

May 25, 2022

Nevada Common Interest Communities
Nevada Common Interest Community Managers

Re: *2022 CIC/HOA Legislative Updates*

Dear All:

My prior letter addressed S.B. 72, which was passed in the legislative session that ended on June 1, 2021 and was signed into law by Governor Sisolak. S.B. 72 became effective May 27, 2021. A copy of my prior letter is available on my website at www.matuskalawoffices.com. Among other changes, S.B. 72 required the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations establishing the criterion to determine whether a violation poses an imminent threat of causing a substantial adverse effect on the health, safety and welfare, and the severity of each violation and limitations on the amount of fines. This letter addresses the proposed regulations that are anticipated to be adopted soon and will be codified in Chapter 116 of the Nevada Administrative Code (“NAC”).

The recent legislative updates and pending regulatory changes will make it necessary for most associations to update their fine and collection policies. I have prepared updated, model collections policies and will have an updated, model fine policy available. Please contact me if interested.

Changes Regarding Fines

The new regulations will add a new section to the NAC regarding fines for a violation of a provision of the governing documents that “poses an imminent threat of causing a substantial effect on the health, safety or welfare of the units’ owners or residents of the common-interest community.” For such violation, the amount of the fine must be “commensurate with the severity of the violation and determined by the executive board in accordance with the governing documents and “must not exceed \$5,000 for each violation.” [Note: Per S.B. 72, a fine for a violation of the governing documents that does not pose an imminent threat is limited to \$100 for each violation or a total amount of \$1,000 per hearing].

Under the new regulations, a violation poses an imminent threat if it:

- (a) Involves a lack of care or neglect which directly and immediately places one or more units’ owners, residents or invitees within the common-interest community in danger or direct threat of being harmed; or
- (b) Is an intentional act which has the potential of causing immediate bodily harm to one or more units’ owners, residents or invitees within the common-interest community.



A violation does not pose an imminent threat if it consists solely of:

- (a) Using vulgar, profane or abusive language;
- (b) Voicing opposition to, or support for, any matter affecting the common-interest community; or
- (c) Any act committed by a unit's owner, tenant or invitee of a unit's owner or tenant which is permitted by this chapter or chapter 116 of NRS or any other applicable federal, state or local law, regulation or ordinance.

Nothing in the foregoing prevents the Association from adopting behavioral, etiquette or anti-bullying policies that do not pose an imminent threat.

Changes to Collection Policies

The list of fees that can be charged for collection costs and foreclosure fees to collect a past due assessment pursuant to NAC 116.470 were increased from an overall maximum of \$1,950 to \$2,250. The specific fees are listed in NAC 116.470 and should be included with the Association's collection policy.

The Association may also recover reasonable management company fees, not to exceed a total of \$325, for serving by mail or email the notice of delinquent assessment or notice of protections afforded under the Service Members' Civil Relief Act.

The Association may also recover reasonable attorney's fees and costs, without markup, for legal services that do not include activities listed in subsection 2 of NAC 116.470.

Reserve Studies

NAC 116.415 subsection 1 has been amended to require, in addition to the requirements already set forth in NRS 116.415, that the budget shall include an estimate of the amount of reserves necessary in the projected fiscal year for maintenance, repairs, replacement or restoration of the major components of the common elements based on the most recent study of reserves or updated study of reserves.

NAC 116.425 subsection 1 has been amended to require an inventory and "quantification" of the major components of the common elements.

NAC 116.425 subsection 2 has been amended to define "adequately funded reserves" to mean funds sufficient to maintain the common elements described in the governing documents at the level described in the reserve study without using funds from the operating account and without special or reserve assessments.



NAC 116.427 has been amended to provide that the executive board is required to adopt a new reserve study (not simply commission the reserve study) within 5 years of the adoption of the previous reserve study.

NAC 116.435 has been amended to require the Association to file a summary of reserve study with the Division. The filing should be made by electronic means on a form prescribed by the Division. Pursuant to subsection 4 of NRS 116.31152, the summary is due within 45 days of the adoption of the reserve study by the executive board.

Other Changes

NAC 116.385 subsection 1 has been amended to require the association to provide the “names and individual mailing and email addresses and telephone numbers for each member of the executive board.”

NAC 116.385 subsection 2 has been amended to require the Association or the community manager to provide, on a form prescribed by the Division, any change in the contact information for a member of the executive board or the Community Manager.

NAC 116.410 subsection 1 has been amended to recommend PPC’s Guide to Homeowners’ Associations and Other Realty Association as the recommended reporting principles and practices of financial accounting. The guide is available at the Thompson-Reuters website at a cost of \$455.

NAC 116.550 has been amended to delete insolvency as grounds for an audit by the Division. As NAC 116.550 now reads, the Division may “investigate and audit all financial accounts of an association if the Division has reason to believe that the accounts or records of the association have not been properly maintained and the Division determines and audit is reasonably necessary to assist the Division in administering or enforcing any other provision of this chapter, chapter 116 of the NRS or any other statute that the Division is charged with administering or enforcing.”

Sincerely,

MATUSKA LAW OFFICES, LTD.

A handwritten signature in blue ink that reads "Michael L. Matuska".

By:

MICHAEL L. MATUSKA