

MATERIALS PROVIDED BY NEVADA SENATOR MIKE SCHNEIDER TO ASSEMBLY HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE

(MAR. 9, 2005)

NEVADA COMMISSION FOR COMMON-INTEREST COMMUNITIES

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GENERAL BACKGROUND INFORMATION ON NEVADA CIC'S

NEVADA HAS 2,073 TOTAL COMMON-INTEREST COMMUNITY ASSOCIATIONS COMPOSED OF:

- 65 MASTER ASSOCIATIONS
- 367 SUB ASSOCIATIONS
- 1,641 REGULAR ASSOCIATIONS

THESE ASSOCIATIONS CONTAIN 310,501 UNITS. AND, WE ARE GROWING RAPIDLY.

IN 1991, NEVADA ADOPTED THE UNIFORM COMMON-INTEREST OWNERSHIP ACT (UCIOA) WHICH HAS BEEN CODIFIED IN CHAPTER 116 OF THE *NEVADA REVISED STATUTES* (NRS). CHAPTER 116 EXTENDS TO MOST CICS CREATED WITHIN THE STATE OF NEVADA.

SINCE THE INCEPTION OF CICS IN NEVADA, THEY HAVE BROUGHT BENEFITS AND PROBLEMS. IN NEARLY EVERY LEGISLATIVE SESSION SINCE 1991, MY COLLEAGUES AND I HAVE TRIED TO REFINE AND IMPROVE CIC LEGISLATION SO OUR CITIZENS CAN CONTINUE TO RECEIVE THE BENEFITS OF ASSOCIATIONS WHILE AVOIDING SOME OF THE UNPLEASANT SITUATIONS THAT CAN ARISE WITH THEM. LET ME FOCUS ON JUST TWO POLICY APPROACHES WE CRAFTED.

NEVADA OFFICE OF THE OMBUDSMAN FOR OWNERS IN COMMON-INTEREST COMMUNITIES

THE 1997 NEVADA LEGISLATURE CREATED THE OFFICE OF THE OMBUDSMAN FOR OWNERS IN COMMON-INTEREST COMMUNITIES WITHIN THE REAL ESTATE DIVISION. 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.

SPECIFICALLY, THE OMBUDSMAN IS DIRECTED TO:

- ASSIST IN PROCESSING CLAIMS SUBMITTED TO MEDIATION OR ARBITRATION;
- ASSIST OWNERS IN CICS TO UNDERSTAND THEIR RIGHTS AND RESPONSIBILITIES UNDER THE STATUTES AND THE GOVERNING DOCUMENTS OF THEIR ASSOCIATIONS; AND
- ASSIST PERSONS APPOINTED OR ELECTED TO SERVE ON EXECUTIVE BOARDS OF ASSOCIATIONS TO CARRY OUT THEIR DUTIES.

FURTHERMORE, IF THE EXECUTIVE BOARD REFUSES TO ALLOW A MEMBER TO REVIEW THE BOOKS, RECORDS, OR OTHER PAPERS OF THE ASSOCIATION, THE OMBUDSMAN MAY, ON BEHALF OF THE MEMBER AND UPON WRITTEN REQUEST, REVIEW THE RECORDS DURING THE REGULAR WORKING HOURS OF THE ASSOCIATION. IF THE OMBUDSMAN IS DENIED ACCESS, THE OMBUDSMAN MAY REQUEST THE CIC COMMISSION TO ISSUE A SUBPOENA FOR THEIR PRODUCTION.

IN 2003, THE LEGISLATURE INCREASED THE SCOPE OF THE OMBUDSMAN'S DUTIES AND AUTHORIZED THE OMBUDSMAN TO:

- INVESTIGATE DISPUTES INVOLVING THE UCIOA OR GOVERNING DOCUMENTS OF A CIC IN ORDER TO ASSIST IN RESOLVING SUCH DISPUTES;
- COMPILE INFORMATION ON EACH CIC INCLUDING INFORMATION ON THE NUMBER OF FORECLOSURES FOR UNPAID FINES AND ASSESSMENTS AND WHETHER THE RESERVE STUDIES HAVE BEEN CONDUCTED AS REQUIRED BY STATUTE. [FOR JULY 1, 2004 THROUGH DECEMBER 31, 2004, 95 NOTICES OF FORECLOSURE WERE RECEIVED, 4 UNITS WERE ACTUALLY FORECLOSED ON AND 41 WERE PENDING].

A \$3 ANNUAL FEE ASSESSED TO EACH UNIT IN AN ASSOCIATION FUNDS THE OMBUDSMAN'S ACTIVITIES.

ASSESSMENT OF OMBUDSMAN PROGRAM

WHILE THE OMBUDSMAN HAS PERFORMED A USEFUL ROLE IN FACILITATING SETTLEMENTS OF DISPUTES, INSTANCES HAVE ARISEN WHERE PARTIES HAVE REFUSED TO COOPERATE BECAUSE THE OMBUDSMAN HAS LITTLE REAL AUTHORITY.

ONE REASON NEVADA SUBSEQUENTLY CREATED A COMMISSION IS THAT SOMEONE HAS TO HAVE THE AUTHORITY TO ENFORCE THE LAWS WHEN ONE OR BOTH PARTIES EITHER REFUSE TO WORK MATTERS OUT THEMSELVES OR CANNOT REACH A RESOLUTION DESPITE EVERYONE'S BEST EFFORTS. IN SUCH A CASE, THE ONLY OTHER OPTION IS TO PROCEED TO COURT. THIS IS AN EXPENSIVE AND TIME CONSUMING PROCESS WHICH FRANKLY MANY HOMEOWNERS CANNOT AFFORD. THEREFORE, MY COLLEAGUES AND I CREATED THE COMMISSION.

NEVADA COMMISSION FOR COMMON-INTEREST COMMUNITIES

THE SECOND POLICY APPROACH I WANT TO ADDRESS IS THIS COMMISSION FOR COMMON-INTEREST COMMUNITIES. IT WAS CREATED BY SENATE BILL 100 WHICH I INTRODUCED IN 2003. THE PURPOSE OF THE COMMISSION IS TO GIVE HOMEOWNERS AN EXPEDITIOUS AND INEXPENSIVE FORUM FOR RESOLVING DISPUTES WITH CICS.

COMMISSION STRUCTURE

THE COMMISSION FOR COMMON-INTEREST COMMUNITIES IS A FIVE-MEMBER BODY APPOINTED BY THE GOVERNOR TO SUPERVISE THE ADMINISTRATION OF THE UCIOA. COMMISSIONERS MUST MEET CERTAIN QUALIFICATIONS:

- ONE COMMISSIONER MUST BE AN ASSOCIATION MEMBER RESIDING IN NEVADA WHO HAS SERVED ON AN EXECUTIVE BOARD IN THIS STATE;
- ONE COMMISSIONER MUST BE IN THE BUSINESS OF DEVELOPING CICS IN NEVADA;
- ONE COMMISSIONER MUST HOLD A PERMIT OR CERTIFICATE;
- ONE COMMISSIONER MUST BE A CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS STATE; AND
- ONE COMMISSIONER MUST BE AN ATTORNEY LICENSED IN THIS STATE;

COMMISSIONERS:

- SERVE 3-YEAR TERMS;
- THREE MUST COME FROM CLARK COUNTY; AND
- MUST ATTEND COURSES OF INSTRUCTION ARRANGED BY THE REAL ESTATE DIVISION CONCERNING RULES OF PROCEDURE AND SUBSTANTIVE LAW APPROPRIATE FOR COMMISSIONERS.

THE COMMISSION:

- MUST MEET AT LEAST ONCE A QUARTER;
- IS EMPOWERED TO ADOPT REGULATIONS TO CARRY OUT THE PURPOSES OF THE COMMON-INTEREST COMMUNITY LAWS; AND
- IS AUTHORIZED TO APPOINT HEARING PANELS COMPOSED OF ONE OR MORE INDEPENDENT HEARING OFFICERS TO CONDUCT HEARINGS AND OTHER PROCEEDINGS, DETERMINE VIOLATIONS, IMPOSE FINES AND PENALTIES, AND TAKE OTHER DISCIPLINARY ACTIONS.

COMMISSION STAFF

IN ADDITION TO THE FIVE COMMISSIONERS, THERE ARE:

- FOUR COMPLIANCE INVESTIGATORS,
- THREE ADMINISTRATIVE AND ACCOUNTING ASSISTANTS, AND
- A DEPUTY ATTORNEY GENERAL.

COMMISSION FUNDING

THE TOTAL BUDGET FOR THE COMMISSION AND THE OMBUDSMAN'S OFFICE FOR FY 2005-2006 IS \$2.8 MILLION. IT IS FUNDED FROM THE SAME \$3 PER DOOR CHARGE THAT FUNDS THE OMBUDSMAN'S OFFICE.

COMMISSION'S POWERS AND PROCEDURES

DATA COLLECTION

The commission is required to:

- Collect and maintain information regarding number and kind of CICs in the state, the effect of Chapter 116 and attendant regulations on the development, operation and management of CICs as well as on the lending market for CICs.
- Collect and maintain information on violations of the chapter, accessibility and use of mediation and arbitration, number of foreclosures within CICs for failure to pay assessments and fines, reserve studies, and any other issues the commission determines are of concern to unit owners.
- Develop and promote educational guidelines for conducting CIC board elections, meetings and for enforcing governing documents through liens, fines, and penalties.
- Recommend and approve education and research programs relating to CICs relating to management, sale and resale of units, alternative dispute resolution procedures, and enforcement of assessments and fines.

COMMISSION REGULATIONS

- Commission authorized to adopt regulations establishing standards for subsidizing mediation and arbitration to ensure such proceedings are expeditious, affordable, and accessible.
- Commission can adopt regulations establishing standards for subsidizing education programs for the benefit of unit owners as well as executive board members and officers of associations.

REGULATION OF COMMUNITY MANAGERS

- Commission must establish standards of practice for community managers.
- Commission or a panel authorized to take appropriate disciplinary action against a community manager who violates any provision of the chapter.

COMMISSION AND OMBUDSMAN AUTHORITY TO INVESTIGATE VIOLATIONS

Real Estate Division and ombudsman authorized to investigate any person who violates the UCIOA. Commission and hearing panels have jurisdiction to take action against such violators. However, they cannot intervene in internal activities of a CIC except to extent necessary to prevent or remedy a violation.

HOW A COMPLAINT IS FILED WITH COMMISSION

- Person aggrieved by an alleged violation of the UCIOA may file a written affidavit with division not later than one year after person discovers or reasonably should have discovered violation.
- Affidavit must set forth facts constituting violation. However, affidavit may not be filed unless aggrieved person has provided it to respondent with written notice sent by certified mail on at least two occasions mailed at least 15 days apart. Written notice must specify in reasonable detail the alleged violation, any actual damages suffered, and any proposed corrective action.
- In the first 14 months of operation, the commission received 340 affidavits of which 162 were assigned to field investigators and 178 were returned to the complainant for additional information.**
- Commission or panel may impose a fine of not more than \$1,000 if someone knowingly files a false or fraudulent affidavit.

PROCEDURE AFTER COMPLAINT IS FILED

- Real Estate Division refers it to ombudsman who assists parties with resolving the dispute. If parties cannot resolve matter, ombudsman provides division with a report and division conducts investigation to determine whether good cause exists to proceed with a hearing.
- If division determines there is good cause for a hearing, division files a complaint with commission and schedules a hearing.
- Commission or panel must hold a hearing not later than 90 days after complaint is filed by division unless good cause is shown to continue the matter. Division must give respondent at least 30 days notice of hearing and provide copy of the complaint and all relevant information in possession of the division.
- Respondent must file an answer not later than 30 days after division's notice is delivered or mailed and must contain an admission or denial of the allegations in the complaint and any defenses respondent will rely upon. If respondent fails to answer, commission may enter a default decision after giving respondent notice.
- The commission plans to begin holding its first hearings later this month.**

PARTIES ALLOWED TO HAVE ATTORNEY

Any party may be represented by an attorney at any hearing on the complaint.

TIMEFRAME TO RULE ON COMPLAINT

Commission or a panel must render a final decision not later than 20 days after final date of hearing. Written decision must include findings of fact and conclusions of law and all parties must receive notice of the decision by certified mail not later than 60 days after the hearing ends.

COMMISSION SANCTIONS IF VIOLATION HAS OCCURRED

If commission or panel finds a violation was committed, it may do any or all of the following:

1. Order the respondent to cease and desist;
2. Order the respondent to take affirmative action to correct the violation;
3. Impose an administrative fine of not more than \$1,000;
4. Remove an executive board member or officer if they have knowingly and willfully committed a violation and their removal is in the best interests of the CIC;
5. Impose a fine of not more than \$1,000 for each violation after notice and hearing if respondent violates an order of the commission or panel;
6. Order respondent to pay costs of the proceedings incurred by division, including investigation costs and reasonable attorney's fees. If respondent is a board member or officer, CIC is responsible for all fines and costs imposed on respondent and respondent may not be held personally liable, unless respondent knowingly and willfully committed the violation;
7. Order an audit of CIC or require board to hire a community manager or both;
8. Bring an action in district court to enjoin further violations if it has reasonable cause to believe such violations will continue.

**QUESTIONS POSED BY CALIFORNIA COMMITTEE ON HOUSING
& COMMUNITY DEVELOPMENT**

1. WHAT EFFECT HAS THE COMMISSION HAD IN NEVADA? HAS IT IMPROVED MATTERS FOR HOMEOWNERS?
2. WAS IT DIFFICULT POLITICALLY TO CREATE THE COMMISSION?
3. ARE THERE ANY SIGNIFICANT PROBLEMS WITH THE CURRENT CIC LEGISLATIVE SCHEME? IF SO, HOW ARE THEY BEING ADDRESSED?

HISTORY OF COMMON-INTEREST COMMUNITY LEGISLATION IN NEVADA

1991

Nevada Legislature adopted the Uniform Common-Interest Ownership Act (UCIOA) which has been codified in Chapter 116 of the *Nevada Revised Statutes* (NRS). Chapter 116 extends to most CICs created within the State of Nevada.

1995

Legislature was confronted with operational issues regarding the conduct of association business and responded with three bills:

- A.B. 152**-Legislators were presented with many complaints regarding disputes over the proper interpretation and application of CC&Rs and provisions in association bylaws. In an attempt to provide a simple, inexpensive, and expeditious mechanism for resolving such controversies, A.B. 152 required that any civil action based on a claim relating to the bylaws, rules, or procedures for changing assessments in a CIC must be submitted to mediation or arbitration before the action is filed with a court.
- A.B. 510**-Association members are supposed to have direct control over the executive board. Regrettably, legislators learned of numerous instances where members were prevented from effectively participating in the governance process. As a result, A.B. 510 made changes regarding notification of matters relating to homeowners' association meetings and other CIC ownership proceedings. The bill increased the number of association meetings that must be held each year from at least one to a minimum of two. Additionally, A.B. 510 required an association to provide owners with a 21-day written notice of a meeting at which an assessment for a capital improvement is to be considered.
- S.B. 395**- Finally, the 1995 Legislature passed S. B. 395 which established procedures for constructional defect lawsuits. The Legislature wanted to encourage parties to settle disputes without litigation and enacted procedures requiring parties to specify what defects were at issue and provide opportunities to affect repairs rather than seek damages.

1997

The Legislature continued to monitor developments with CICs. As a result of further input from affected parties, lawmakers recognized the need to modify and expand certain protections they had previously created to ensure members retained ultimate control of their associations.

- S.B. 314**- authorized a member to attend any meeting of the association or the executive board, except when the executive board meets in executive session. Meetings must be held at least once a year and the executive board must meet at least once every 90 days. Further, the bill prescribed requirements for the content of meeting agendas.
- The bill also established requirements for a reserve account for common area repairs and imposed preconditions before the association can commence certain civil actions.
- In addition, the measure created restrictions on an association's ability to foreclose a lien assessed for a violation of association rules. Further, an association may not apply any assessment, fee, or other charge paid by a member toward a fine imposed against the owner.
- The bill also prohibited an association from exercising the power of eminent domain.
- Additionally, the bill created the Office of the Ombudsman for Owners in Common-Interest Communities and provided a mechanism to fund the ombudsman.

1999

Lawmakers heard testimony that indicated problems still existed with, among other issues, obtaining access to association information and with proper financial management.

- S.B. 451**- required an association to prepare and distribute operating and reserve budgets, and required the executive board to conduct a study of the reserves at least once every 5 years.
- The measure revised notice requirements for board meetings and provided that the term of office for board members shall not exceed 2 years.
- In addition, S.B. 451 required that the election of board members be conducted by secret written ballot and the votes be counted in public.
- The bill also established additional requirements for proxy voting and prohibited voting by proxy for the election of board members.
- Additionally, S.B. 451 granted authority to the Real Estate Commission to subpoena records, books, and other information of an association. The bill also required that a board, upon request by an association member, make available books, records, and other papers of the association.
- Finally, the bill required the commission to establish standards of practice and disciplinary procedures for persons engaged in property management for associations.

2003

Underlying CIC issues remained contentious and lawmakers continued to receive numerous complaints. The 2003 Legislature passed three bills designed to address many of the fundamental problems that arise year after year

- S.B. 100-** In order to give homeowners an expeditious and inexpensive forum for resolving disputes with CICs, this bill creates a five-member Commission for Common-Interest Communities appointed by the Governor. Commissioners serve three-year terms and must meet certain qualifications. The measure contains provisions relating to a variety of issues such as executive board conflict of interest prohibitions, access to CIC documents, voting procedures, fines, and penalties.
- S.B. 136-** reinforced the Legislature's concern about due process for association members. The measure requires an owner to adhere to a schedule required by a CIC for the completion of the design, commencement, completion of construction, or issuance of a permit for a unit or an improvement to a unit. The bill also authorizes an association to impose and enforce a construction penalty if an owner fails to adhere to the schedule, as long as the CIC complies with certain notice and hearing requirements.
- S.B. 359-** protects the ability of association members to display the national flag without unreasonable restrictions.

SENATE BILL 100
(First Reprint)

Topic

Senate Bill 100 makes various changes to provisions governing common-interest communities (CICs).

Summary

Creation of Commission for Common-Interest Communities [Section 13]

Senate Bill 100 defines various terms used in the Act. The bill also creates a five-member Commission for Common-Interest Communities appointed by the Governor. Commissioners must meet certain qualifications, serve three-year terms, and at least three must come from a county with a population of 400,000 or more. While engaged in Commission business, Commissioners receive \$80 per day as salary as well as the per diem and travel allowances provided for state employees.

Adoption of Regulations [Section 16 & 18]

The Commission, or the Administrator of the Real Estate Division with the approval of the Commission, may adopt regulations to carry out the Act. The Commission is authorized to employ staff and the Attorney General shall act as counsel for the Commission.

Commission Hearing Panels [Section 19]

Additionally, the bill authorizes the Commission to appoint hearings panels consisting of one or more independent hearing officers. The Commission may by regulation delegate certain of its powers to the hearing panels, including the authority to determine violations, impose fines and take other disciplinary action.

A final order of a hearing panel may be appealed to the Commission and the Commission must review and approve that order not later than 20 days after the Commission provides a written notice of its intention to review the hearing panel order.

Good Faith Immunity of Commission, Division, Employees and Ombudsman [Section 21]

The Commission, its employees and consultants, the Real Estate Division, and the Ombudsman are immune from civil liability for any decision or action taken in good faith without malicious intent.

Commission Data Collection [Section 22]

Furthermore, Senate Bill 100 requires the Commission to collect and maintain certain information regarding the number and kind of CICs in the state, the effect of Nevada Revised Statutes Chapter 116 and attendant regulations on the development, operation and management of CICs as well as on the lending market for CICs. The Commission must also collect and maintain information on violations of the chapter, accessibility and use of mediation and arbitration, number of foreclosures within CICs for failure to pay assessments and fines, reserve studies, and any other issues the Commission determines are of concern to unit owners.

Additionally, the Commission shall develop and promote educational guidelines for conducting CIC elections, meetings and for enforcing governing documents through liens, fines, and penalties. Moreover, the Commission shall recommend and approve education and research programs relating to CICs relating to management, sale and resale of units, alternative dispute resolution procedures, and enforcement of assessments and fines.

Commission Regulations [Section 23 & 24]

The bill also authorizes the Commission to adopt regulations establishing standards for subsidizing mediation and arbitration to ensure such proceedings are expeditious, affordable, and accessible. Additionally, the measure authorizes the Commission to adopt regulations establishing standards for education programs for the benefit of unit owners as well as executive board members and officers of associations.

Furthermore, Senate Bill 100 authorizes the Commission to adopt regulations for issuance of certificates for community managers who do not hold a permit.

Commission and Ombudsman Authority to Investigate Violations [Sections 28 & 29]

Moreover, the measure authorizes the Division and Ombudsman to investigate any person who violates the Act and gives the Commission and hearing panels jurisdiction to take action against such violators. The rights, remedies and penalties provided in the Act are not exclusive and do not abrogate others that might exist at law or in equity. However, the Commission or a hearing panel shall not intervene in internal activities of a CIC except to the extent necessary to prevent or remedy a violation.

Filing Affidavit Regarding Violation With Division [Section 30]

Senate Bill 100 provides that a person aggrieved by an alleged violation of the Act may file a written affidavit with the Division not later than one year after the person discovers or reasonably should have discovered the violation. The affidavit must set forth the facts constituting the

violation. However, the affidavit may not be filed unless the aggrieved person has provided the respondent with written notice sent by certified mail on at least two occasions mailed at least 15 days apart. The written notice must specify in reasonable detail the alleged violation, any actual damages suffered, and any proposed corrective action. The Commission or a hearing panel may impose a fine of not more than \$1,000 if someone knowingly files a false or fraudulent affidavit.

Ombudsman and Division Action on Affidavit [Section 31]

Upon receipt of the affidavit, the Division shall refer it to the Ombudsman who shall give such guidance as the Ombudsman deems necessary to assist the parties with resolving the dispute. If the parties cannot resolve the matter, the Ombudsman shall provide the Division with a report and the Division shall conduct an investigation to determine whether good cause exists to proceed with a hearing. If the Division determines there is good cause for a hearing, the Administrator of the Division shall file a complaint with the Commission and schedule a hearing.

Procedure for Commission Hearing on Complaint Filed by Division [Section 32]

The Commission or a panel shall hold a hearing not later than 90 days after the complaint is filed unless good cause is shown to continue the matter. The bill requires the Division to give the respondent at least 30 days notice of the hearing and provide a copy of the complaint and all relevant information in the possession of the Division.

The respondent must file an answer not later than 30 days after the Division's notice is delivered or mailed and must contain an admission or denial of the allegations in the complaint and any defenses the respondent will rely upon. If the respondent fails to answer, the Commission may enter a default decision after giving the respondent notice.

Attorney Representation and Commission Decisions [Sections 33 & 34]

Any party may be represented by an attorney at any hearing on the complaint. The Commission or a panel must render a final written decision not later than 20 days after the final date of the hearing. The decision must include findings of fact and conclusions of law and all parties must receive notice of the decision by certified mail not later than 60 days after the hearing ends.

Commission Authority to Remedy Violations After Hearing [Sections 35- 37]

If the Commission or a panel finds a violation was committed, it may order the respondent to cease and desist, order the respondent to take affirmative action to correct the violation, or impose an administrative fine of not more than \$1,000. The Commission or panel may also remove an executive board member or officer if they have knowingly and willfully committed a violation and their removal is in the best interests of the CIC. If a respondent violates an order of the Commission or panel, it may impose a fine of not more than \$1,000 for each violation after notice and hearing.

The bill also authorizes the Commission or panel to order a respondent to pay the costs of the proceedings, including investigation costs and reasonable attorneys' fees. If the respondent is a board member or officer, the CIC is responsible for all fines and costs imposed on the respondent and the respondent may not be held personally liable.

Additionally, if the Commission or panel finds the board of a CIC or someone acting on behalf of a board has committed a violation, it may order an audit of the CIC or require the board to hire a community manager or both. The Commission or Division may also bring an action in district court to enjoin further violations if it has reasonable cause to believe such violations will continue. If the Commission or Division has reasonable cause to believe a person will commit, or continue to commit, a violation, either may seek an injunction in court.

Displaying the Flag [Section 38]

Senate Bill 100 authorizes a unit's owner to display the flag of the United States in a manner consistent with the Federal Flag Code and permits a CIC to impose certain reasonable restrictions on displaying the flag.

Executive Board to Place Complaints on Agenda [Section 39]

Additionally, the bill requires an executive board to place a subject on the agenda of the next regularly scheduled meeting if the board receives a written complaint from a unit's owner alleging the board has violated any provision of the chapter or the governing documents and action is required by the board.

Conflicts of Interest for Board Members [Sections 40, 42 & 62(5)]

Furthermore, the bill prohibits a member of the board, an officer or a community manager from soliciting or accepting any compensation or gratuity that would improperly influence or appear to a reasonable person to improperly influence them or result in a conflict of interest. Senate Bill 100 also prohibits an executive board member or officer from entering into certain contracts for goods or services with the CIC. Each person on the ballot as a candidate for executive board member must make a good faith effort to disclose any business or personal interests that would result in or appear to a reasonable person to result in a potential conflict of interest if elected. The disclosure must be made in writing to each member of the CIC in a manner established in the bylaws.

Prohibition on Retaliatory Action by Board [Section 41]

Moreover, the measure prohibits a board, member of the board, officer, employee, or agent from taking any retaliatory action against a unit's owner because the owner complained in good faith about an alleged violation or requested to review the CIC's books and records.

Payment of Costs and Reserve Contributions by Declarants [Section 43]

The measure also requires declarants and successor declarants to pay certain costs for additional elements when the CIC is developed in phases and further requires them to deliver their share of the reserves specified in the required reserve study.

Transient Commercial Use [Section 44]

Additionally, the bill allows transient commercial use of units under certain conditions in counties with a population of 400,000 or more.

Reallocation of Costs in Master Associations [Section 45]

Furthermore, an executive board of a master association created before January 1, 1975, located in a county with a population of 400,000 or more may reallocate the costs of administering the common elements among the units of the CIC uniformly and based upon actual costs associated with each unit.

Delegate Voting [Section 46]

Moreover, the bill authorizes CICs with at least 1,000 units, or CICs created prior to October 1, 1999, to exercise voting rights by delegates or representatives if the declaration so provides.

Construction Penalties [Section 47]

Senate Bill 100 authorizes a CIC to impose a construction penalty against an owner who fails to adhere to a construction schedule if the penalty and schedule are set forth in the declaration, another document recorded before the owner acquired title to the unit or in a contract between the owner and the CIC. The owner must receive notice of the violation and be informed of the right to a hearing. A construction penalty is not a fine for purposes of Chapter 116.

Commission Subpoena Power [Section 51]

The measure also authorizes the Commission, a member of the Commission or a panel to issue subpoenas that are enforceable by petition to a district court.

Ombudsman's Authority to Investigate and Compile Data [Section 52]

Additionally, the bill authorizes the Ombudsman to investigate disputes involving Chapter 116 of Nevada Revised Statutes (NRS) or governing documents of a CIC in order to assist in resolving such disputes. The Ombudsman is also required to compile information on each CIC including information on the number of foreclosures for unpaid fines and assessments and whether the reserve studies have been conducted as required by the statutes.

Exemption of Predominantly Non-residential Associations [Section 54]

Furthermore, the bill exempts CICs created before January 1, 1992, if they are located in a county whose population is less than 50,000 and less than 50 percent of the units are put to residential use unless a majority of the owners elect otherwise in writing.

Prohibition Against Unreasonable Restrictions on Use or Improvement of Units [Section 58]

Moreover, the measure prohibits a CIC from unreasonably restricting or impeding the lawful rights of an owner to have reasonable access to the owner's unit. A CIC is also prohibited from unreasonably restricting or withholding approval for improvements such as ramps, railings or elevators necessary to improve access for owners with disabilities, additional locks to improve security, or shutters to improve security or reduce energy costs. Such improvements that are visible from any other portion of the CIC must be installed in accordance with procedures in the governing documents and must be designed to the maximum extent practicable to be compatible with the style of the CIC.

Limitations on Fines [Section 61]

Senate Bill 100 imposes certain limits on the amount of interest charged on past due fines and the costs of collecting such fines.

Staggered Terms and Prohibition Against Serving on Board if Related to Community Manager [Section 62]

The bill also provides that terms for board members shall be staggered, with certain exceptions, and that there is no limit on the number of terms a member may serve unless the governing documents provide otherwise. Additionally, the measure prohibits a person from serving as a board member or officer of a CIC if the person is related to someone who serves as a community manager for that CIC, unless the person is appointed by the declarant.

Secret Ballots and Other Procedures for Elections [Sections 62 & 63]

Furthermore, Senate Bill 100 makes certain provisions for secret ballot elections for the selection or removal of executive board members, unless the CIC declaration provides for voting by delegates or representatives. If an election is conducted by secret ballot, the ballots must be opened and counted at a meeting of the CIC. Incumbents and candidates are prohibited from participating in the opening or counting of ballots or from possessing or having access to the ballots. Each member of the board must certify in writing to the CIC within 90 days after being elected or appointed to the board that the member has read and understands the governing documents and Chapter 116.

Association and Board Meeting Minutes [Sections 65 & 66]

The bill requires the secretary of the CIC or other designated officer to take minutes at each meeting of unit owners and at each board meeting. The minutes must contain certain specified items. Minutes must be retained until the CIC terminates and owners may record meetings if they provide notice prior to the start of the meeting that they intend to record the proceedings, except when the board meets in executive session.

Actions During Executive Board Sessions [Section 67]

The bill prohibits a board from meeting in executive session to take action on contracts, including contracts with the attorney for the CIC. Copies of contracts a board takes action on must be made reasonably available to owners for review. A board may meet in executive session to discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or employee of the CIC. The board may also meet in executive session to discuss the failure of an owner to adhere to a construction schedule.

Quorum Requirements and Use of Proxies [Sections 68 & 69]

Senate Bill 100 provides that if the governing documents require a quorum for an association meeting greater than 20 percent of the eligible votes that may be cast for election of the board, and there are insufficient people present to constitute a quorum, the persons in attendance may adjourn the meeting to a time not less than 48 hours nor more than 30 days later. At the subsequent meeting, a quorum shall be deemed to be present if persons eligible to cast 20 percent of the vote at an election of the board are present. However, only matters that were on the agenda of the original meeting may be acted on. Further, the actual number of votes that are required pursuant to the governing documents for taking a particular action is not changed. The bill also provides that before a vote may be cast pursuant to a proxy, certain conditions must be met.

Commission Regulation of Community Managers [Sections 70 & 71]

Additionally, the measure provides that the Commission shall establish standards of practice for community managers who hold permits or certificates. Moreover, the Commission or a panel is authorized to take appropriate disciplinary action against a community manager who violates any provision of the chapter. Furthermore, the bill makes changes regarding exceptions to the requirements for holding a permit or certificate as a community manager.

Tax Credits for Park Facilities [Section 73]

The bill also authorizes a CIC to use credits against the statutory residential construction tax for park facilities and related improvements under certain conditions.

Penalty for Failure to Pay Fees to Administrator [Section 74]

Additionally, Senate Bill 100 authorizes the Administrator to impose a penalty against a CIC that fails to pay the fees owed by the CIC to the Administrator. The penalty for each violation may not exceed 10 percent of the amount of the fees owed or \$500, whichever is less.

Liens [Sections 76-78]

Furthermore, the bill makes certain changes to the provisions regarding liens, including granting a CIC a lien against a unit for any construction penalty imposed under the Act.

Access to Association Records [Section 79]

Senate Bill 100 requires a CIC to make certain records available to members upon written request, including without limitation, all records filed with a court relating to a civil or criminal action to which the association is a party. The executive board must also maintain a general record concerning each violation of the governing documents for which a fine, construction penalty or other sanction has been imposed, other than a failure to pay an assessment. The record must contain a general description of the nature of the violation and the type of sanction imposed, including the amount of any fine levied. The record must not contain the name or address of the person who was the subject of the sanction or fine or any other information that could be used to identify them. The record must be organized in such a manner that it is convenient for members to access. All of the records of a CIC must be maintained for at least 10 years.

Providing Reserve Study to Potential Purchaser [Section 83]

Finally, Senate Bill 100 also requires a unit's owner to furnish a purchaser with a summary of the financial components of the CIC reserve study before an offer to purchase becomes binding. Upon request of a unit's owner or a purchaser, the CIC must provide reasonable access to the entire reserve study for inspection, copying and audit.

Effective Date

Portions of the Act become effective on July 1, 2003. Some sections become effective on October 1, 2003. Other sections become effective on January 1, 2004.

CIC GENERAL INFORMATION

What are the limitations on association powers?

In addition to limitations contained in the governing documents, CICs are prohibited from taking certain actions. For example, a CIC may not unreasonably restrict or impede the lawful rights of an owner to have reasonable access to the owner's unit. A CIC is also prohibited from unreasonably restricting or withholding approval for improvements such as ramps, railings or elevators necessary to improve access for owners with disabilities, additional locks to improve security, or shutters to improve security or reduce energy costs. Such improvements that are visible from any other portion of the CIC must be installed in accordance with procedures in the governing documents and must be designed to the maximum extent practicable to be compatible with the style of the CIC.

Similarly, any covenant, restriction or condition in a deed, contract or other legal instrument which affects the transfer, sale or any other interest in real property that prohibits or unreasonably restricts the owner from using a solar energy system is void and unenforceable.

What are the powers and responsibilities of the executive board?

General Powers

Each member of the executive board must, within 90 days after taking office, certify in writing that they have read and understand the association's governing documents and the provisions of Chapter 116 of NRS.

Unless otherwise provided by the declaration, the bylaws, or the NRS, the executive board may act in all instances on behalf of the association. The executive board cannot amend the declaration, terminate the CIC, elect members of the executive board, or determine their qualifications, powers, duties, or terms of office. The executive board may fill vacancies for the unexpired portion of any term. Additionally, the board elects the association officers.

Standards of Conduct for Board Members

Members of the board must exercise the same ordinary and reasonable care as directors of a corporation. Executive board members are subject to the business-judgment rule. Essentially, this standard requires that, in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest.

Avoiding Conflicts of Interest

Each candidate for election to the board must make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result in or appear to a reasonable person to result in a potential conflict of interest. The disclosure must be made in writing to each member of the CIC in the manner established in the bylaws.

Additionally, a member of the board, an officer, or a community manager is prohibited from soliciting or accepting any compensation or gratuity that would improperly influence or appear to a reasonable person to improperly influence them or result in a conflict of interest. An executive board member or officer is also prohibited from entering into certain contracts for goods or services with the CIC.

Prohibition on Retaliatory Action

A board, member of the board, officer, employee, or agent is prohibited from taking any retaliatory action against a unit's owner because the owner complained in good faith about an alleged violation or requested to review the CIC's books and records.

Employment of a Community Manager

A homeowners' association may employ a community manager to handle matters for the community. With certain exceptions, the community manager must have a permit or a certificate to act as a community manager and be certified by the Real Estate Division. Community managers are required to have successfully completed required instruction in property management of CICs. Additionally, community managers are required to take an examination before being certified and then are required to renew their certification periodically. Similar rules apply to property managers who hold permits.

Imposition of Fines and Penalties

In 2003, the Legislature created a distinction between a fine and a construction penalty. The executive board has authority to impose fines and other sanctions for violations of the governing documents, including, but not limited to:

- Prohibiting an association member from voting on matters related to the CIC for a reasonable time; and
- Prohibiting an association member, guest, or tenant from using the common elements for a reasonable time, except for streets, sidewalks, and parking areas.

A fine may be imposed for each violation. The fine must be commensurate with the severity of the violation but must not exceed \$100 for each violation, or a total amount of \$500, whichever is less. Further, if a violation is not cured within 14 days or any longer period set by the board, the violation is deemed to be a continuing violation and additional fines may be imposed for each seven-day period that the violation is not cured.

Fines bear interest at the rate set by the CIC but not to exceed the legal rate per annum. Costs of collecting an unpaid fine may also be collected according to a schedule established by the CIC, with certain limitations established by statute for violations that do not threaten the health, safety or welfare of other residents.

A board may not impose a fine unless:

- Not less than 30 days before the violation, the person to be fined has been provided with written notice of the applicable provisions of the governing documents;
- Within a reasonable time after the violation, the person to be fined has been given a written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing; and
- The person to be fined has been given a reasonable opportunity to contest the violation at the hearing.

A board must hold a hearing before it can impose a fine unless the person to be fined pays the fine, waives the right to a hearing in writing, or fails to appear after proper notice of the hearing. Additionally, a board may appoint a committee of not less than three members to conduct hearings on violations if the governing documents so provide. These provisions only establish minimum procedural requirements for imposing fines and do not preempt provisions of the governing documents that provide greater procedural protections.

A board is also authorized to impose a construction penalty against an owner who fails to adhere to a construction schedule if the penalty and schedule are set forth in the declaration, another document recorded before the owner acquired title to the unit, or in a contract between the owner and the CIC. The owner must receive notice of the violation and be informed of the right to a hearing. A construction penalty is not a fine for purposes of Chapter 116.

Reserves Studies

Each CIC is required to conduct a study of the reserves required to repair, replace, and restore the major components of the common elements at least every five years. Further, the results of the study must be reviewed at least annually to determine if the reserves are sufficient and whether necessary adjustments to maintain the required reserves must be made. The results of the study must be submitted to the Commission for Common-Interest Communities within 45 days after it is adopted by the executive board.

A person qualified by training and experience must conduct the reserve study required. The reserve study must include:

- A summary of an inspection of the major components of the common elements the association is obligated to repair, replace, or restore;
- An identification of the major components of the common elements that the association is obligated to repair, replace, or restore which have a remaining useful life of less than 30 years;
- An estimate of the remaining useful life of each major component identified above;
- An estimate of the cost of repair, replacement, or restoration of each major component identified above, during and at the end of its useful life; and
- An estimate of the total annual assessment that may be required to cover the cost of repair, replacement, or restoration of the major components identified above, after subtracting the reserves of the association as of the date of the study.

Further, this statute requires the commission to adopt regulations establishing the qualifications required for conducting the reserve study. Those qualifications are found in the *Nevada Administrative Code*.

Financial Oversight

Additionally, an executive board is required to hold a meeting at least once every 90 days to review:

- A current reconciliation of the operating and reserve accounts of the association;
- The actual revenues and expenses for the reserve account compared to the budget for that account for the current year;
- The latest account statements prepared by the financial institutions in which the accounts of the association are maintained;
- An income and expense statement for the operating and reserve accounts, prepared on at least a quarterly basis; and
- The status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

What charges may be included in annual assessments?

Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After the association has made the initial assessment, they must be made at least annually, based on a budget adopted at least annually by the association. All common expenses, including a reserve, must be assessed against all the units (except certain vacant lots) in accordance with the allocations set forth in the declaration. The association shall establish an adequate reserve, funded on a reasonable basis, for the repair, replacement, and restoration of the major components of the common elements. The reserve 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.

Further, to the extent required by the declaration, 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. The association must provide written notice to each unit owner at least 21 calendar days before a meeting where an assessment for a capital improvement is to be considered or where action may be taken.

Unless the declaration otherwise provides, penalties, fees, charges, late charges, fines, and interest charges are enforceable as assessments. If a homeowner makes a written request for a statement showing the amount of unpaid assessments due on the owner's unit, the association must provide it within 10 business days. Additionally, the NRS prohibits the application of an assessment, fee, or other charge paid by a member toward a fine imposed by the association against the unit's owner.

What happens if a fine, penalty, or an assessment is not paid?

An association has a lien against any unit for any penalty, assessment, or fine imposed against the owner. Unless the declaration provides otherwise, penalties, fees, charges, late charges, fines, and interest charged for items such as the use, rental, or operation of common elements are also enforceable by liens.

The lien may then be recorded and foreclosed by sale after certain notices required by law are given to the owner. However, an association may not foreclose a lien that results from a fine for a violation of the governing documents unless the violation is one that threatens the health, safety, or welfare of the residents of the association or, the lien is for a construction penalty. Proceedings to foreclose a lien for unpaid assessments must be instituted within three years or the lien is extinguished. An association may bring an action in court to recover the assessment or fine instead of filing and foreclosing a lien. In either case, the prevailing party must be awarded costs and reasonable attorney's fees.

What are the penalties if someone violates an association's governing documents or the statutes respecting homeowners' associations?

If any person subject to Chapter 116 of NRS fails to comply with any of its provisions or any provision of the declaration or bylaws, then any person or class of persons suffering actual damages from the failure to comply has a claim for appropriate relief. A person may bring a civil action for damages. Punitive damages may also be available if the failure to comply is found to be willful and material and if the failure is established by clear and convincing evidence. The prevailing party may be awarded reasonable attorney's fees.

Additionally, a person who is aggrieved by an alleged violation of CIC laws may file a complaint with the Commission for Common-Interest Communities.

How must executive board meetings be conducted?

Time for and Notice of Meetings

An executive board meeting must be held at least once every 90 days. Except in an emergency or if the bylaws require a longer period, notice of each meeting must be given not less than 10 days before the meeting by notice sent to the mailing address of each unit or any other address or electronic mailing address designated in writing by the unit's owner. Alternatively, notice may be published in a newsletter that is circulated to each association member. The notice must state the time and place of the meeting and include a copy of the agenda or the date and locations where copies of the agenda may be conveniently obtained. The notice must also include notification of a member's right to have a copy of the minutes or a summary of the minutes of the meeting upon payment of the cost of providing the copy and to speak to the association or executive board, unless the executive board is meeting in executive session. The agenda must identify items that the executive board may take action on at the meeting.

Contents of Agendas

An executive board must place a subject on the agenda of the next regularly scheduled meeting if the board receives a written complaint from a unit's owner alleging the board has violated any provision of the chapter or the governing documents and action is required by the board.

An Owner's Right to Address Board

A member may attend any meeting of the association members or of the executive board and speak at the meeting, except executive sessions. However, the executive board may establish reasonable limitations on the time a member may speak at such a meeting.

Association and Board Minutes

The secretary of the CIC or other designated officer must take minutes at each association meeting of unit owners and at each executive board meeting. The minutes must contain certain specified items. Minutes must be retained until the CIC terminates and owners may record meetings if they provide notice prior to the start of the meeting that they intend to record the proceedings, except when the board meets in executive session. Minutes or a summary must be prepared within 30 days after the meeting and a copy must be given to any member who requests one, although the board may charge for the cost of providing the copy.

Executive Board Sessions

Executive sessions are closed meetings of the board. Association members are not allowed to attend executive sessions unless they are the subject of a hearing on an alleged violation of the governing documents. They may however be excluded during deliberations.

A board may meet in executive session to discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or employee of the CIC. The board may also meet in executive session to discuss the failure of an owner to adhere to a construction schedule or a violation of the governing documents. Additionally, a board may meet to discuss litigation. A board may not meet in executive session to take action on contracts, unless the contract is between the CIC and an attorney.

Are association members permitted to review association books and records?

The executive board must make available the books, records, and other papers of the association for review during the regular working hours of the CIC, upon written request. This includes, without limitation, contracts to which the CIC is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. However, certain records are not open to inspection. These include contracts between the CIC and an attorney and personnel records of CIC employees, except for records relating to hours worked and salaries and benefits. Records relating to another CIC member are not open to inspection.

The executive board must also maintain a general record concerning each violation of the governing documents for which a fine, construction penalty or other sanction has been imposed, other than a failure to pay an assessment. The record must contain a general description of the nature of the violation and the type of sanction imposed, including the amount of any fine or construction penalty levied. The record must not contain the name or address of the person who was the subject of the sanction or fine or any other information that could be used to identify them. The record must be organized in such a manner that it is convenient for members to access.

The board must maintain and make available for review at the business office of the association or other suitable location within the county where the CIC is located, the financial statement of the association, budgets of the association, and the reserve study.

All of the records of a CIC must be maintained for at least 10 years (except minutes, which must be kept as long as the CIC exists). An executive board is prohibited from requiring payment of more than \$10 per hour to review books, records, contracts, or other papers. A fee may be charged to cover the actual costs of preparing a copy, but not to exceed 25 cents per page. Further, if the board refuses to allow an association member to review these documents, the ombudsman may request to review the records during the regular working hours of the association. If access is denied, the ombudsman may request the commission to issue a subpoena for their production.

Can an association commence a civil action?

The executive board may commence a civil action if a vote is taken at a meeting where notice is given at least 21 calendar days in advance and at least a majority of all unit owners approve. This rule does not apply to actions to enforce payment for an assessment or to enforce the governing documents. Additionally, if there is need to commence such an action to protect the health, safety, and welfare of the residents, a board may commence a civil suit without the required vote. However, the board must then conduct a vote or obtain written agreement of at least a majority of the members to ratify the suit within 90 days after commencement of the action, and if it is not ratified, to dismiss it.

Additionally, if an association commences or seeks to ratify the commencement of a civil action, the association must provide a written statement to all members at least 10 days in advance that includes:

- A reasonable estimate of the costs of the civil action, including reasonable attorney's fees;
- An explanation of the potential benefits of the civil action and the potential adverse consequences if the association does not commence the action or if the outcome of the action is not favorable to the association; and
- All disclosures required to be made upon the sale of the property.