

July 21, 2023

Nevada Common Interest Communities
Nevada Common Interest Community Managers

Re: 2023 CICC/HOA Legislative Updates

Dear All:

My prior letter addressed proposed regulations anticipated for adoption and codification in Chapter 116 of the Nevada Administrative Code (“NAC”). Those changes made it necessary for most associations to update their fine and collection policies. Many of you took advantage of the updated, model collections and fine policies offered by my office. If not, please contact me for updated fine and collection policies.

AB 189, SB 417, AB 309 and SB 378 were passed in the legislative session that ended on June 1, 2023 and are discussed in the body of this memo.

AB 189 is poorly drafted, but applies to declarant owned common interest communities in counties with populations of 700,000 or more (Clark County).

Sec. 1 amends NRS Chapter 244 (regarding counties) by adding a new section which prevents counties from adopting ordinances that would prevent construction work from starting in declarant owned common interest communities as early as 5 a.m. from April 1st to September 30th.

Sec. 3 amends NRS 116.347 and precludes the executive board of declarant owned common interest communities from adopting ordinances that would restrict when construction can start from April 1st to September 30th if the city or county in which the common interest community is located already adopted an ordinance regarding the hours that construction work may begin. Section 3 does not preclude the executive board from adopting an ordinance restricting the hours that construction work may begin from April 1st to September 30th if the city or county has not adopted an ordinance, and Section 3 does not preclude the executive board from adopting ordinances restricting the hours that construction work may begin from October 1st to March 31st.

Sec. 4 amends NRS Chapter 268 (regarding cities) to add the same provisions.

SB 417 makes two changes. The first change is to NRS 116.31175 regarding the right of a unit owner to request books and records of the association. The association can now charge up to \$25 per hour to review the records, an increase from \$10 per hour. The second change is to NRS 116.760 regarding the ability of the Division to impose sanctions against a person who knowingly files a false intervention affidavit. The maximum fine is \$10,000 (an increase from \$1,000). The Division may also disqualify the person from serving as a member of an executive board for 10 years and designate the person as a vexatious affiant and not accept further affidavits from the person unless the affidavit is first approved by the Ombudsman before filing.



AB 309 is more difficult to summarize. It is 39 pages long and very detailed, but this is what I see initially:

Sec. 1 amends NRS 116.31034 regarding ballots. Sec 1 allows for secret paper or electronic ballots and provides additional detail that the ballots must be reviewed, announced and entered into the record at the meeting. A quorum is not required to be present at the meeting.

Sec. 2 amends NRS 116.31036 regarding recall votes. The amendments are consistent with the amendments described in Sec 1. A recall vote may also take place by secret paper or electronic ballots which must be counted at a meeting.

Sec. 2.5 amends NRS 116.31068 regarding electronic notifications. If a unit owner has not opted out of receiving electronic notices, but has not designated an email address, the association may serve notices to the email address previously provided by the unit owner or by hand delivery or U.S. Mail.

Sec. 3 amends NRS 116.311 regarding voting to clarify that an association can conduct a vote without a meeting if it notifies the unit owners that the vote will be taken by ballot and delivers a paper or electronic ballot to every unit owner entitled to vote on the matter. Sec. 3 also adds that the association may allow voting on a voting machine approved by the Nevada Secretary of State. Sec. 3 continues on to explain that a meeting must be held to open and count the ballots and that any electronic voting must be conducted by an independent third party contractor voting system or voting machine.

Sec. 4 amends NRS 116.31105 regarding voting in associations that consist of at least 1,000 units. Sec. 4 allows electronic ballots the same as Secs. 1 and 2, supra.

Sec. 5 amends NRS 116.31153 regarding the requirement for two (2) signatures on checks from the operating account. Sec. 5 clarifies that two signatures are not required for regular transfers to the reserve account, utilities, automatic payments for insurance, telephones, cable, satellite, internet, services that are billed on a monthly or quarterly basis and payments to the Ombudsman.

Secs. 6 and 7 make changes to NRS 116A.620 regarding books and records and specifies that the Commission shall adopt regulations regarding the transfer of all books and records upon the termination of the management agreement, and until then, the manager has 30 days to transfer the books and records.

Secs. 8-11 amend NRS Chapter 116B regarding condominium hotels, and largely include the same changes to NRS Chapter 116 discussed above regarding electronic ballots and voting and transfers from the operating account.

SB 378 makes various changes requiring the website and pay portal established by NRS 116.31069.



Sec. 1 adds a new section that the association may establish a pay portal only if:

- (a) the association has contracted with a payment processor that maintains a cybersecurity insurance policy in the minimum aggregate amount of \$5,000,000;
- (b) the association maintains its own cybersecurity policy in the minimum aggregate amount of:
 - (1) For an association that contains 150 units or less - \$250,000
 - (2) For an association that contains 151 to 250 units - \$500,000
 - (3) For an association that contains more than 250 units - \$1,000,000.
- (c) the pay portal allows the association to suspend access for a unit owner that has a past due account that has been referred to a third party for collection;
- (d) the association or payment processor complies with NRS 603A.010 to 603A.290 regarding personal information;
- (e) the association has conducted a cost-benefit analysis.

Sec. 3 amends NRS 116.31068 regarding electronic notifications. If a unit owner has not opted out of receiving electronic notices, but has not designated an email address, the association may serve notices to the email address previously provided by the unit owner or by hand delivery or U.S. Mail.

Please feel free to contact me with any questions.

Sincerely,

MATUSKA LAW OFFICES, LTD.

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

MICHAEL L. MATUSKA