2025 CIC TASK FORCE

4) DISCUSSION AND POSSIBLE ACTION ITEMS:

1. **Capital Improvement - NRS 116.3115 (9) *(NRS 116B.590)* Assessments for common expenses; funding of adequate reserves; collection of interest on past due assessments; calculation of assessments for particular types of common expenses; notice of meetings regarding assessments for capital improvements.**

(9) The association shall provide written notice to each unit's owner of a meeting at which an assessment for 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.

Suggested Discussion – Associations are legally obligated to maintain, repair, and replace common areas, but capital improvements go beyond ordinary upkeep. In reality and day-to-day practice, it can be unclear whether an expense - like adding solar panels or upgrading a pool - is a maintenance item or a capital improvement that could require the unit owners' approval and a required 21-day written notice before a meeting. A clear understanding protects both the board and unit owners by identifying when a project crosses into capital improvement territory and triggers voting or notice requirements.

Issue - The issue with the current statute is that some boards interpret the language to mean they don't have to give unit owners written notice at least 21 days before a meeting on proposed improvements if the board:

- Has authority to make improvements,
- Isn't requesting owner funds; and
- Doesn't classify the project as capital improvement, but maintenance or upkeep instead.

Without clarification, boards can add common elements and spend association operating funds to implement projects without notifying unit owners at least 21 days before the date of the meeting or obtaining approval from the unit owners. Whether the board funds projects through new assessments or use existing operating funds, the financial impact on owners is the same - unit owners fund the improvement. Addressing this gap helps manage expectations, provides transparency, and reduces disputes between the boards and unit owners over spending authority.

2. Complaints placed on agenda - NRS 116.31087 (*NRS 116B.510)* - Right of units' owners to have certain complaints placed on agenda of meeting of executive board

1. If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall, upon the written request of the unit's owner, place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.

2. Not later than 10 business days after the date that the association receives such a complaint, the executive board or an authorized representative of the association shall acknowledge the receipt of the complaint and notify the unit's owner that, if the unit's owner submits a written request that the subject of the complaint be placed on the agenda of the next regularly scheduled meeting of the executive board, the subject of the complaint will be placed on the agenda of the next regularly scheduled meeting of the executive board.

Suggested Discussion – The Division would like to see the consolidation of the language in subsections (1) and (2) into a single provision that provides clear guidance to the board on handling alleged violations of NRS 116 or governing documents, and that requires the board to provide the owner an opportunity for discussion with the board regarding the allegation once placed on the agenda at the next regularly scheduled executive board meeting.

Issue - The current statutory language allows some boards to interpret subsection (2) as inapplicable when a unit owner does not request in their written complaint under subsection (1) to have the subject of the allegation placed on the agenda at the time of notification of the allegation. In practice, some boards fail to inform unit owners of this right as required in subsection (2). Additionally, when allegations are properly included on the agenda, some boards are advised not to engage in discussion due to concerns about self-incrimination or legal exposure without counsel. As a result, boards may place the subject of the complaint on the agenda, call the agenda item, no discussion takes place by the board, and proceed to other business with no opportunity for discussion with the unit owner. Unit owners view this practice as a formality, rather than fostering open dialogue and the potential of an early resolution, thus requiring them to seek other alternative methods for resolution.

Suggested language : *"Not later than 10 business days after the date the executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board or an authorized representative of the association shall acknowledge the receipt of the complaint and notify the unit's owner that, if the unit's owner submits a written request that the subject of the complaint be placed on the agenda of the next regularly scheduled meeting of the executive board, the subject of the complaint will be placed on the agenda of the next regularly scheduled meeting of the executive board."*

3. Reasonable Time to Prohibit Use of Common Element - NRS 116.31031(1)(a)(b)
(NRS 116B.430)

NRS 116.31031 Power of executive board to impose fines and other sanctions for violations of governing documents; regulations; limitations; procedural requirements; continuing violations; collection of past due fines; statement of balance owed.

1. Except as otherwise provided in this section, if a unit's owner or a tenant or an invitee of a unit's owner or a tenant 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 the invitee of the unit's owner or the tenant 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 the invitee of the unit's owner or the tenant from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.*

Suggested Discussion – The Division would like to see clear and precise language written into law to ensure both compliance and transparency i.e. specify what amount of time would be considered reasonable when a board imposes sanctions regarding use of the common elements and/or voting because of a violation of the governing documents.

Issue – The Division has observed that some boards are prohibiting unit owners' access to common areas (such as the clubhouse, pool, etc.) and/or suspending their voting rights for up to a year due to infractions like using profanity in these spaces, and at times deeming the action as health, safety and welfare. Prohibiting the use of the common elements and voting on matters related to the community are required by law to be reasonable; however, the term *reasonable* is not defined leading to inconsistent interpretation and application by boards. It would be helpful to identify what is "reasonable" in this context and as used in this section for consistency and accountability within the communities.

COMMISSION FOR COMMON-INTEREST COMMUNITIES TASK FORCE
MEETING MINUTES AUGUST 19, 2020

VIA WEBEX VIRTUAL MEETING
AUGUST 19, 2020
10:00 A.M.

1-A) Introduction of Commissioners in attendance
Terry Reynolds, Director of the Department of Business and Industry; Sharath Chandra, Administrator for the Real Estate Division; Charvez Foger, Ombudsman for Common-Interest Communities; Peter Keegan, deputy attorney general with the Attorney General's Office; Adam Clarkson attorney with The Clarkson Law Group; Ken Richardson, former training officer for the Real Estate Division and currently teaching HOA management at UNLV.

2) Public Comment
None.

3-A-1) Discussion regarding amendments, additions and deletions to NRS 116 including but not limited to NRS 116.1201(2)(a) regarding limited-purpose associations.
Charvez Foger stated that a limited-purpose association is an association that is guided by the Division but is not regulated. Mr. Foger stated that limited-purpose associations handling landscaping and things of that sort but don't have to following NRS and NAC 116. Mr. Foger stated that limited-purpose associations pay fees to the Division but can not use the Ombudsman's Office for assistance.

Adam Clarkson stated that people have the expectation that limited-purpose associations fall under the purview of the Real Estate Division and that NRS 116 applies to them. Mr. Clarkson stated that the proposed change to NRS 116 is a good direction to have the statute reflect what people expect to practically applies. Mr. Clarkson stated that he is in support of the proposed change and would like to see more detail. Mr. Clarkson stated that the proposed change says "at least these additions" but there are other ones that would be good as well.

Mr. Foger stated that the Ombudsman's Office Education Officer would like the language to mirror NRS 116.1203 for small, planned communities.

Ken Richardson stated that he agrees with Mr. Clarkson. Mr. Richardson stated that limited-purpose associations should be subject to some regulation and be able to take advantage of the informal conferences conducted by the Ombudsman's Office since these associations pay fees to the Division. Mr. Richardson stated that he supports the proposed changes.

Mr. Clarkson stated that if it is intended to craft the language similar to NRS 116.1203 he would want to see the limited-purposed associations include NRS 116.1201(6)(b). Mr. Clarkson stated that subsection (b) states that the limited-purpose associations cannot enforce their association's governing documents against the unit owners.

Sharath Chandra stated that currently there is a proposed change to add NRS 116.3116 and NRS 116.3116(8) to the existing language for limited-purposed associations. Mr. Chandra stated that the Division will dig deeper to make sure that the intent of the limited-purpose association is not overridden by just adding extra sections. Mr. Chandra stated that the Division will look at original legislation that might be from 2005.

3-A-2) <u>Discussion regarding amendments, additions and deletions to NRS 116 including but not limited to NRS 116.31031(1)(b)(2) and NRS 116.31031(2) regarding the fine cap of $1,000 and fining unit owners for the actions of invitees.</u>

Charvez Foger stated that the Ombudsman's Office would like to amend the language to state, "the amount of the fine must not exceed $100 for each violation or total amount of $1,000 per hearing, whichever is less."

Adam Clarkson stated that the proposed revision will be good to clear this up. Mr. Clarkson stated that in the industry, this a majority interpretation. Mr. Clarkson stated that a lot of people have debated if that $1,000 means that there can be a limit at the hearing or a limit of the fine. Mr. Clarkson stated that the Division has interpreted it as being per hearing.

Ken Richardson stated the current language is confusing and creates a lot of problems. Mr. Richardson stated that he does not know if the language should make clear that the $1,000 does not include a continuing fine. Mr. Richardson stated that he has had that matter come up in a class where students were told that they cannot do a continuing fine if it is more than $1,000. Mr. Richardson stated that he supports the proposed language.

Mr. Clarkson stated that this change is being added in the section that does not apply to health, safety welfare violations. Mr. Clarkson stated that there is already a $100 cap for fines that are not health, safety, welfare violations. Mr. Clarkson stated that the $1,000 could apply to an overgrown lawn, a disabled car or graffiti spray painted. Mr. Clarkson stated that if a homeowner had eleven violations, there could not have eleven $100 fines because the it is caped at $1,000. Mr. Clarkson stated that this is the majority interpretation right now. Mr. Clarkson stated that health, safety and welfare fine is not capped and are sometimes used too frequently.

Sharath Chandra stated that the only proposed change to NRS 116.31031(1)(b)(2) would state "$1,000 per hearing". Mr. Chandra stated that if there needs to be additional clarification, he will look to the Task Force members for proposed language.

Mr. Clarkson stated that he supports Mr. Richardson comment regarding continuing fines.

Mr. Clarkson stated that the minority position in the industry regarding this matter is that there is a fine of $100 that can become continuing after 2 weeks. Mr. Clarkson stated that once the homeowner hits $1,000 that is the limitation. Mr. Clarkson stated that there is not a lot of people supporting that but there have been some investor owners who have done limited litigation with associations over this issue.

Mr. Richardson suggested an advisory opinion addressing continuing fines separate from the proposed changes.

Mr. Foger stated that the Ombudsman's Office has an FAQ on this issue posted on the Division's

website.

Terry Reynolds stated that he agrees with Mr. Richardson and stated that it would be important to have clarification aside from proposed statute regarding continuing fines.

Mr. Foger state that the Ombudsman's Office believes that NRS 116.31031(7) addresses that issue.

Peter Keegan stated that NRS 116.31031(7) addresses the issue but if there is going to be a $1,000 cap, that language could include something that says this does not apply to continuing fines or continuing violations. Mr. Keegan stated that a continuing violation stems from one hearing. Mr. Keegan stated that if they violation is repeated, is the intention to limit the fine to the first hearing of $1,000 including continuing future violations which would not get another hearing.

Mr. Foger stated that statute currently states that.

Mr. Keegan asked if the continuing violation fines limited to $1,000 based on the proposed language.

Mr. Foger stated that it is not.

Mr. Keegan suggested stating that in the statute.

Mr. Clarkson agreed with Mr. Keegan that it would be a good clarification to add into subsection 7 and clarify that it is not subject to limitation.

Mr. Reynolds agreed with Mr. Clarkson.

3-A-3) <u>Discussion regarding amendments, additions and deletions to NRS 116 including but not limited to NRS 116.31087 regarding units' owners having certain complaints placed on the agenda.</u>

Adam Clarkson stated that this was added in 2003 and only required a board to place an item on the agenda but not take action on the matter. Mr. Clarkson stated that in 2009 the language was changed to reflect current language. Mr. Clarkson stated that most in the industry would like to delete the entire section. Mr. Clarkson stated that this section is terrible and there are a lot of really good pathways for homeowners to address grievances with the association such as submitting a letter demanding a cure and if the association does not cure, homeowners have the ability to go to the Division. Mr. Clarkson stated that he has never seen this section used for any positive purpose. Mr. Clarkson stated that this section is used to harass the board.

Mr. Clarkson suggested removing section (2).

Charvez Foger stated that the Division is linking this to NRS 116.760. Mr. Foger stated that the Division's vision was to have the respondent given the reasonable opportunity to go over the violations before coming to the Ombudsman's office and filing a complaint.

Ken Richardson stated that he likes the proposed language and agrees with Mr. Foger. Mr. Richardson stated that he agrees that it gives the homeowner an opportunity to discuss issues and gives the board the opportunity to explain their position before it goes to the Ombudsman.

Mr. Clarkson stated this is an allegation of governing documents or allegation of Nevada law, which is a compliance issue and belongs in executive session. Mr. Clarkson stated it should be placed in a forum where it can be discussed confidentially between the homeowner and the board. Mr. Clarkson stated that if you really want it to be a way to open the door to conversation, it is better to be in executive session so that the board can engage in discussing this with the homeowner. Mr. Clarkson stated that talking about his matter in front of all homeowners is not the best course of action because they are discussing something that could expose them to liability if the board did commit a violation.

Mr. Foger stated that the Division believes this is not confidential and wants to board to be able to go back to the unit owners. Mr. Foger stated that this is the reason the language was drafted so that there can be conversation prior to a complaint being filed with the Ombudsman's Office.

Peter Keegan asked if there was an existing provision in NRS 116 that allows the Division upon receipt of a complaint that appears to be overlooked by the board to remand that issue back to the board and require that it be placed on the agenda by the board and addressed.

Mr. Clarkson stated that the statute as written causes these complaints to not be confidential because it forces them to be on the regular agenda for the association board. Mr. Clarkson stated that if the Division truly wants this process to be a process by which the board will engage with the homeowner and try to get something resolved, it must be placed in executive session.

Mr. Foger requested that Mr. Clarkson provide him with a draft of his proposed language to compare his language to the Division's stance.

Terry Reynolds stated that it is important that the task force has some background on these issues and requested Mr. Keegan to look at some of the types of issues and whether it should be public or in executive session.

3-B) <u>Presentation by the Ombudsman for Common-Interest Communities Education section.</u>
Antonio Brown presented the task force with this presentation. Members of the task force were provided with hand outs of the presentation.

4) <u>For Possible Action: Discussion and decision on date, time, place and agenda items for upcoming meeting(s).</u>
Sharath Chandra stated if members of specific items that they would like to discuss, email them. Mr. Chandra stated that the three agenda items that were discussed are potentially going to go before the Legislature. Mr. Chandra stated that any other discussions items could be used for testimony or any future questions.

Terry Reynolds stated that the agenda items discussed today should be placed on the next meeting agenda to take action.

5) <u>Public Comment</u>
Christopher Peitsch, community manager, commented on agenda item 3-A-3. Mr. Peitsch stated that the law significantly changed 8 to 10 years ago dealing with homeowner forums and the way that they now need to be listed on agendas. Mr. Peitsch stated that it used to be that the homeowner

forum was a good opportunity at the beginning of a meeting for anybody to ask any question they wanted to bring up. Mr. Peitsch stated that this changed about 10 years ago to the first homeowner forum there is a requirement that if a homeowner wants to talk, the item has to be on the meeting agenda. Mr. Peitsch stated that he wonders if some pressure would be released and go back to the scenario where any matter could be brought up during that first homeowner forum. Mr. Peitsch stated he sees homeowners who show up who want to discuss something at the beginning of a meeting and the board has to tell them that it cannot be discussed because it is not on the agenda. Mr. Peitsch stated that this causes frustration because the homeowner has to sit through the entire meeting to discuss at the forum at the end of the meeting.

6) <u>For possible action: Adjournment</u>

Terry Reynolds moved to adjourn. Seconded by Ken Richardson. Motion carried. Meeting adjourned at 11:02 p.m. on August 19, 2020.

From:	Mike Kosor
To:	publiccomment@red.nv.gov
Cc:	Kristopher Sanchez; Shareece N. Bates
Subject:	CIC Task Force meeting Dec 2, 2025
Date:	Sunday, November 30, 2025 10:21:12 PM
Attachments:	Policy CIC Dispute Reform 11.30.25.pdf Comments Ombudsman Reporting 11.30.25.pdf

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Chair Sanchez and Members of the Task Force,

My name is Mike Kosor. Congratulations on convening the first meeting of the reconstituted CIC Task Force. I wish you every success in this important work to finish positioning Nevada as a leader in HOA reform.

Assessing current procedural gaps and considering reforms for fairness, transparency, and accountability, as proposed in Agenda Items 4 and 5, is a necessary first step in addressing challenges faced by homeowners and associations in Nevada's common-interest community system.

I am submitting two documents for your discussion on these agenda items:

Attachment A — Policy Paper: Reforming Nevada's CIC Dispute Resolution Systems
This paper identifies structural procedural gaps that have historically posed controversial challenges within Nevada's CIC system. It proposes straightforward reforms to the dispute resolution and enforcement processes to improve homeowner trust. I hope the next step will involve examining the barriers created by judicial deference to board decision-making and identifying ways for CIC members to invoke the agency's jurisdiction when necessary to resolve disputes.

Attachment B — Illustrative Comments on Ombudsman Reporting
This attachment offers a constructive, personal interpretation of the Ombudsman's publicly available data reported to the Commission. It includes a short section on Challenges in Reading Ombudsman Reporting, followed by three examples of statute-level analysis. I believe this type of analysis is what the Commission and the public should receive to better understand governance patterns, recurring issues, and areas requiring additional data collection, clarification, or direction.

As Attachment B demonstrates, the Ombudsman's current annual reports are largely raw numeric tables. They do not analyze patterns, identify high-risk statutes, highlight persistent non-compliance, or flag data needs. The example analysis shows how modest changes in reporting structure can yield far more meaningful insight into governance trends and compliance challenges.

Thank you to the Task Force members for your willingness to serve and for the thoughtful attention I hope you will bring to these issues.

I will be in attendance and would be glad to provide any clarification or answer questions

about the submitted materials.

Respectfully,

Mike Kosor
Founder, Nevada HOA Reform Coalition
www.NvHOAreform.com

Illustrative Comments on Ombudsman Reporting

For CIC Task Meeting Dec 2, 2025 by Mike Kosor

The importance of informative Ombudsman reporting becomes clear when looking at how individual cases are currently publicly categorized and described. The following examples show how those reporting choices can distort, dilute, or obscure the real nature of the underlying issues.

Confidentiality magnifies the risks inherent in any regulatory structure—especially one that relies heavily on discretion. Arguably, Nevada's unique structure, which employs an independent adjudicatory commission, is the safety net envisioned by lawmakers when the administrative track was created. **This makes the quality and nature of the Ombudsman's reporting all the more important.**

What the Commission Currently Receives

Despite the considerable volume of investigative activity conducted by the Division, the Commission's and public's visibility into statutory governance issues remains limited. Based on my eight years of observing Ombudsman presentations before the Commission, I offer the following assessment:

- Presentations consist primarily of raw totals — a "data-dump" of allegation and disposition counts, without statute-level interpretation or context.
- The Alternate Dispute Resolution Report lacks necessary context (nature of the dispute, participating parties e.g. HOA v Owner, Owner v Owner, or Owner v HOA) or trending.
- No statute-level patterns are identified. The Commission receives no information showing which governance duties generate recurring violations, lack of public awareness or understanding, potential ambiguity, or importantly which statutes present elevated compliance risk.
- The same governance duties issues appear year after year, yet this pattern is not surfaced, explained, or quantified in the official reporting.
- No meaningful structured analysis or exchange typically occurs during Commission meetings.
- The lack of visibility diminishes deterrence, as associations or other violators face no public accountability and no Commission-level scrutiny for repeated statutory violations.
- An HOA buyer attempting due diligence into the governance of a prospective association, even on deep dive, will likely find virtually nothing of value.
- The CCIC Commission is required under NRS 116.665(2)(g) to identify areas of concern affecting owners, associations, and community managers — yet it cannot perform this role effectively without access to aggregated, statute-specific patterns of confirmed violations.

As a result, the Commission and public are left with numeric snapshots of *data* collected rather than actionable oversight i*nformation*.

Attached are three simple examples of how data already collected with modest adjustments in the structure and presentation illustrate can be used to better inform and improve the Commission's

ability to understand patterns of statutory noncompliance, identify areas of concern, and fulfill its responsibilities under NRS 116.665(2)(g).

Much Appears to Be Resolved Outside the Structural Framework

In addition to the lack of analytic reporting to the Commission, a substantial portion of alleged statutory violations from Intervention Affidavits filed by owners appear to be resolved internally ("found") at the Division level, without reaching the Commission for review, delegation, or public visibility. This has led to significant homeowner frustration compounded by confidentiality rules, which prohibit disclosure of most information about investigations, leaving owners uncertain about whether their concerns were validated or whether the association corrected its conduct.

Challenges in Reading Ombudsman Reporting

In the spirit of improving the Ombudsman Report (both the Ombudsman and Compliance sections) and aid the Task Force's work under Agenda Item #5 the following list of "challenges" are provided the Task Force. I recognize the slide deck is prepared for the Commission for Common-Interest Communities, whose members are assumed to understand the terminology, workflow, and what appear to be disposition codes used by the Division. However, for anyone outside that internal ecosystem—including homeowners, associations, researchers, and even members of the Legislature—the reporting format presents several serious challenges. These challenges make it difficult to understand what actually happens to homeowner complaints once they enter the statutory enforcement pipeline.

1. Undefined Terminology and Internal Codes: A brief "terms and definitions" page appended to the slide deck or made available elsewhere would substantially improve transparency. INTRV2, INTRV3, unsubstantiated allegations, Division Resolved Allegation, Division Terminated Allegation, No Violation and Non-Jurisdictional (criteria to differentiate from other in the Outcome case chart), etc.

2. Ombudsman Assistance Report (FY25. RP 7/1/24-5/30/25)

- General 95 cases(?) to Ombudsman Action of 260. Define/explain case origin if not IAs
- 214 of 260 (82%) of "Actions" (assume IAs) are closed. Data as to why closed valuable.
- "NRED letter" (112). Explain what comprises this category vs conference
- 35 IAs to compliance- an extremely low percentage. Explanation is needed. Also, it does not appear to correlate with Compliance Sections' reported FY 25 case total of 130.
- List the Top 3 allegations is a good start: trend analysis and narrative context would be valuable.
- Data on intake rejections (pre-IA screening) would help user understanding, satisfaction, and administrative workload. This would include procedural rejections, jurisdictional dismissal, and other early failures.

3. CIC Compliance/Audit Section (FY25. RP 7/1/24-5/30/25)

- Cases chart (pg 9) does not clarify whether "closed" cases include matters adjudicated before the CCIC

- INTRV2 chart definition is essential. As currently presented, the dataset can be interpreted multiple ways absent definitions and explanations. E.g. 48% of case closed were found "Unsubstantiated", 15 cases (13%) or "Division Resolved" and/or "Terminated Allegation", 40 case (35%)
- Clarification is needed on who determines when an allegation is "found" and what "found" signifies. For example:
    - On average 30% (almost 1 in 3) alleged case were found.
    - NRS 116.31034 Executive Board- 60% of alleged are found.
    - NRS 116.31034 Executive Board- 33% of alleged are found.
- Generally, analysis and trending of INTRV2 case *data* would be immensely valuable to *information* (see examples)

4. No Analysis of Commission Rulings (Post-Hearing)

Although Commission decisions are publicly posted on the NRED website after hearings, the Ombudsman's reporting provides no analysis of these rulings, no synthesis of statutory interpretations, and no identification of recurring compliance problems addressed by the Commission. In most administrative systems, post-adjudication decisions are understood to be the primary source of regulatory guidance—functioning much like judicial opinions by clarifying statutory meaning, creating expectations for future conduct, and promoting consistency across cases.

In Nevada, however, the absence of any summary or trend analysis means that Commission rulings exist in isolation. Owners and associations must sift through individual case PDFs to understand what the Commission actually determined during the fiscal year; policymakers receive no consolidated view of enforcement trends; and the Division offers no account of how Commission decisions should inform future investigative or compliance priorities.

This omission undermines a core value of having an independent adjudicatory body. Without even a basic synthesis—such as an index, the number of violations found, statutes most frequently implicated, types of sanctions imposed, or recurring fact patterns—the Commission's determinations provide little systemic guidance. They resolve individual disputes but do not illuminate the broader compliance landscape or inform stakeholders about how NRS 116 is being interpreted in practice. Post-hearing analysis is not a nicety; it is essential to transparency, deterrence, and the Commission's statutory duty under NRS 116.665(2)(g) to identify areas of concern affecting homeowners, associations, managers, and developers.

Example #1 Below is the actual FY 25 Ombudsman slide

NRS 116.3114 - SURPLUS FUNDS	2	0	2
NRS 116.31142 - PREPARATION & PRESENTATION OF FINANCIAL STATEMENTS	5	3	2
NRS 116.31144 - AUDIT & REVIEW OF FINANCIAL STATEMENT	9	4	5
NRS 116.3115 - ASSESSMENTS / COMMON EXPENSES	18	6	12
NRS 116.31151 - UNITS' OWNERS/ANNUAL DISTRIBUTION	10	5	5
INTRV2 Alleged Issues	**Alleged**	**North**	**South**
NRS 116.31152 - STUDY OF RESERVE	20	6	14
NRS 116.31153 - WITHDRAWALS/SIGNATURES REQUIRED	11	5	6
NRS 116.31155 - HOA/FEES IMPOSED FOR ADMIN FEES & PENALTIES	2	1	1
NRS 116.31158 - HOA / REGISTRATION W/ OMB	5	1	4
NRS 116.3116 - LEINS / ASSESSMENTS AGAINST UNITS	1	1	0
NRS 116.31175 - HOA BOOKS, RECORDS & OTHER PAPERS / MAINTENANCE & AVAILABILITY	17	3	14
NRS 116.3118 - UNITS' OWNERS RIGHTS/MAINTENANCE & AVAILABILITY OF RECORDS REQUIRED F	4	1	3
NRS 116.31183 - RETALIATORY ACTION PROHIBITED	7	0	7
NRS 116.31184 - THREATS & HARASSMENT	7	2	5
NRS 116.31185 - PROHIBITION/CERTAIN PERSONNEL SOLICITING OR ACCEPTING COMPENSATION	6	2	4
NRS 116.31187 - PROHIBITION AGAINST CERTAIN PERSONNEL CONTRACTING WITH ASSOCIATION OR ACCEP	1	1	0
NRS 116.345 ASSOCIATION PROHIBITED FROM TAKING CERTAIN ACTION	4	1	3
NRS 116.4109 - RESALE OF UNITS	2	0	2
NRS 116.760- RIGHT OF PERSON TO FILE AFFIDAVIT WITH NRED; PROCEDURE FOR FILING AFFIDA	2	0	2
NRS 116A.610- CM TO DISCLOSE INFO. BEFORE MBMT. CONTRACT	1	0	1
NRS 116A.620 - MGMT AGREEMENT; INSURANCE; CHANGES; TERMINATION	3	2	1
NRS 116A.630 - STANDARDS OF PRACTICE FOR CM	10	5	5
NRS 116A.640-CM PROHIBITED IN ENGAGING IN CERTAIN ACTS; EXCEPTIONS	6	2	4
INTRV2 Found Issues	**Found**	**North**	**South**
NAC 116A.385 EXECUTIVE BOARD: SUBMISSION TO DIVISION OF CONTACT INFORMATION FOR MEI	1	0	1
NAC116.405 - MEMBERS OF EXECUTIVE BOARD/PROHIBITED ACTION	10	0	10
NAC 116.415 - CONTENT OF BUDGET TO MAINTAIN RESERVE	3	0	3
NAC 116.425 - RESERVE STUDY; CONTENT	1	0	1
NAC 116.451 - PREPARATION, CONTENTS AND DISTRIBUTION OF INTERIM FINANCIAL STATEMENTS	1	0	1
NRS 116.3103 - POWER OF BOARD; FIDUCIARIES	14	1	13
NRS 116.31031 - EXECUTIVE BOARD/IMPOSE FINES	5	0	5
NRS 116-310315 - ACCT. FOR FINES/PROHIBITION FEES TOWARD FINES	1	0	1
NRS 116.31032 - DECLARANT / CONTROL PERIOD	1	0	1
NRS 116.31034 - EXECUTIVE BOARD / ELECTION & ELIGIBILITY	37	3	34
NRS 116.3108 - UNITS' OWNERS/ MEETINGS	1	0	1
NRS 116.31083 - EXECUTIVE BOARD / MEETINGS	2	0	2
NRS 116.31085 - UNIT'S OWNERS/RIGHT TO SPEAK AT CERTAIN MEETINGS	2	2	0

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Suggested add: FY25 — Top 5 Violation found

Example of the type of analysis missing from the Ombudsman slide

Statute	Alleged	Found	Confirmation Rate
NRS 116.31034 — Elections	61	37	61%
NRS 116.3103 — Fiduciary Duties	42	14	33%
NAC 116.405 — Prohibited Acts	21	10	48%
NRS 116.31175 — Records Access	17	7	41%
NRS 116.31083 — Board Meetings	16	2	12.5%
% of Total	**50%**	**75%**	—

(potential narrative)

- 50% of all FY25 alleged statutory violations arise from just five governance duties**:**
- These same statutes account for three-quarters (75%) of all confirmed violations**,**
- Election-related problems dominate the dataset with the highest vol. and confirmation rate.
- Fiduciary-duty violations consistently appear as the second-largest governance concern**,**
- Prohibited-conduct and records-access violations together reflect substantial, repeated breakdowns in transparency, accountability, and compliance with required procedures.
- Board-meeting violations are regularly alleged but rarely confirmed, suggesting either (1) inconsistent application of the statute, (2) gaps in evidence collection, or (3) a mismatch between homeowner expectations and statutory requirements.

Example #2 – multi- year evaluation (use FY23-FY25 annual reporting)

Three-Year Governance Statutes Table (FY23–FY25)

Statute	FY23 Alleged	FY23 % Found	FY24 Alleged	FY24 % Found	FY25 Alleged	FY25 % Found
NRS 116.31034 — **Elections**	32	12.5%	45	29%	61	61%
NRS 116.3103 — **Fiduciary Duties**	29	44.8%	45	2%	42	33%
NAC 116.405 — **Prohibited Acts**	30	30%	30	30%	21	48%
NRS 116.31175 — **Records Access**	11	54.5%	21	0%	17	41%
NRS 116.31083 **—** **Board Meetings**	20	15%	16	0%	16	12.5%
NRS 116.3108 — **Owners' Meetings**	9	11.1%	12	0%	12	8.3%

(Narrative Example #2 — FY23–FY25 Governance Violation Trend)

Across the three most recent fiscal years, the data shows a stable and highly concentrated pattern of statutory complaints in the same core governance duties—elections (NRS 116.31034), fiduciary obligations (NRS 116.3103), prohibited board conduct (NAC 116.405), and access to records (NRS 116.31175). These statutes anchor the transparency, accountability, and democratic oversight of common-interest communities. They also consistently generate the highest volumes of homeowner allegations, and in most years they produce substantial rates of confirmed violations when investigated.

- **FY23**
  - Nearly **45%** of fiduciary-duty allegations were confirmed.
  - More than **50%** of records-access allegations were confirmed.
  - Approximately **13%** of election-related allegations were validated.
- **FY24**
  - Allegations concentrated in the *same* governance categories as FY23 and FY25.
  - Yet confirmation rates for fiduciary-duty and records-access violations dropped to near zero.
  - This pattern diverges sharply from both FY23 and FY25 and almost certainly reflects internal investigative or classification differences, rather than any meaningful improvement in association compliance.
- **FY25**
  - Confirmation rates returned to the earlier FY23 profile.
  - **61%** of election-related allegations were confirmed.
  - **33%** of fiduciary-duty allegations were confirmed.
  - **41%** of records-access allegations were confirmed.

Taken together, FY23 through FY25 reveal a coherent and recurring picture. Homeowners continue to report violations in the same fundamental governance categories year after year, and the Division routinely confirms a meaningful proportion of those allegations.

Example #3- deep dives (as needed or requested by Commission)

1. **Election Violations (NRS 116.31034)**

Fiscal Year	Alleged	Found	Confirmation Rate
FY23	32	4	13%
FY24	45	13	29%
FY25	61	37	61%

Interpretive Notes

- Highest-volume statute every year.
- Highest-confirmation statute in FY25.
- Shows sustained and substantial growth over three years.
- Indicates systemic election-administration problems, not isolated disputes.

2. **Three-Year Focus: NAC 116.405 (Prohibited Acts)**

Fiscal Year	Alleged	Found	Confirmation Rate
FY23	30	9	30%
FY24	30	9	30%
FY25	21	10	48%

Interpretive Notes

- One of the most consistently alleged governance violations statewide, nearly identical allegation levels in FY23 and FY24, and only a modest drop in FY25.
- Stable pattern of validated board-conduct violations over multiple years. FY25 saw a higher 48% suggesting not fewer allegations but a higher proportion substantiated.
- Persistence over three years indicates recurring breakdowns in lawful board conduct.

3. **Fiduciary Duty (NRS 116.3103)**

Fiscal Year	Alleged	Found	Confirmation Rate
FY23	29	13	45%
FY24	45	1	2%
FY25	42	14	33%

Interpretive Notes

- **#2 category every year;** high and near-identical volumes annually
- FY24 is a sharp outlier- likely reflecting **internal investigative variability**, not a sudden improvement in compliance.

- Recurrence across all three years demonstrates that fiduciary-duty disputes are systemic, not interpersonal**.**
- The pattern is suggestive of weak deterrence in the current enforcement structure.

These problems are not random, interpersonal, or trivial; they cluster around the statutory duties most central to the integrity and openness of association governance. While the administrative process frequently obtains corrective action in individual cases, the recurrence of these same violations across three consecutive fiscal years demonstrates that the current framework corrects isolated incidents but does not deter the underlying behavior. The continuity of the data makes clear that Nevada's administrative enforcement system detects real governance failures but does not yet address their root causes.

This statute-specific example reinforces the broader point illustrated in Examples #1 and #2: the same governance problems repeat every year, the Division repeatedly confirms them, and yet the current reporting and enforcement framework does not furnish the Commission with the analytical tools needed to understand or deter recurrence.

Reforming Nevada CICs Dispute Resolution Systems

Executive Summary

The Nevada Supreme Court has recognized that an HOA is "no less of 'a quasi-government entity' … 'paralleling in almost every case the powers, duties, and responsibilities of a municipal government.'"[1] Its governance structure however, is based on the corporate model, lacking the checks and balances that typically constrain cities from abusing their residents. Disputes are common and often seen as petty and unnecessary. Nevada, consistent with the American Law Institute's *Restatement (Third) of Property: Servitudes* finds that "public policy supports use of alternatives to judicial resolutions of common-interest community (CIC) disputes, and implying a power to use less drastic alternative enables the association to carry out its functions and meets the probable expectations of the property owners."[2]

Nevada's CIC dispute-resolution system has never fully achieved this non-judicial resolution objective nor the Legislature's explicit and long-standing goal: ensuring that homeowners and associations can obtain a low-cost, neutral, and timely determination of their rights and obligations without being forced into expensive civil litigation. For more than thirty years, Nevada lawmakers have relied on two complementary tracks to pursue this goal:

(1) an administrative enforcement system for alleged violations of NRS 116, and
(2) an ADR-based governance-dispute process for disagreements arising under the declaration, bylaws, and other governing documents.

Despite periodic improvements, both tracks fail at the same critical point: from the perspective of homeowners, neither reliably produces a determinative outcome unless the homeowner assumes the prohibitive cost and risk of civil litigation**.** In theory the system provides alternatives; in practice it often delivers only delay, opacity, and the abandonment of legitimate concerns.

Administrative Enforcement (Section I)

The administrative process established by innovative lawmakers in 2003 made Nevada a leader in CIC regulatory oversight--the Nevada Real Estate Division (NRED) investigates alleged statutory violations and an independent Commission for Common-Interest Communities dedicated to CICs acts as a binding adjudicatory tribunal. Yet operational deficiencies—most visibly the lack of transparency experienced by owners—prevent the administrative track from functioning as intended. Opacity erodes confidence in the process and makes it impossible for the public or the Commission to evaluate whether statutory duties are being enforced evenhandedly.

[1] *Kosor v. Olympia Co.*, 136 Nev. 834, 837 (2020) (quoting *Cohen v. Kite Hill Cmty. Ass'n*, 142 Cal. App. 3d 642, 191 Cal. Rptr. 209, 214 (1983))
[2] See *Restatement (Third) of Property: Servitudes* § 6.8 cmt. a, at 155 (2000)

Confidentiality magnifies the risks inherent in an administrative system that relies heavily on discretion. Some degree of discretion is indispensable. But discretion cannot serve as the primary operating mode of enforcement when its exercise is largely invisible.

The failures themselves are modest but consequential:

- No review mechanism exists for Division closures of complaints filed, leaving complainants without recourse and depriving the Commission and public of visibility into gatekeeping consistency.
- An overly expansive interpretation of NRS 116.757 (confidentiality).

They can be corrected through modest reforms:

- creation of an independent Review Officer (RO) to assess closure decisions upon request;
- clarification of permissible information-sharing under NRS 116.757;
- adoption of redacted closure summaries, improved reporting by the Division to include analysis not just data, and uniform procedural guidance.

Governance Disputes (Section II)

The governance-dispute track, under NRS 38.300–.360, was intended to provide an affordable alternative to litigation capable of producing a determination. It has never done so. The fundamental defect is structural: either party may unilaterally block, in effect veto, the ADR pathway capable of issuing a decision, forcing the dispute into mediation (which cannot decide the merits) and then into civil litigation.

Prevailing-party attorney-fee provisions, embedded in nearly all CC&Rs, magnify the risk even when a complainant (typically a homeowner) is simply attempting to enforce the protections the Legislature enacted or the obligations the developer imposed through the declaration without regulatory review. Associations defend litigation costs using assessment-funded counsel and business judgment protections[3], while individual homeowners face personal financial exposure for simply seeking clarity regarding their rights. Legislative testimony over decades consistently reflects the same reality: the merits of governance disputes remain unexamined not because owners lack valid concerns, but because the system makes neutral review financially inaccessible.

Mandating a nonbinding referee determination alters that dynamic. Even without formal preclusive effect, it introduces a credible, low-cost merits assessment into a space that has long lacked one. The very act of rejecting such a determination adds functional tension: it requires a

[3] *Associations defend litigation costs using assessment-funded counsel and business-judgment protections, a structural asymmetry long recognized in CIC scholarship. See* Restatement (Third) of Property: Servitudes *§ 6.13 & cmt. b (Am. L. Inst. 2000) (explaining that importing corporate-law deference into CIC governance can insulate boards from accountability even where decisions directly burden individual owners). *In governance-dispute litigation, these protections are implicated because an association can rely on assessments to finance defense costs while invoking the Business Judgment Rule to shield its underlying decision from judicial review. The combination magnifies the financial and doctrinal obstacles faced by homeowners and reinforces the cost-based coercion this paper seeks to address. The paper does not develop the full argument that the Business Judgment Rule is inappropriate for CICs, but notes its relevance to understanding present incentives and barriers.*

dissatisfied party to proceed in the face of a competent contrary analysis, and in the case of an association, requires disclosure to members because the determination—unlike privileged legal advice—cannot be withheld under an advice-of-counsel rationale. If litigation follows, the board's decision also invites process-based judicial scrutiny. In this way, the referee's nonbinding status becomes a strength rather than a weakness—it preserves party autonomy while creating a practical accountability mechanism that has been missing from the governance-dispute track since its inception.

Core Reform

This paper proposes a single structural correction drawn directly from the model introduced in A.B. 34 (2013)[4]: If the Ombudsman cannot resolve the matter informally under NRS 116.765, and the parties do not mutually choose arbitration or civil litigation, the dispute defaults to the referee process. A referee conducts a very low-cost merits review and issues a written decision and award deemed nonbinding arbitration under NRS 38.300–.360. The reform preserves full access to the courts but removes the respondent's unilateral ability to block any determinative process.

This model:

- restores the *determinative* function the Legislature intended in 1995 and reaffirmed in 2013;
- prevents strategic "vetoes", delays, and cost-based coercion;
- ensures every governance dispute receives a neutral determination; and
- produces a written, neutral merits award that carries significant practical and fiduciary weight and is likely to deter unnecessary litigation,
- while post-award civil litigation remains available.

Legislative Imperative

Industry stakeholders are likely to frame the referee program much as they did in 2013 claiming it expands NRED jurisdiction, circumvent existing processes, add cost to associations, or constitutes impermissible intrusion on "private" contracts.[5] Those objections lack support in fact or in law.

The Nevada Supreme Court's 2025 decision in *Kosor v. SHCA* rendered the entire NRS 38 ADR requirement waivable- no longer "mandatory" and not jurisdictional. Unless the Legislature restores the mandatory character, any governance-dispute reform, including this referee-default model, remains vulnerable to waiver, gamesmanship, and judicial nullification.

[4] Despite support from NRED, CIC Commissioners and homeowners. Assembly Bill 34 (2013) failed to pass out of committee and therefore died pursuant to legislative deadline. Strong opposition from industry stakeholders--especially HOA management companies, developers, and industry attorneys, to include the Real Property Section of the state bar.

[5] See testimony before Assmb. Committee Judiciary on several CIC bills (A.B 320, A.B 370 and A.B 397), 03/27/2013

Appendix A therefore includes necessary amendments to NRS 38.310–.330, and appendix B providing for implementation structure for the referee process as the default program.

Reforming Nevada CICs Dispute Resolution Systems

By Mike Kosor[6]

Introduction

"Neither the law governing cities, nor the law governing corporations, is well suited to common interest communities."[7] The American Law Institute's *Restatement (Third) of Property: Servitudes* concludes that "legal proceedings to enforce compliance with [CIC] obligations should ordinarily be the last resort….public policy supports use of alternatives to judicial resolutions of common-interest community (CIC) disputes, and implying a power to use less drastic alternatives enables the association to carry out its functions and meets the probable expectations of the property owners."[8]

Nevada's common-interest community (CIC) dispute-resolution and regulatory-enforcement system is bifurcated. Alleged violations of NRS 116 fall within the jurisdiction of the Nevada Real Estate Division (NRED) and the Commission for Common-Interest Communities (Commission), while disputes arising exclusively from governing documents fall outside the authority of both bodies and must proceed through the civil courts. Despite these separate pathways—and notwithstanding the long-recognized tension over how to classify CICs, and the Nevada Supreme Court finding they operate in the "quasi-governmental "space [9]—neither track consistently delivers what homeowners identify as an important need: a low-cost, neutral determination of whether an association or owner has complied with governing obligations.

CIC purchasers are understandably surprised by the extent to which the freedoms they associate with homeownership have been curtailed.[10] At the same time, enforcement practices among CICs

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[6] Founder, NVHOAReform Coalition. https://www.nvhoareform.com/ Kosor is not an attorney and as such nothing in this paper is intended to serve as legal advice.

[7] Susan F. French, *Making Common Interest Communities Work: The Next Step,* UCLA School of Law, pg 5.

[8] See *Restatement (Third) of Property: Servitudes* § 6.8 cmt. a, at 155 (2000)

[9] The Nevada Supreme Court confirmed that common-interest community associations exercise "delegated powers of governance" that are "public in character," placing them in a *quasi-governmental* posture when enforcing governing documents and imposing obligations on owners. *Kosor v. S. Highlands Cmty. Ass'n*, 140 Nev. Adv. Op. (2024) (recognizing that associations wield authority that is not purely contractual but derives from statute and functions in a manner analogous to governmental power). The Court emphasized that CICs do not operate solely as private contracting parties; they enforce obligations through statutory mechanisms that bind all owners as a condition of property ownership.

[10] CC&Rs are quintessential adhesion documents. For the most part, courts do not undertake a substantive analysis of the desirability of individual community covenants. Purchasers do not negotiate their terms; they are imposed by the declarant and accepted on a take-it-or-leave-it basis as a condition of acquiring title. Courts acknowledge the "legal fiction" of owner consent: the owner is deemed to have agreed by purchasing property encumbered by the declaration, even though the terms are not read, cannot be modified, and are often not understood. See *Restatement (Third) of Property: Servitudes* § 6.13 cmt. a (2000) (noting that common-interest community servitudes are typically non-negotiable and imposed unilaterally by the developer); see also Susan F. French, *Making Common Interest Communities Work: The Next Step*, at 4–6 (2004) (describing CC&Rs as adhesion contracts that lack the procedural safeguards of public law); Thomas W. Merrill & Henry E. Smith, *The Property/Contract Interface*, 101

vary widely, waiver problems persist, and volunteer boards are often "guided" by advisors whose incentives are not always aligned with de-escalation. The result is predictable: disagreements that could be resolved informally instead escalate toward litigation. Outrage, defiance, inexperience, and other human factors then compound the problem, producing lawsuits that courts frequently view as petty or unnecessary.[11]

Ordinances must be enforced by local officials, while CC&Rs (covenants, conditions, and restrictions, the core governance documents) can be enforced by any property owner in the common interest community, as well as by the association. As Susan French, Reporter for the American Law Institute (ALI) *Restatement (Third) of Property: Servitudes*, has described: "t[T]he community association governance structure, which is based on the corporate model, lacks the checks and balances that typically constrain cities from abusing their residents. The corporate model theoretically protects owners from abusive boards and management companies by giving them power to elect and remove the board of directors. However, individual owners who lack the political clout to mount a recall or successful run for the board have little recourse against board misconduct. In most states, if persuasion and politics fail, the owner can only resort to the courts. Resort to the courts is not only cumbersome and costly, but it is also risky. Governing documents for common interest communities typically provide that in suits between an owner and the association, the loser pays the winner's attorney fees."[12]

Industry actors have repeatedly urge adherence to the contract model for CIC enforcement, under which civil courts serve as the sole adjudicator of disputes. While lawmakers urged by owners seek alternatives capable of providing timely, proportionate, and affordable determinations.[13]

Nevada ultimately developed a dual-track system: administrative enforcement for statutory violations and an adapted alternative-dispute-resolution (ADR) structure as a precursor to civil

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Colum. L. Rev. 773, 782–84 (2001) (explaining that the "contract" framing of servitudes obscures their adhesive nature and regulatory function).

[11] Id. at 238 (2000)

[12] Susan F. French, *Making Common Interest Communities Work: The Next Step*, UCLA School of Law Working Paper, at 5 (2004)

[13] Legislative testimony across multiple sessions reflects sustained industry advocacy for a "civil-court-only" model grounded in corporate-contract principles, and equally sustained legislative pushback. Repeatedly expressed are concerns traditional litigation was too costly, too slow, too inaccessible for most homeowners, and fundamentally ill-suited to the low-value, high-volume disputes typical of common-interest communities. See Hearing on A.B. 237 Before the Assembly Comm. on Judiciary, 69th Leg. (Nev. Mar. 19, 1997) (industry testimony urging that CIC disputes "belong in court" as private contractual matters); Hearing on S.B. 314 Before the S. Comm. on Judiciary, 71st Leg. (Nev. Feb. 18, 2001) (industry resistance to expanding administrative resolution mechanisms); Hearing on A.B. 370 Before the Assembly Comm. on Judiciary, 77th Leg. (Nev. Mar. 27, 2013) (industry witnesses cautioning that a referee determination could supplant the role of civil litigation in resolving declaration-based disputes); Hearing on A.B. 370 Before the Assembly Comm. on Judiciary, 77th Leg. (Nev. Mar. 27, 2013) (legislators and NRED officials emphasizing that civil litigation is "not workable" for most CIC disputes and that affordable determinative mechanisms were necessary); Hearing on S.B. 100 Before the S. Comm. on Judiciary, 72nd Leg. (Nev. May 1, 2003) (lawmakers noting that owners "cannot realistically litigate" most disputes and requiring a more accessible dispute-resolution structure).

litigation for CC&R-based disputes. For more than three decades, legislators have repeatedly expressed concerns with the effectiveness of this structure.[14]

This paper addresses reforms to both tracks. Section I analyzes the administrative-enforcement system created in 2003 and concludes that it is structurally sound but operationally incomplete, offering two targeted reforms to restore transparency and review. Section II addresses governance disputes and explains why the Legislature's longstanding goal—creating a reliable, lower-cost alternative to litigation capable of producing a determination—has not been achieved. The reform advanced corrects the structural defect that allows either party to avoid any determination of the merits and the chilling effect that prevents owners from obtaining interpretive clarity before litigation.

SECTION I — Regulatory Enforcement

A. Origins and Development (1991–2003)

Nevada adopted the Uniform Common-Interest Ownership Act (UCIOA) in 1991, establishing for the first time a comprehensive statutory structure for common-interest communities in the state. The Act codified duties for associations, boards, and unit owners but created no enforcement mechanism.[15] Throughout the 1990s, disputes—whether based on statutory duties or governing documents—could be addressed only through the civil courts.

In 1995, the Legislature adopted Nevada's formal alternative dispute-resolution (ADR) structure for CIC governance issues. But this early framework offered no binding outcomes and allowed parties to proceed to civil court without obtaining a neutral determination of the underlying issues. The structural gaps persisted.

In 1997, the Legislature created the Office of the Ombudsman within the NRED, seeking to provide homeowners with education, assistance, and support in navigating disputes.[16] In 1999, lawmakers expanded the Ombudsman's authority to request records and maintain complaint and education databases.[17] Still, Nevada lacked the crucial components of effective regulatory oversight: investigative capacity and an adjudicatory forum outside civil litigation.

By 2000, the American Law Institute (ALI) had concluded that civil litigation was structurally mismatched to the nature of community-association disputes—too slow, too costly, and procedurally ill-fitted to the recurring, low-dollar, high-volume conflicts characteristic of CICs. "Using legal proceedings to enforce compliance with common-interest-community obligations

[14] Hearing on S.B. 314 Before the S. Comm. on Judiciary, 69th Leg. (Nev. Feb. 18, 1997) (testimony describing that homeowners "cannot afford to sue," "avoid litigation even when they have legitimate complaints," and "do not have the resources to challenge their association").

[15] See A.B. 221, 66th Leg. (Nev. 1991) (enacting Nevada's version of the Uniform Common-Interest Ownership Act)

16 See S.B. 347 197, 69th Leg. (Nev. 1997) Legislature significantly amended NS 116, often described as Nevada's "HOA Bill of Rights" and created the Office of the Ombudsman.

17 In 1999, the Legislature expanded the Ombudsman's authority to request records, maintain association databases, and seek subpoenas through the Commission. See S.B. 451, 70th Leg., ch. 541, §§ 13–16, 1999 Nev. Stat. 2703–07.

should ordinarily be the last resort because of their expense and hostile character" [18] Nevada lawmakers heard similar testimony, emphasizing that homeowners faced disproportionate burdens when seeking to resolve even relatively minor disputes.[19]

In 2003, the Legislature enacted Senate Bill 100, creating Nevada's modern administrative enforcement framework. SB 100 empowered NRED to investigate alleged violations of NRS 116 and associated regulations and established the Commission for Common-Interest Communities (Commission) as an independent adjudicatory body to hear and decide those matters. Senator Mike Schneider, the bill's sponsor, later summarized the Commission's design succinctly: "The purpose of the Commission is to give homeowners an expeditious and inexpensive forum for resolving disputes with CICs."[20] Homeowners repeatedly described court as too expensive, too slow, and intimidating while NRED officials stated that a system should provide timely, proportionate handling of conflicts at minimal cost.[21]

Legislation limited NRED and Commission enforcement jurisdiction to statutory duties—"not [to] intrude into internal governance matters except when necessary to prevent or remedy a statutory violation."[22] The administrative track thus emerged as the sole mechanism for enforcing statutory duties, absent actual damages,[23] explicitly separate from the civil-litigation pathway that continues to govern CC&R-based disputes today.

B. Current Administrative Process

A homeowner initiates the administrative process by submitting an Intervention Affidavit (Form 530) alleging a violation of NRS 116. The affidavit is filed with the Ombudsman, who conducts an initial review for jurisdiction, completeness, and procedural compliance and may attempt

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[18] *Restatement (Third) of Property: Servitudes* § 6.8 cmt. a, at 155 (Am. L. Inst. 2000)

[19] *See* Hearing on A.B. 237 Before the Assembly Comm. on Judiciary, 69th Leg. (Nev. Mar. 19, 1997) (testimony describing civil litigation as prohibitively expensive and inaccessible for ordinary homeowners); Hearing on S.B. 314 Before the Senate Comm. on Judiciary, 71st Leg. (Nev. May 10, 2001) (lawmakers expressing concern that homeowners were forced into costly litigation to resolve routine community-association disputes)

20 *See* Mike Schneider, *Nevada's Commission for Common-Interest Communities*, written testimony submitted to the California Assembly Committee on Housing and Community Development (Mar. 9, 2005)

[21] Nevada Legislature, Legislative Counsel Bureau, *Legislative History of Senate Bill 100 (2003)*, Research Division (Mar. 20, 2005).

22 *See* Testimony of Sen. Mike Schneider (Nev.), Presentation to the California Assembly Committee on Housing and Community Development on Common-Interest Development Reform (circa 2004–05)

[23] NRS 116 creates a private right of action only where a violation causes actual damages. The Act's general civil remedy provision, NRS 116.4117, authorizes an action for damages or injunctive relief only where the claimant can demonstrate actual damages or a threatened loss. Nevada courts have held that absent actual damages, owners and associations have no private right of action under NRS 116.4117. *Piazza v. Bd. of Dirs. of Spring Mountain Ranch Homeowners Ass'n*, 133 Nev. 44, 49, 388 P.3d 83, 87 (2017) ("NRS 116.4117 requires a showing of actual damages."). Other private rights of action in NRS 116 are similarly limited to specific statutory grants and do not extend to general governance disputes. SB 201 (2025) amended the statutory right to display qualifying religious items (NRS 116.325) and created a specific right of action, but because it did not displace NRS 116.4117's actual-damages requirement, enforcement is arguably restricted absent damages and therefore remains effectively confined to the administrative track.

informal resolution with the parties. The Ombudsman then prepares a written report and transmits the matter to the Division for investigation.[24]

The Division then determines whether "*good cause exists*" to refer the case to the Commission.[25] If the Division declines to refer the matter, the case is closed. At that point:

- the complainant has no right to appeal,
- there is no internal review mechanism, and
- the Division is required to provide only a categorical notice of closure.

Closure decisions occur within a confidentiality framework that significantly constrains transparency *(see Section I.C.2 for a full discussion)*. A complainant may submit a Reopening Request (Form 605), but only if new or additional facts are presented that were not available during the initial investigation.[26]

If the Division concludes that a statutory violation occurred, it refers the matter to the Attorney General's Office (AG) for prosecution before the Commission.[27] The AG prosecutes on behalf of the state; the Commission presides over an evidentiary hearing and issues a public, authoritative order. If that order is later challenged in court, the AG also defends the Commission's decision against due-process or other legal attacks on judicial review.[28]

C. Administrative Reforms

The administrative system created in 2003 reflects the Legislature's core intent: statutory duties should be enforced in an accessible forum distinct from civil litigation, with the Commission providing binding, publicly accountable decisions. Structurally, the system is sound and includes an unusually valuable feature—rare among CIC regulatory models nationwide—employing an independent adjudicatory commission.[29]

Yet public trust in the system remains low. Because Nevada publishes no meaningful data capable of measuring homeowner satisfaction or any programmatic success metrics—such as how often disputes submitted for investigation culminate in a substantive determination rather

[24] *See* NRS 116.760, NAC 116.150–.160, and Nevada Real Estate Division, *Form 530: Intervention Affidavit*.

[25] NRS 116.765(4). NRS 116 contains no definition of "good cause." The term, consistent with general administrative-law principles, implies a referral is warranted where the evidence submitted, if true, plausibly supports a material violation.

[26] *See* Nevada Real Estate Division, Form 605 — Request to Reopen Intervention Affidavit

[27] *See* NRS 116.785(2) (upon determining that a violation has occurred, "the Division shall submit the matter to the Attorney General for enforcement" before the Commission); see also NRS 116.745(1) (authorizing the Commission to conduct hearings and impose remedies for violations referred for enforcement).

[28] *See* NRS 233B.135 (providing for judicial review of final agency decisions, including those of the Commission); and NRS 228.110(1) (requiring the Attorney General to "represent the State and all state officers, departments, agencies, boards and commissions" in all legal proceedings).

[29] *See* Hearing on S.B. 100 Before the S. Comm. on Judiciary, 72d Leg. (Nev. Feb. 20, 2003) (statement of Sen. Mike Schneider) (explaining that SB 100 was drafted to provide an "expeditious and inexpensive forum" for resolving statutory disputes and to ensure that enforcement of NRS 116 obligations occurred outside the civil courts through an independent commission).

than administrative closure—the assessment must necessarily be qualitative.[30] What does exist is years of homeowner testimony and the Commission's own minutes reflecting persistent concerns with the investigative and disposition process.[31]

The deficiencies are not structural but operational: first**,** the absence of any mechanism to review Division closures prior to a hearing referral, and second**,** an overly expansive interpretation of confidentiality. Together these shortcomings undermine core administrative-law values: transparency, consistency, and the complainant's ability to understand how the Division reached a decision.

Confidentiality magnifies the risks inherent in an administrative system that relies heavily on discretion. Some degree of discretion is indispensable: the Ombudsman must be able to resolve straightforward matters informally, obtain corrective action without unnecessary escalation, and focus investigative resources where statutory attention is most warranted. But discretion cannot serve as the primary operating mode of enforcement when its exercise is largely invisible. When allegations are screened out, resolved internally, or marked as "found" without Commission adjudication—and when confidentiality prevents any meaningful public or institutional review—the system loses the very safeguards that legitimize discretionary enforcement. Without external visibility, it becomes impossible to determine whether discretion is being exercised equitably, consistently, or in a manner that deters repeat violations. The result is that patterns of governance failure remain hidden, homeowners perceive the process as opaque and unaccountable, and the Commission lacks the visibility and information it needs to carry out its statutory responsibility under NRS 116.665(2)(g) to identify areas of concern affecting owners, associations, managers, and developers. Limited discretion is necessary; unmonitored discretion is destabilizing.

Reforms are suggested below. They do not require expanding jurisdiction or materially amending NRS 116. Each proposal restores features the Legislature understood as essential when it created the administrative track in 2003.

1. Review Officer (RO): Independent Review of Division Closures

Nevada provides no mechanism to review the Division's discretion in closing complaints it has investigated that do not result in referral. When the Division determines there is no "good cause"

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[30] Presentations consist primarily of raw totals-- a "data-dump" of allegation and disposition counts, without statute-level interpretation or context. Statute-level patterns are rarely identified. The Commission receives no clear determination as to which governance duties generate recurring violations, lack of public awareness or understanding of said, potential ambiguity, or importantly which statutes present elevated compliance risk.

[31] CICCH Commission Meeting Minutes (multiple years) (recording repeated homeowner complaints regarding transparency, inconsistent closure determinations, and the perceived opacity of NRED's investigative dispositions, as well as Commissioner statements expressing concern about cases being closed at the Division without reaching the Commission). See also Hearing on A.B. 361 Before the Assembly Comm. on Judiciary, 80th Leg. (Nev. Apr. 2, 2019) (homeowners describing the investigative process as opaque and lacking any mechanism for contesting closure decisions); Hearing on S.B. 69 Before the S. Comm. on Judiciary, 80th Leg. (Nev. Mar. 6, 2019) (testimony noting that "very few complaints ever make it to the Commission" and that closure letters provide insufficient explanation); and Hearing on A.B. 396 Before the Assembly Comm. on Judiciary, 81st Leg. (Nev. Apr. 5, 2021) (homeowners and advocates criticizing the administrative process as a barrier that prevents complainants from receiving meaningful adjudication).

to proceed, the matter ends. A complainant has no pathway for review, and the Commission and public have very limited information to evaluate whether the Division's gatekeeping function is being exercised consistently and appropriately.

Reporting on Intervention Affidavits closed without referral to the Commission is inadequate, and improved reporting alone will not materially enhance transparency or accountability. To restore the balance the Legislature intended in 2003, this paper proposes creation of an independent Review Officer (RO) to evaluate Division closure decisions upon written request. The RO would not alter jurisdiction or expand rights; it would introduce oversight into a gap the Legislature never affirmatively created and ensure closure decisions comport with the statutory purpose.

The RO would receive:

- a written statement from the complainant identifying alleged investigative deficiencies, and
- access to the case file.[32]

The RO would prepare a brief written recommendation[33], to the Commission to:

- affirm the closure,
- remand for further investigation, or
- refer the matter to hearing.

The Commission's counsel could serve in this role, but to avoid separation-of-functions concerns, the position should be located outside the Attorney General's Office. [34] Alternatively, the RO could be a contracted administrative-law professional funded through existing Ombudsman Fund resources and, if appropriate, cross-use in the referee capacity discussed in the following section. This reform increases transparency, introduces proportional oversight, and restores the accountability structure envisioned by SB 100—without expanding jurisdiction or altering substantive rights.

[32] Disclosure to the Commission or its designated review officer is consistent with NRS 116.757(2), which permits disclosure "as necessary for the performance of the official duties of the Division or the Commission." Review of Division closures falls squarely within the Commission's supervisory and adjudicatory role under NRS 116.745(3) and NRS 116.750

[33] Although the RO would issue a written recommendation in each matter reviewed, nothing in this proposal requires the Commission to vote on individual closure decisions. Consistent with existing Commission practice, RO recommendations could be transmitted as periodic, collective reports, providing oversight without converting each closure into a docketed adjudication.

[34]Administrative-law doctrine seeks to separate investigative, prosecutorial, and adjudicative functions to preserve the independence and objectivity of agency decision-making. Under *Withrow v. Larkin*, 421 U.S. 35 (1975), combining investigative and prosecutorial responsibilities with adjudicative or advisory roles within a single agency—as occurs when the Attorney General's Office both prosecutes NRED cases and serves as counsel to the Commission—is not a per se due-process violation. However, the optics are poor: the arrangement creates an avoidable appearance that the adjudicator is being advised by the same institution advancing the charges. This concern can be wholly eliminated by structurally separating these roles, such as assigning Commission counsel to a different unit, contract attorney, and/or an independent Review Officer.

2. Confidentiality Reform

According to the Director of the Department of Business and Industry, the "Commission's role is adjudicative, focusing on addressing proven violations during hearings." That description, reflected in his February 2025 memorandum, substantially understates the Commission's statutory responsibilities. A straightforward reading of NRS 116.660–.680—and particularly NRS 116.615(2)—shows that the Commission's powers and duties are far broader than adjudicating the cases the Division chooses to prosecute. Lawmakers intended the Commission to serve a policy-oversight role on behalf of "persons affected by common-interest communities" (NRS 116.615(2)(g)), a mandate that necessarily encompasses systemic concerns, recurring issues raised by homeowners, and broader patterns within CIC governance.

To accomplish this statutory duty, the Commission must rely on the Division for administrative support and information. A major component of that information arises from the Division's investigations of Intervention Affidavits—alleged violations of the chapter, most often filed by unit owners. As noted earlier, these complaints, and the Division's handling of them, should be an essential source of insight to the Commission, not only for the exercise of its adjudicative responsibilities but also for its broader duty to evaluate the operation of Nevada's common-interest communities and the concerns of unit owners and other affected persons.

Confidentiality itself is not the problem. The problem is the absence of an administrative-access exception in NRS 116.757 and the Division's interpretation of the statute as prohibiting disclosure to the Commission and complainants. Unless corrected, the Commission cannot fulfill its statutory responsibility to provide policy oversight and address issues of concern to the people affected by Nevada's common-interest communities. Limits on public disclosure of investigative materials are common across administrative agencies, and NRED is no exception. What is uncommon, and structurally problematic, is that NRS 116.757 contains *no administrative-access exception***.** Yet its sister body, the Real Estate Commission--also supported administratively by the Division--does operate under the typical exception: NRS 116A.270 expressly permits the Division to disclose investigative information "as necessary in the course of administering this chapter," including to other governmental agencies. By contrast, the CIC Commission is restricted from receiving the investigative information that informs its duty under NRS 116.615[35]

Because owner-filed Intervention Affidavits contain allegations implicating the operation of common-interest communities and the experiences of unit owners, the Division's handling of these matters should provide essential insight into the concerns of those affected by CIC governance. Yet under the current interpretation of NRS 116.757, the Commission receives no access to investigative materials in cases that do not proceed to a formal complaint. The result is that the Commission is unable to evaluate systemic issues, recurring concerns, or whether

[35] Suggested in Memo Director of Business and Industry Memorandum, February 11, 2025, subject The Role of the Commissioners -CICCH (cautioning Commissioners were not access confidential information compiled from investigations conducted by the Division absent a formal complaint filed.)

statutory standards are being applied consistently and correctly—exactly the areas in which many Nevada homeowners express understandable frustration.

The February 2025 Director's memorandum compounds this limitation by characterizing the Commission's role as narrowly adjudicative and by implying that broader oversight functions rest with the Department's administration rather than with the Commission itself. That framing is inconsistent with the statute. NRS 116 assigns policy-oversight responsibilities—including responsibility to address "other issues" affecting unit owners, associations, and other stakeholders—to the Commission, not to the Director. Preventing the Commission from accessing investigative information necessary to discharge that duty undermines the structure the Legislature intended.

Confidentiality itself is not the problem. The problem is the absence of an administrative-access exception in NRS 116.757 and the Division's interpretation of the statute as prohibiting disclosure to the Commission and complainants.[36] Unless corrected, the Commission cannot fulfill its statutory responsibility to provide policy oversight and address issues of concern to the people affected by Nevada's common-interest communities.

Nothing in NRS 116.757 prohibits the Division from sharing investigative information internally with the Commission or with an RO for the limited purpose of reviewing closure decisions. Nor does the statute bar the Division from providing complainants with a redacted explanation of:

- the investigative steps taken,
- the reasons a violation was not found, or
- deficiencies in the submitted allegations.

Similarly, the statute does not prevent the Division from issuing anonymized or categorical public information necessary to ensure consistent application of "good cause" standards across cases.[37] What the statute protects is the confidentiality of *investigatory materials*, not the opacity of *outcomes*.

The Commission should seek a formal opinion clarifying NRED's current limitations, and—working jointly with NRED—use its rulemaking authority to adopt regulations that establish:

(1) redacted closure summaries in all closed cases**,**
(2) limited internal access to investigative materials for Commission and RO review**,** and
(3) public procedural guidance promoting consistency and accountability.

[36] Because the IA process requires the complainant to notify the respondent and attempt resolution before filing, the respondent necessarily knows the complainant's identity. Confidentiality interpreted as protecting anonymity between the parties therefore misunderstands the statutory design and obscures information without serving its intended purpose.

[37] Under the plain-meaning canon, statutory restrictions on "investigatory files" limit disclosure of the protected materials themselves, not anonymized or categorical summaries that do not reveal their contents. Confidentiality provisions in comparable regimes are routinely interpreted to bar disclosure of identifiable records, not anonymized or aggregate information. Law has historically treated de-identified data as outside core privacy prohibitions.

These reforms do not expand jurisdiction or alter substantive rights. They correct an administrative interpretation that exceeds statutory text and restore the transparency necessary for the legitimacy of the administrative-enforcement system.

SECTION II — Governance Disputes

A. Origins and Development (1995–2013)

In 1995, four years after adopting the UCIOA framework for CICs, the Legislature enacted a statutory ADR framework within NRS 38, Nevada's law on mediation and arbitration, mandating[38] that CC&R-based disputes complete requiring mediation or a division-administered program before a party could file a civil action. The Legislature's goal in bringing ADR to CICs mirrored the concerns driving administrative reform efforts: civil litigation was too slow, too costly, and too procedurally rigid for the small-scale disputes that dominate common-interest community life.

However, the 1995 ADR structure offered no neutral contract interpretation, no determination on the merits, and no binding outcome absent the mutual consent of the parties. Either participant in ADR can satisfy its mandatory requirement[39] merely by attending mediation or participating in a program format, then proceed directly to civil court.

By the early 2000s, national legal authorities recognized the structural mismatch between CIC disputes and traditional civil litigation. Susan F. French—Reporter for the American Law Institute's *Restatement (Third) of Property: Servitudes*—explains that "neither the law governing cities, nor the law governing corporations, is well suited to common interest communities," and that when politics fails, owners are left with only "cumbersome," "costly," and "risky" litigation under loser-pays provisions.[40] The ALI likewise observed litigation is inherently ill-suited as an enforcement mechanism in CICs.[41] Nevada lawmakers heard and echoed similar testimony.

In 2013, lawmakers considered a suite of CIC bills prompted by growing dissatisfaction with a dispute-resolution system that forced homeowners into the purely private realm—where the only path to a neutral determination of governing-document conflicts was costly arbitration or full civil litigation. [42] Supported by the Real Estate Division, commissioners of the CIC Commission, and numerous homeowners, the Legislature sought to expand access to lower-cost, publicly accountable processes by embedding a referee option directly into the Ombudsman's existing NRS 116.765 workflow. A Division appointed hearing offical qualified by training and experience in Nevada real property and CIC law would issue a written decision and award

[38] NRS 38.320, see Section II.F. of this paper for recent issues related to the mandatory nature of ADR

[39] See Sec II F for a discussion of the Courts reading of the "mandatory" nature of NRS 38 directed ADR

[40] Susan F. French, Making Common Interest Communities Work: The Next Step, UCLA School of Law Working Paper 5 (2004).

[41] See *Restatement (Third) of Property: Servitudes* § 6.8 cmt. a, at 155 (2000)

[42] Hearing on AB 320 before the Assembly Judiciary Subcomm,, 77th Leg. (Mar 27, 2013) lawmakers considered three bills encompassing alleged violations of NRS 116 and claims relating to CC&R such as arbitration, mediation hearings and hearing panels, the ombudsman, alternate dispute resolutions; AB 34, AB 320, AB 370, and AB 397. See March 27, 2103 AB 34 minutes, pg3.

capped at $7,500 and could not award attorney's fees.[43] The bill expressly preserved the right of any party to commence a civil action following issuance of the award.[44]

The effort met immediate and coordinated resistance from industry stakeholders and the State Bar's Common-Interest Communities Subcommittee. [45] Opposition argued that CC&Rs were private contracts beyond the reach of any process coordinated through the Division. Opposition also asserted the proposal, if passed, "would expand the jurisdiction [of the Ombudsman] to include disputes involving the interpretation and enforcement or applicability of an association's governing documents" constituting improper state intrusion into private agreements and that any shift away from arbitration risked overwhelming the Division with complaints.[46]

The hearing minutes reflect the depth of the structural divide: homeowners and commissioners described a process marked by cost, opacity, and lack of accountability, while industry lawyers insisted that the private ADR framework—and the insulation it provides from administrative oversight--must remain intact. The result was-- and remains today-- a governance-dispute track that does not deliver on the Legislature policy objective: a reliable, low-cost alternative to civil litigation capable of providing owners and associations with an authoritative determination of their respective rights and obligations.

B. Current Governance / ADR Process

Under that framework, three private dispute-resolution formats exist:

- a referee process (available only upon mutual agreement),
- nonbinding arbitration (also available only upon mutual agreement), and
- mediation (the required default when the parties do not agree to a determinative process).

Mediation can facilitate discussion but does not generate a ruling, and its value depends on good-faith participation--an element that cannot be guaranteed in adversarial or escalated CIC conflicts.[47] It produces no written interpretation of the governing documents, no findings, and no determination of whether the respondent's conduct complies with its CC&Rs or bylaws. It is confidential.

In practice, therefore, the only ADR formats capable of issuing a merits-based evaluation, referee review or arbitration, are available only if both parties agree. When a respondent declines either option, the dispute defaults to mediation, which produces no evaluation on the merits. As a

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[43] See A.B. 34 (2013), Sec. 5(3)(a)–(b)

[44] A.B. 34 did not create an administrative adjudication system. See section 5(4). In effect, A.B. 34 would have placed the referee option inside the existing ADR framework while allowing the Ombudsman to refer certain disputes into that process as part of the NRS 116.765 workflow.

[45] Id.

[46] This argument is questionable and was absent any supporting data/study. The proposed language of A.B. 34 did not assign interpretive authority to the Ombudsman or authorize the Division to issue adjudicatory findings. Rather, the referee function remained a form of ADR neutral review, with courts retaining authority over any civil action or confirmation under NRS 38.239. See Hearing on A.B. 34, A.B. 320, and A.B. 370 Before the Assemb. Comm. on Judiciary, 77th Leg. (Nev. Apr. 2, 2013).

[47] In addition, mediators do not do findings of fact, and if findings of fact are required, it destroys the process.

result, the parties receive no authoritative assessment unless the matter proceeds to civil litigation.

C. The Core Problem Requiring Reform

The Legislature has repeatedly signaled that homeowners should have access to a neutral decision-maker on governance disputes. [48] Yet the current structure allows the threat and expense of litigation to chill the pursuit of any determination. The fundamental defect is structural: either party may unilaterally block--effectively veto--the ADR pathway capable of issuing a decision, forcing the dispute into mediation (which cannot decide the merits) and then into civil litigation.

Prevailing-party attorney-fee provisions, embedded in nearly all CC&Rs, magnify the risk even when a complainant is simply attempting to enforce the protections the Legislature enacted or the obligations imposed through the declaration. Associations defend litigation using assessment-funded counsel and business judgment protections, while individual homeowners face personal exposure merely for seeking clarity regarding their rights. Legislative testimony over decades reflects the same reality: the merits of governance disputes often remain unexamined not because owners lack valid concerns, but because the system makes neutral review financially inaccessible.

What is missing from the governance-dispute track is any mechanism that assures a substantive, independent merits assessment early enough to influence the parties' behavior. When disagreement arises over the meaning of the governing documents, the only written analyses available to the parties typically come from their respective attorneys—analysis that is both adversarial and privileged, and therefore too often shielded from members and immune from process-based judicial scrutiny. Nothing in the existing ADR structure introduces a transparent, nonprivileged, expert evaluation of the disputed provision. This absence not only contributes to escalation into civil litigation but allows associations to rely exclusively on counsel's view without ever having to confront competent contrary analysis or disclose to members that viable alternatives exist.

D. ADR Program Reforms

This paper proposes implementing the effort of A.B. 34(2013) (applicable sections are shown in **Appendix B**).

[48] This expectation is reflected throughout the legislative history but appears only indirectly in the statutory text. Under NRS 38.320(1), a party must submit the dispute to mediation or to a "program." The latter, defined in NRS 38.300(5), is a process "under which a person … can render decisions on disputes." One pathway can yield a determinative evaluation; the other cannot.

1. Implementing Structure

Rather than forcing governance disputes through mediation (which cannot resolve them), the reform proposed here follows that contemplated by lawmakers in 2013.

- The claimant files an IA.
- The Ombudsman screens the matter.
- If unresolved, the Ombudsman administratively assigns the dispute:
    - Statutory issues move to Division investigation under NRS 116.745.
    - Governing document disputes move to the referee program for a merits review.

It is important to emphasize that the referee program itself is not new. The Legislature incorporated the referee format into Nevada's ADR statutes in 2013, establishing it as a Division administered process within NRS 38.300–.360. Nothing in this reform proposal alters the structure, authority, or limits of that program, including its nonbinding character, its $7,500 cap (or as adjusted to reflect inflation, etc. since 2013), or its inability to award attorney's fees. What A.B. 34 would have changed, and what this proposal now adopts, is not the referee program but the pathway into it: the Ombudsman would be permitted to direct governance-document disputes into the already-existing referee process when the parties do not mutually agree on mediation or arbitration. Opposition in 2013 centered on this assignment authority—not on the referee program itself—which remains unchanged in this proposal.

2. Why The Referee Program Is the Appropriate Default

The referee program has several characteristics that uniquely position it as the mandatory fallback:

- Most importantly, it produces a written, reasoned evaluation of the governing-document dispute.
- It is faster and dramatically lower-cost than arbitration or district-court litigation.
- It avoids the constitutional issues because the referee award remains advisory and nonbinding unless a party seeks judicial confirmation.
- It reflects the Legislature's long-standing objective: ensuring that homeowners have access to a neutral merit determination of their governing documents without incurring prohibitive litigation costs.
- It minimally alters the existing ADR model.

3. No Expansion of State Power; No Constitutional Defect

This reform:

- Does **not** mandate binding adjudication or a final administrative order;
- Does **not** close the courthouse doors- any party may still process to district court;
- Does **not** expand the Ombudsman's jurisdiction over CC&R interpretation
- Does **not** prohibit a party from retaining legal counsel, it

- **Simply** restores a process allowing the Ombudsman to channel governing-document disputes into a structured, neutral evaluation process rather than leaving homeowners without a path to a merits review.

E. Big Gains From A "Nominal" Change

Although removing a respondent's ability to veto referee review appears modest, its impact is foundational. Under the current structure, a party can avoid any neutral evaluation simply by rejecting arbitration or referee review, thereby forcing the matter into mediation—which cannot resolve governing-document disputes—or into immediate civil litigation. This dynamic is not incidental; it creates a structural pressure point. It allows an association, or any similarly well-resourced respondent, to use cost, time, and prevailing-party fee exposure to chill access to any neutral early determination. Legislative testimony across multiple sessions—most vividly in 2013—reflects the same pattern: only a very small fraction of governance disputes ever reach court, not because the system resolves them early, but because the cost and risk of litigation deter homeowners from pursuing a ruling at all. The merits remain unexamined not because homeowners lack substantive concerns, but because the only available path to a ruling requires incurring litigation risks that far exceed the stakes of any individual dispute. The result is an appearance of apathy that does not reflect disinterest or satisfaction, but a rational response to a system that makes clarity prohibitively risky to pursue. [49]

Industry opponents frequently argue that prevailing-party attorney-fee clauses serve as a necessary deterrent against frivolous litigation and that removing or softening fee exposure would unleash a wave of baseless claims. This concern often raised during legislative hearings misunderstands both the structure of CIC disputes and the incentives of the parties involved. It is correct that fee-shifting discourages litigation; indeed, this writer agrees. But the deterrent does not distinguish between frivolous claims and legitimate efforts to obtain clarity on governing-document obligations. In the HOA context—where parties often exist in radically unequal positions of knowledge, expertise, and financial capacity (a single homeowner versus an assessment-funded association), the risk of a fee award becomes not simply a deterrent but an absolute barrier to obtaining any neutral merits assessment.

Nor are CC&Rs the kind of freely negotiated contracts in which fee-shifting is traditionally justified. CC&Rs are adhesive instruments drafted by developers to serve the developer's interests during the build-out period; those interests often diverge from the governance needs of post-turnover associations and bear no resemblance to the justified expectations of ordinary purchasers.[50] Buyers rarely read these documents, cannot negotiate their terms, and yet are bound

[49] ADR-outcome data from the 2013 period was not available. The Ombudsman's quarterly ADR reports provided to the Commission since 2019 show a consistent pattern: for every claim reported as "successful" or "settled," approximately twice as many are categorized as "unsuccessful." Fewer than five percent of reported ADR matters proceed through the referee program during this period. The reports do not identify the types of disputes involved or the reasons why claims do not resolve or move forward, leaving the low utilization of the referee program an important but unreported unknown. This persistent pattern is consistent with concerns expressed in 2013 legislative testimony regarding the difficulty homeowners face in obtaining a merits determination under the existing ADR structure, though the reports themselves do not reveal the causes.

[50] See fn #10

by them as servitudes enforceable against their property. To treat prevailing-party provisions in such instruments as if they reflected bargained-for risk allocation is a legal fiction that magnifies the chilling effect on owners seeking interpretive clarity.

To be clear, nothing in this reform eliminates fee recovery for genuinely frivolous actions. A party who knowingly or recklessly brings a meritless claim should remain subject to sanctions. But frivolousness requires knowledge--or a reasonable basis to conclude--that a claim lacks merit. The entire point of the referee-default reform is to make that determination low-cost, fast, and neutral**,** rather than financially ruinous. Neither the owner nor the association should be required to incur substantial attorney's fees simply to learn what the governing documents mean or whether a disputed action is permissible. A referee determination provides precisely the low-risk, low-cost filter the current system lacks aiding in distinguishing meritorious disputes from frivolous ones without forcing either party to gamble their financial security to obtain a ruling.

A reformed process culminating in a written referee determination changes the dynamic entirely. Even though the referee's decision remains formally nonbinding, it supplies what the system presently lacks: an impartial evaluation of the parties' rights and obligations. At that point, the association's fiduciary duties—particularly the duties of good faith, loyalty, and reasoned decision-making—become operative in a manner they are not today.

Once a credible neutral has evaluated the issue and provided a well-supported interpretation, a party that elects to litigate against that assessment must still satisfy its obligation—if an association, its duty to consider that contrary information—before justifying to both its members and any reviewing court why further escalation is necessary despite the costs, risks, and availability of an expert independent opinion. The existence of a neutral determination does not formally bind the association, but it alters the fiduciary landscape in which the board must operate. A board choosing to disregard such a determination assumes a burden to demonstrate that its departure from the neutral's analysis reflects a reasoned and informed judgment, rather than a decision animated by predisposition, selective reliance on counsel, or an unwillingness to meaningfully engage with competent contrary analysis. In this posture, the board's process—not the ultimate correctness of its interpretation—becomes the focal point, particularly where litigation would impose substantial costs and extend conflict that could otherwise be resolved through accepted, low-cost neutral evaluation. The reform does not require courts to second-guess settled interpretations or abandon deference; it simply raises the bar for invoking the Business Judgment Rule[51] once a qualified neutral has clarified the dispute's merits.

In practice, this creates a powerful disciplining effect. The HOA—or any party dissatisfied with the determination—retains access to the courts but cannot invoke that access reflexively or strategically. The referee's decision thus becomes the functional pivot point: it resolves the dispute in most cases, aligns the association's incentives with its governing duties, and eliminates the ability to weaponize litigation cost as a means of avoiding a merits determination. This is why the "nominal" reform—the removal of the veto—is crucial. It does not alter the

[51] The American Law Institute has concluded that the traditional corporate Business Judgment Rule is not well suited to community-association governance. See *Restatement (Third) of Property: Servitudes* §6.13 cmt. b (2000) (noting that corporate-law rules "do not translate well" to common-interest communities). In light of this, Nevada's statutory codification of the BJR for CICs, NRS 116.3103(1), warrants legislative re-examination.

substantive legal rights of either party; it corrects the incentive structure that presently prevents ADR from functioning as the Legislature intended.

And perhaps not insignificantly, what this reform does constrain is not homeowners or associations, but the financial incentives of attorneys on both sides. When the pathway to interpretive clarity becomes inexpensive, fast, and neutral, the volume of protracted fee-generating litigation diminishes accordingly.[52]

In practice, this creates a powerful disciplining effect. The HOA—or any party dissatisfied with the determination—retains access to the courts but cannot invoke that access absent reflection. The referee's decision thus becomes the functional pivot point: it resolves the dispute in most cases, aligns the association's incentives with its governing duties, and eliminates the ability, to weaponize litigation cost as a means of avoiding a merits determination. This is why the nominal reform--the removal of the veto--is crucial. It does not alter the substantive legal rights of either party, *but it corrects the incentive structure that presently prevents ADR from functioning as the Legislature intended*.

F. Legislative Fix to NRS 38.310 ("Mandatory" ADR is no longer mandatory)

As a result of the Nevada Supreme Court's 2025 ruling in *Kosor v. SHCA*, the entire CIC arbitration and mediation framework in NRS 38 is now waivable.[53] The Court found NRS 38.310 does not create a right of judicial review or hinge on finality.[54] It simply imposes a procedural prerequisite to certain civil lawsuits involving HOAs. The statute does not limit the court's jurisdiction over them. The Court held, without support, that treating the "mandatory" ADR requirement as jurisdictional would defeat the statute's purpose of encouraging early resolution. Its justification appears one strictly related to judicial efficiency.[55]

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[52] It bears noting that the existing structure—where the only path to a merits determination is civil litigation—creates substantial attorney-fee opportunities for lawyers on both sides of a dispute. This is not an accusation of misconduct, but a structural observation: when the default mechanism for resolving routine governance disagreements is full-scale litigation, counsel necessarily becomes the primary economic beneficiary of a system that otherwise leaves most homeowners unable to obtain clarity on their rights. A referee-default model materially reduces this dynamic by resolving the great majority of disputes before prevailing-party exposure attaches, thereby shrinking the volume of litigated cases and, with it, the fees that attorneys on both sides currently earn from the status quo.

[53] Kosor v. Southern Highlands Community Ass'n, 140 Nev. Adv. Op.34 (Jun. 18 2025), NSC case #87942. Applying the clear-statement rule, the Court concluded that NRS 38.310 is a claim-processing rule, not a jurisdictional requirement. Jurisdiction was not affected by the parties' failure to comply with the statute's ADR.

[54] See *Weinberger v. Salfi*, 422 U.S. 749, 764 (1975) (concluding that there was no subject matter jurisdiction over claims of class members who had not participated in agency proceedings because "the statute empowers district courts to review a particular type of decision by the Secretary, that type being those which are 'final' and 'made after a hearing") (emphases added); *Crane v. Cont'l Tel. Co. of Cal.*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989) (noting that "[c]ourts have no inherent appellate jurisdiction over official acts of administrative agencies except where the legislature has made some statutory provision for judicial review").

[55] Understandably, some judges and court systems are reluctant to accept mandatory dismissal rules that interfere with discretionary case management. Each branch of government depends on the others for critical functions—funding, appointments, or legal authority. This in turn motives officials to defend their prerogatives. Nonetheless, in the opinion of the author, the Court's ruling was a policy preference, not a legal justification. Courts are supposed to

This vulnerability permitting a bypass of ADR must be addressed by the Legislature regardless of whether the broader reforms proposed in this paper are adopted. Unless corrected, *Kosor* allows the *mandatory* ADR system—long understood by lawmakers as a protective, non-waivable prerequisite --to be bypassed through inadvertence, unfamiliarity, or litigation strategy. That outcome directly contradicts the statute's purpose, supported by decades of legislative history**.** [56]

In practical terms, it also means that any future reform to Nevada's ADR structure will remain vulnerable to judicial recharacterization unless the Legislature states unequivocally that compliance is a jurisdictional requirement. The defect identified in *Kosor* was not constitutional but textual: the Court did not question the Legislature's authority to require mandatory ADR or to assign exclusive first-instance adjudicatory jurisdiction to the Division. The record indicates it did not examine legislative history; it held only that the statute did not speak with the level of clarity the Court required for a jurisdiction-stripping provision**.**

Although the Court stated that "magic words" are not necessary to express jurisdictional intent, the decision in *Kosor* effectively adopted a strict clear-statement rule but failed to articulate any standard by which the Legislature might convey its intent in future enactments[57]. Mandatory phrasing--such as "no civil action may be commenced" and "the court shall dismiss"--is insufficient unless the statute explicitly states that ADR compliance is a condition of subject matter jurisdiction. In so doing, the Court has not merely overlooked legislative authority—it has actively displaced it.[58] In this interpretive environment, the safest and most effective means of ensuring that legislative intent is implemented—and not transformed through judicial construction is to use the term "jurisdictional" directly.

This is not a concession to judicial preference; it is a drafting necessity to restore and preserve the protective policy design the Legislature has repeatedly endorsed. A waivable ADR process fails to protect homeowners, allows strategic noncompliance, and places the burden of legal sophistication on those least likely to possess it. By contrast, a clearly jurisdictional ADR prerequisite guarded by the courts, ensures that governance disputes proceed through the proportionate, neutral process the Legislature intended. The statutory revisions presented in **Appendix A** reflect this imperative.

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follow legislative directives, not reweigh them. Read more at NVHOAReform.com https://www.nvhoareform.com/post/nevada-supreme-court-ignores-the-law-on-hoa-disputes-legislature-overruled

[56] Hearings on AB 34 (2011), AB 192(215), AB 370(2013)

[57] A *claim-processing rule*, the Court explained as the nature of NRS 38, can be mandatory, meaning it must be enforced if timely and properly raised**,** but nonetheless nonjurisdictional because it can be ***forfeited or waived***. Because Kosor filed suit without insisting on the ADR requirement first being met, and the HOA failed to object, the parties waived the claims-processing rule-the Court found.

[58]Had the Legislature intended ADR under NRS 38.310 to be waivable under certain criteria, it would have said so—as it has in numerous other statutes. It did not. Courts begin with the statute's plain meaning, departing from it only when that meaning is clearly not intended; and when ambiguity exists, they turn to context and legislative history to discern legislative intent. These are longstanding interpretive principles. *Kosor*, however, did not engage with legislative intent and instead sidestepped the issue by relying on its own interpretive framework, effectively avoiding the statute's clear command.

Appendix A

Proposed Amendment to NRS 38.310

NRS 38.310 Limitations on commencement of certain civil actions.

1. [No civil action] A court of this State does not have jurisdiction over any civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,

may be commenced in any court in this State unless the action has been submitted**, if the parties agree** to mediation or [if the parties agree,] or has been referred to a program **established** pursuant to NRS 38.330 to 38.360 inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. The requirement of submission to the program is jurisdictional. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

NRS 38.320 (*unchanged*)

Appendix B

Proposed amendment to NRS 116

Exact replica of the applicable sections presented in AB 34 (2013) DBR 10-354 see https://www.leg.state.nv.us/App/NELIS/REL/77th2013/Bill/586/Text

Sec. X. 1. The Ombudsman may, to the extent that money is available in the Account for Common-Interest Communities and Condominium Hotels for that purpose, appoint a referee to render a decision on the merits of a claim filed with the Division pursuant to paragraph (a) of subsection 3 of NRS 116.765.

2. A referee appointed pursuant to subsection 1 must be qualified by training and experience in the laws of this State governing real property and common-interest communities.

3. A referee appointed pursuant to subsection 1 must review the claim and the answer filed pursuant to paragraph (a) of subsection 3 of NRS 116.765 and, unless the parties agree to waive a hearing, conduct a hearing on the claim. After reviewing the claim and the answer and, if required, conducting a hearing on the claim, the referee shall issue a written decision and award and provide a copy of the written decision and award to the parties and to the Ombudsman. The referee may not award to either party:

(a) Damages in an amount which exceeds $7,500.

(b) Attorney's fees.

4. For the purposes of NRS38.300 to 38.360, inclusive, a written decision and award of a referee appointed pursuant to this section is deemed to be the decision and award in a claim submitted to nonbinding arbitration. Any party may, within 30 days after receiving the written decision and award of the referee, commence a civil action in the proper court concerning the claim which was referred to the referee. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint were referred to a referee pursuant to this section and NRS 116.765. If such an action is not commenced within that period, any party may, within 1 year after receiving the

written decision and award, apply to the proper court for a confirmation of the written decision and award pursuant to NRS 38.239.

5. Any statute of limitations applicable to a claim referred to a referee pursuant to this section and NRS 116.765 is tolled from the time the affidavit setting forth the facts constituting the claim was filed with the Division pursuant to NRS 116.760 until the issuance of the written decision and award by the referee.

6. The Administrator may adopt such regulations as are necessary to carry out the provisions of this section.

Sec. XX. NRS 116.765 is hereby amended to read as follows: 116.765 Upon receipt of an affidavit that complies with the provisions of NRS 116.760, the Division shall refer the affidavit to the Ombudsman.

2. The Ombudsman shall give such guidance to the parties as the Ombudsman deems necessary to assist the parties to resolve the alleged violation [.] or breach.

3. If the parties are unable to resolve the alleged violation or breach with the assistance of the Ombudsman, the Ombudsman [shall]:

(a) May refer the parties to a referee appointed pursuant to section 5 of this act. The aggrieved person who filed the affidavit must file with the Ombudsman a written claim which includes the information requested by the Ombudsman and the fee prescribed pursuant to subsection 2 of NRS 38.320. The claimant must serve a copy of the claim in accordance with subsection 3 of NRS 38.320 and the person upon whom a copy of the claim is served must comply with subsection 4 of NRS 38.320. All fees collected by the Ombudsman pursuant to the provisions of this paragraph must be accounted for separately and may only be used by the Division to administer the provisions of NRS 38.300 to 38.360, inclusive, and section 5 of this act.

(b) Shall, for an alleged violation, provide to the Division a report concerning the alleged violation and any information collected by the Ombudsman during his or her efforts to assist the parties to resolve the alleged violation. 2

From: Paul De La Cruz
To: NRED Administration
Subject: Subject: Public Comment – HOA Regulation, Complaint Process, and Artesia HOA Case Study
Date: Sunday, November 30, 2025 9:04:23 PM

Dear Task Force Members,
Thank you for the opportunity to comment. I speak today as a homeowner directly impacted by these gaps.
I wish to raise three concerns that directly affect homeowners:

1. Regulation Gap: HOA property managers are individually licensed and regulated by NRED, yet the management companies they work for are not. This is like requiring a realtor to hold a license while leaving the broker unregulated. Without oversight of the business entity, accountability is incomplete and homeowners remain exposed.

2. Complaint Process: The current NRED complaint process is far too complicated for most homeowners to navigate. Forms, procedural hurdles, and unclear recourse. The Ombudsman process often feels designed to shield property managers rather than empower homeowners..

3. Artesia HOA Case Study: In Artesia, the board has held Zoom-only budget ratification meetings 2024-2025, ignored emailed proxies, and deferred reserve obligations. These practices undermine NRS 116 and leave homeowners exposed to higher costs later. Proxies are binding votes under both our Bylaws and state law, yet owners have had to fight simply to have them counted. Deferred reserve projects — including mailboxes, fencing, and asphalt — now total over $150,000 in liabilities waiting to hit. Most troubling, the November 18,2025 budget was approved by the board while Artesia was in default with the Secretary of State. This means the association was technically out of compliance with corporate law at the very time it was exercising governance powers.

These issues show why reform is urgently needed. Regulation must extend to management companies, the complaint process must be simplified, and real enforcement must ensure boards and managers cannot sidestep homeowner rights.

Sincerely,

Paul DeLaCruz
5011 Stubblefield dr
Pahrump Nv 89061
661-202-0136

From:	Laura Chapman
To:	NRED Administration
Cc:	Laura Chapman
Subject:	Written Testimony for Public Comment NEVADA COMMON-INTEREST COMMUNITIES TASK FORCE December 2, 2025
Date:	Monday, December 1, 2025 4:57:22 PM
Attachments:	Untitled document.pdf 2025-12-01 16-29.pdf

Hello, Please see attached letter and response from Sharath Chandra for the Public comment written testimony to the task force. Thank you.

Laura Chapman

My name is **Laura Chapman**, and I am a local Realtor and consumer advocate. Several years ago, I partnered with Senator Pat Spearman to address concerns before the Legislature regarding fees charged to homeowners by community management companies. At that time, **NRS 116.4109** set the maximum allowable fees at **$150 for a demand**, **$160 for a resale certificate**, and **$350 for closing out or opening a new file**.

Despite these statutory limits, numerous management companies were disregarding or misinterpreting the "maximum" language and charging homeowners **$180 to $280** for these services. The only consequence for overcharging was an individual refund—issued only if a homeowner identified and reported the violation. There were no broader enforcement mechanisms or industry-wide accountability.

Following subsequent legislative changes—heavily influenced by industry lobbying—the statute now allows an **automatic 3% annual increase** to these fees. As a result, in **2026**, homeowners will legally be charged **$811.45**, *plus* credit card surcharges and third-party processing fees. This is occurring despite the law's explicit prohibition on charging:

> **8.** In preparing, copying, furnishing, expediting, or otherwise providing any document or item pursuant to this section, an association or any entity acting on its behalf **shall not charge any fee:**
> **(a)** Not authorized in this section; or
> **(b)** In excess of any limit set forth in this section.

I have attached the Ombudsman's written response to my request for an advisory opinion. The office states that its authority is limited, yet I see many other advisory opinions in which the Ombudsman has interpreted statutory language. If the office can determine that certain fees are permissible—even when the statute plainly states otherwise—why is it unable to issue an interpretation affirming the clear protections written into the law?

At the current rate of increase, consumers will be paying **over $900 by 2029** for what amounts to two documents requiring approximately **10–12 minutes of work**. By **2035**, these fees will exceed **$1,000**, and for homeowners with two associations, the cost will surpass **$2,000**. The **resale certificate** and **demand** contain essentially the same information with only formatting differences. The management software generates these documents in **2–3 minutes**, and the data entry required for file transition takes approximately **five minutes**, as the necessary information is already uploaded by Realtors and title companies.

This equates to a rate of roughly **$67 per minute**, or **$4,057.45 per hour**—for services that were originally intended to be cost-recovery only.

If the Ombudsman cannot assist homeowners, **which agency or authority can?** Why are consumers consistently directed to the Ombudsman's office only to be told that no action can be taken?

I appreciate your time and consideration as this issue continues to impact homeowners across Nevada.

STATE OF NEVADA

JOE LOMBARDO
Governor

DR. KRISTOPHER SANCHEZ
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Deputy Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

September 15, 2025

Via U.S. Mail
Laura Chapman
6988 Comiskey Park Street
Las Vegas, NV 89166

Re: Advisory Opinion Request per NRS 116.326(2), Received August 14, 2025

Dear Ms. Chapman:

The Nevada Real Estate Division ("Division") is in receipt of your request for an advisory opinion regarding NRS 116.4109.

Pursuant to NRS 116.623(5)(a), the Division provides this timely response. Upon review of the details provided in your letter, it has been determined that an advisory opinion would not be appropriate to address this issue.

We also acknowledge receipt of your prior correspondence to both the Governor's Office and the Division. On July 17, 2025, the Division provided you with a detailed response intended to clarify this matter. You are correct that NRS 116.4109 establishes statutory caps on fees that may be charged. In addition, NRS 116.3102(6) prohibits associations and their agents from imposing unauthorized or excessive fees for these documents. As noted, the Division provides a complaint form for homeowners who believe they have been charged more than the law allows.

With respect to optional credit card processing fees, these are commonly described as pass-through charges covering merchant transaction costs imposed by credit card issuers. The Division considers such optional processing fees permissible provided that:

- The purchaser is clearly informed that the fee is optional and applies only to credit card payments.
- An alternative, fee-free payment method is made available (e.g., ACH, check); and
- The fee is charged by the third-party platform solely to cover transaction costs and not retained by the association or its agent as profit.

While the Division understands your concerns and values your continued engagement, its authority is limited to the provisions of NRS and NAC 116. The Division cannot opine on potential violations of other state or federal laws regarding credit card fees. For those concerns, the Nevada Attorney General's Office would be the more appropriate agency to contact. They can be reached through their Consumer Protection Hotline at (702) 486-3132 or via their online complaint form.

Thank you for presenting your concerns to the Division.

Sincerely,

Sharath Chandra
Administrator

cc: Charvez Foger, Deputy Administrator
Sonya Meriweather, Ombudsman
Terry Wheaton, Chief Compliance Investigator

From: JEANNIE KING
To: NRED Administration
Subject: Artesia HOA Pahrump Nv
Date: Wednesday, December 3, 2025 5:08:23 AM

Dear Task Force Members,
Thank you for the opportunity to comment. I speak today as a homeowner directly impacted by these gaps.
I wish to raise three concerns that directly affect homeowners:

1. Regulation Gap: HOA property managers are individually licensed and regulated by NRED, yet the management companies they work for are not. This is like requiring a realtor to hold a license while leaving the broker unregulated. Without oversight of the business entity, accountability is incomplete and homeowners remain exposed.

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management companies, the complaint process must be simplified, and real enforcement must ensure boards and managers cannot sidestep homeowner rights.

Sincerely,

Jeannie R King
4800 parkwood Dr
Pahrump, NV
9095525984