications and alterations. Additionally, the Division must adopt regulations governing the use and occupancy of mobile homes and the abatement of any substandard, unsafe, or unsanitary condition of a park. The Division may determine a mobile home to be a nuisance and order its demolition, removal, or repair.

The relationship between a manufactured home park owner and a tenant is also regulated by the Division and subject to statute. Approved applicants for residency have certain rights, such as the right to review the rental agreement for 72 hours, as well as park rules and other residency documents. Certain provisions in rental agreements are prohibited, such as confessions of judgment, exculpatory clauses favoring the landlord, waivers of rights and remedies, and additional charges for children or pets, unless some special service in that regard is provided. An individual may bring an action in court if the individual makes a payment toward purchase or placement of a home in a park in reliance on a written statement that proves to be false or misleading. A park owner must also provide certain information about applicable laws and how to contact the Division as well as the resident park manager. Managers and assistants must complete prescribed continuing education classes annually.

Parks may adopt rules concerning tenant use, but they must be: (1) adopted in good faith and not to avoid a legal obligation; (2) reasonably related to the purpose for which they were adopted; (3) sufficiently explicit to inform a tenant of what can or cannot be done; and (4) uniformly enforced. While parks may require the sale of a home to be approved by the park, consent to the sale cannot be unreasonably withheld. Furthermore, parks must allow tenants to display the national flag and political signs, within certain limitations.

If a park is changed to allow older persons only, existing tenants who no longer qualify to remain in the park are entitled to have the landlord pay to relocate their homes to a new location within 50 miles. Similarly, if a park is closed or condemned, tenants are entitled to relocation assistance or the fair market value of the home if: (1) the tenant chooses not to move the unit; (2) the unit cannot be moved without structural damage; or (3) there is no park within 50 miles that will accept the unit. The landlord must also pay for the cost of appraising a mobile home unit and the cost of disposal if it cannot be moved.

Each for-profit park must pay the Division \$12 per lot annually for the Fund for Low-Income Owners of Manufactured Homes. This fund is used to assist qualifying owners with rental payments.

In 2011, legislation was enacted that required a landlord of a manufactured home park, who is closing or converting the park, to pay costs associated with moving a tenant's manufactured home to a new

location that is within 150 miles of the manufactured home park. Under prior law, the landlord was required to pay the costs of moving a tenant's home to a new location within 100 miles.

## **LANDLORD/TENANT**

In addition to specific statutes addressing tenancy issues involving manufactured housing, Nevada has a general law regarding discrimination in housing known as the Nevada Fair Housing Law (NFHL). This law can be found in Chapter 118 ("Discrimination in Housing; Landlord and Tenant") of NRS. The NFHL, administered by the Nevada Equal Rights Commission, establishes the rights and obligations of landlords and tenants. Among other matters, the NFHL:

- Defines certain prohibited acts and practices involving discrimination on the basis of ancestry, color, creed, disability, familial status, national origin, race, religion, or sex;
- Requires disclosure of the property tax portion of rent; and
- Provides rules governing the abandonment of real property by a tenant.

There are also numerous federal enactments aimed at preventing discrimination in housing. Among these are: Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Rehabilitation Act of 1973; the Housing and Community Development Act of 1974; the Community Reinvestment Act of 1977; the Equal Credit Opportunity Act of 1974; and the Older Persons Act of 1995. These acts and their attendant regulations address discrimination on the basis of color, family status, handicap, national origin, race, religion, and sex. They prohibit denial of access to housing, blockbusting, and discrimination in regard to access, membership, or participation in multiple listing services and other real-estate-related services or organizations.

Nevada also has specific provisions addressing landlord/tenant issues arising from rental of dwellings, including:

- Content of rental agreements and prohibited provisions;
- Obligations of landlords, including advance notice of rent increases;
- Contact disclosure requirements for owners and managers, habitability, and rules about security deposits;
- Rights of landlords and tenants, such as a landlord's right to access the dwelling, a surviving spouse's right to terminate a lease, and tenants' rights to display the United States flag; and
- Remedies for violations by a landlord or a tenant.

Because of the spike in residential foreclosures in Nevada over the last several years, the 2009 Legislature felt it necessary to make various changes to the foreclosure statutes. Of high concern was the eviction of tenants when a rental property goes into foreclosure. With so many

homes entering foreclosure, many tenants were caught off guard when they were served eviction notices. Through no fault of their own, the property they rented entered foreclosure, and they were required to vacate the premises.

Prior to 2009, tenants who resided in a foreclosed rental property only had three days to vacate the property. With passage of legislation in 2009, a tenant could be removed only after the expiration of a specified period not to exceed 60 days. Additionally, the law specified that a notice of foreclosure must not only be served on the property owner but also to a tenant who occupied the actual property entering foreclosure.

In 2011, the Legislature enacted measures to ensure tenants (both residential and commercial) were treated fairly by landlords, and landlords who acted in good faith were able to maintain their investments. One measure, S.B. 368 (Chapter 191, *Statutes of Nevada*), prohibited various forms of discrimination based on gender identity or expression and sexual orientation in certain real estate transactions. Among other provisions, the bill declared it to be the policy of the State of Nevada that all people shall, without discrimination, distinction, or restriction because of gender identity expression or sexual orientation, have equal opportunity to reasonably seek and obtain housing accommodations. The measure prohibited access to certain services associated with the sale or rental of a dwelling, discrimination involving the sale or rental of a dwelling, and eviction. The Nevada Equal Rights Commission may investigate and hold hearings with regard to these issues.

Another bill, Assembly Bill 226 (Chapter 56, *Statutes of Nevada 2011*), prohibited a landlord from: (1) interfering in the tenant's use of the premises unless under certain circumstances; (2) removing items from the premises; (3) preventing a tenant's access to commercial property; or (4) changing the door lock of a commercial property due to delinquency of payment without providing information to the tenant about how to obtain a new key. The landlord could also dispose of abandoned personal property if the landlord provided written notice by certified mail to the tenant.

In an effort to protect victims of domestic violence, the 2013 Legislature enacted a measure (A.B. 284 [Chapter 301, *Statutes of Nevada*]) to allow for the early termination of a rental agreement if a tenant, cotenant, or household member is a victim of domestic violence. The bill established notice requirements, addressed liability for unpaid rental amounts, required a landlord to install new locks under certain circumstances, and limited the information a victim is required to disclose to prospective landlords.

One effect of Nevada's foreclosure crisis was the rise in squatting on abandoned property, either by persons who continued to live in their home after foreclosure or others who chose to break into and reside in abandoned properties. In order to address the issue, the 2015 Legislature enacted A.B. 386 (Chapter 507, *Statutes of Nevada*). The bill created and defined the crimes and associated penalties for "housebreaking," "unlawful occupancy," and "unlawful reentry."

## **HOMESTEAD LAW**

The *Nevada Constitution*, which was adopted in 1864, provided for the exemption of homesteads from forced sale. The current version of this law is found in Chapter 115 ("Homesteads") of NRS.

To be eligible for the homestead exemption, State law requires a person to declare a homestead and to record that declaration with the county recorder. During the 2009 Session, State lawmakers enacted a measure that required the Real Estate Division to create a standardized form for the Declaration of Homestead. This form is available, free of charge, by the Division and the recorder in each of Nevada's counties.

The protection afforded by the homestead exemption does not apply to a mortgage used to purchase or improve the property, legal taxes imposed on the property, or prior liens. If a person accumulates other debts or defaults on a loan, or if a judgment is entered against the person in a suit, the exemption protects the homeowner. The exemption covers up to \$550,000 equity in the property. Furthermore, Federal Bankruptcy Law acknowledges that a state law providing for a homestead exemption, such as Nevada's, will be honored in any proceeding.

## **ADDITIONAL RESOURCES**

### ***Commission for Common-Interest Communities and Condominium Hotels***

Pursuant to Chapter 116 of NRS, service of process and other communications upon the Commission may be made at the principal office of the Real Estate Division. The following is the proper routing for service of process and other communication upon the Commission:

Legal Administrative Officer  
Real Estate Division  
Department of Business and Industry  
2501 East Sahara Avenue, Suite 303  
Las Vegas, Nevada 89104  
Telephone: (702) 486-4036  
Fax: (702) 486-4067  
Website: <http://red.nv.gov/Content/CIC/Commission>

### ***Ombudsman for Owners in Common-Interest Communities and Condominium Hotels***

The Department of Business and Industry published a document titled, *Nevada Common-Interest Community Manual*, which contains references to NRS and *Nevada Administrative Code* (NAC) chapters relevant to common-interest communities. The publication is available through the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels.

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels  
Real Estate Division  
Department of Business and Industry  
2501 East Sahara Avenue, Suite 202  
Las Vegas, Nevada 89104  
Telephone: (702) 486-4480  
Toll-free Telephone: (877) 829-9907  
Website: [http://red.nv.gov/Content/CIC/Office\\_of\\_the\\_Ombudsman](http://red.nv.gov/Content/CIC/Office_of_the_Ombudsman)



**Office of the Attorney General**

Carson City Office	Las Vegas Office	Reno Office
100 North Carson Street Carson City, Nevada 89701 Telephone: (775) 684-1100 Fax: (775) 684-1108	555 East Washington Avenue Suite 3900 Las Vegas, Nevada 89101 Telephone: (702) 486-3420 Fax: (702) 486-3768	5420 Kietzke Lane Suite 202 Reno, Nevada 89511 Telephone: (775) 688-1818 Fax: (775) 688-1822

E-mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

Website: <http://ag.nv.gov/>

The Office of the Attorney General published a pamphlet titled, *Rules for Homeowners’ Associations*, which may be obtained by contacting any of its offices.

**Research Division—Legislative Counsel Bureau**

Carson City Office	Las Vegas Office
401 South Carson Street Carson City, Nevada 89701 Telephone: (775) 684-6825 Fax: (775) 684-6400	555 East Washington Avenue Room 4400 Las Vegas, Nevada 89101 Telephone: (702) 486-2800 Fax: (702) 486-2810

E-mail: [research@lcb.state.nv.us](mailto:research@lcb.state.nv.us)

Website: <http://www.leg.state.nv.us>

Chapter 116 (“The Uniform Common-Interest Ownership Act”) of NRS, may be viewed in its entirety at: <http://www.leg.state.nv.us/NRS/NRS-116.html>.

Chapter 116 of NAC may be viewed in its entirety at: <http://www.leg.state.nv.us/NAC/NAC-116.html>.

Chapter 116A (“Common-Interest Communities: Regulation of Community Managers and Other Personnel”) of NRS may be viewed in its entirety at: <http://www.leg.state.nv.us/NRS/NRS-116A.html>.

Chapter 116B (“Condominium Hotel Act”) of NRS may be viewed in its entirety at: <http://www.leg.state.nv.us/NRS/NRS-116B.html>.

Commerce

***State Contractors' Board***

Henderson Office	Reno Office
2310 Corporate Circle, Suite 200 Henderson, Nevada 89074 Telephone: (702) 486-1100 Fax: (702) 486-1190	9670 Gateway Drive, Suite 100 Reno, Nevada 89521 Telephone: (775) 688-1141 Fax: (775) 688-1271

Website: <http://www.nvcontractorsboard.com>

***Manufactured Housing Division—Department of Business and Industry***

Carson City Office	Las Vegas Office
1830 East College Parkway Suite 120 Carson City, Nevada 89706 Telephone: (775) 684-2940 Fax: (775) 684-2949	2501 East Sahara Avenue Suite 204 Las Vegas, Nevada 89104 Telephone: (702) 486-4135 Fax: (702) 486-4309

Department	Location	Telephone Number
Code and Compliance	Las Vegas	(702) 486-4135
Continuing Education	Carson City	(775) 684-2947
Inspections	Carson City	(775) 684-2943
	Las Vegas	(702) 486-4135
Landlord/Tenant and Compliance Investigations	Carson City	(775) 684-2942
	Las Vegas	(702) 486-4310
Licensing	Carson City	(775) 684-2945
Lot Rent Subsidy Program	Carson City	(775) 684-2948
Titles	Carson City	(775) 684-2946

E-mail: [nmhd@mhd.state.nv.us](mailto:nmhd@mhd.state.nv.us)

Website: <http://mhd.nv.gov/>

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