

June 26, 2015

Nevada Common Interest Communities
Nevada Common Interest Community Managers

Re: *Legislative Updates*

Dear All:

The 78th legislative session that ended on June 1, 2015 was a particularly active session. Over 500 bills were passed by the legislature and signed into law by Governor Sandoval, including at least 6 bills that affect Nevada Common Interest Communities, their managers, and attorneys. The following summary is provided for your informational purposes. The complete text of the bills can be found at <http://www.leg.state.nv.us/>.

SB 306

SB 306 amended the superpriority rules in NRS 116.3116:

1. Clarifies that the assessment lien includes costs of collecting a past due assessment.
2. Clarifies the superpriority rule and specifies that the lien for unpaid assessments and certain collection costs have priority over the first deed of trust.¹
3. Clarifies that the association, its employees, and the community manager do not need to be licensed collection agents to collect amounts due.
4. Clarifies that a lien for unpaid assessment will expire after 3 years unless the association records a notice of default or initiates judicial proceedings to enforce the lien.
5. Adds a new provision for the benefit of the holder of the first deed of trust, that any amounts paid by the lender will become a debt of the unit's owner.

SB 306 amends NRS 116.3116(2):

1. Requires extensive additional information to be included in the notice of default, including a detailed statement of the deficiency, the amount that is entitled to superpriority, and an affidavit of the mailing address of the lien holders. They will usually be acquired from the trustee sale guarantee, which means that the trustee sale guarantee now must be ordered prior to recording the notice of default.
2. Modifies AB 273 (2013) (See my prior letter of January 2, 2014) regarding the effect of Nevada Foreclosure Mediation Program ("FMP") on the foreclosure process. Although the association typically has to wait until the FMP certificate of completion is filed before completing its foreclosure, this amendment allows the association to proceed if the unit owner fails to pay new assessments that have accrued during the pendency of the FMP.

¹ Consult the text of the statute or your attorney for specifics on which collection costs are included with the super priority lien.



SB 306 amends the notice procedures in NRS 116.3116(2):

1. Clarifies that notices are to be mailed via certified mail.
2. Clarifies that the notice of sale must run in the newspaper for three (3) consecutive weeks, and that a copy of the notice must be mailed via certified mail to the Ombudsman, the unit's owner the lender and anyone else who has requested notice.²
3. Adds additional requirements for noticing the sale, including recording and posting the notice.

SB 306 amends the sale procedures in NRS 116.31164 as follows:

1. The lender has until five (5) days prior to the sale to satisfy the association's lien. If the lender does so, the association can proceed with the sale only if it records a notice of satisfaction at least two (2) days prior to the sale.³ The person conducting the sale shall notify the prospective bidders whether the lender has satisfied the lien.
2. The sale shall take place at the courthouse between 9:00 a.m. and 5:00 p.m., except in counties with populations of 100,000 or more, where the sale may take place at another public venue.
3. A sale may be continued three (3) times before the association has to re-notice the sale.
4. The person conducting the sale is precluded from purchasing the unit.

SB 306 amends NRS 116.31166 by creating a right of redemption as follows⁴:

1. Following the sale, the purchaser receives a certificate to be recorded in the county records which explains that the unit is subject to redemption.
2. The unit owner's interest may be redeemed by the unit owner, the unit owner's successors-in-interest, or a lender within sixty (60) days after the sale by paying (i) the purchase price plus interest of one percent (1%) per month; (ii) any assessments, taxes, or liens paid by the purchaser and interest thereon; and (iii) any amounts reasonably expended by the purchaser to maintain the unit.
3. If no redemption is made, the person conducting the sale shall deliver to the buyer a deed without warranty.
4. A copy of the deed must also be sent to the Ombudsman.

² Lenders are now supposed to maintain their addresses for notification purposes on a website maintained by the Ombudsman's office. *See infra*.

³ In most cases, the association will not proceed with the sale once the lender has satisfied the association lien.

⁴ This redemption process is similar to the process for tax sales.



SB 306 amends the provisions in Chapter 107 of NRS regarding the foreclosure of deeds of trust:

1. Adds new requirements for the trustee to notify the association of the foreclosure of the deed of trust and whether certificates have issued from the FMP.

SB 306 created a new section in Chapter 657 of NRS as follows:

1. Lenders must maintain their contact information with the Division of Financial Institutions. The Division of Financial Institutions will maintain this information on their website. This will presumably be the same information that is reported on the trustee sale guarantee.

You will notice that some of the additional steps required by SB 306, including preparing the certificate, are not currently included in the schedule of costs that are assessed to the unit owner pursuant to NAC 116.470. The current schedule of fees does include adjustments for the additional work that will now be required for the payoff demand, notice of default, and foreclosure.

SB 154

SB 154 amends NRS 116A.410 by adding a new subsection (g) which directs the Commission to Common Interest Communities to adopt regulations on the biannual renewal of licenses, including continuing education requirements. At least five (5) hours of the continuing education requirements may be satisfied by attending disciplinary hearings or observing alternative dispute resolutions.

AB 141

AB 141 amends NRS 116.31163 by clarifying that the notice of default must be mailed to a holder of a security interest, regardless of whether the lender has previously notified the association. Read in conjunction with SB 306, discussed *supra*, the notice of default must be mailed via certified mail, the association should order a trustee sale guarantee prior to mailing, which will identify the mailing address(es) for the secured party, and commercial lenders will also have to provide their mailing addresses for inclusion on the website maintained by the Division of Financial Institutions.

AB 192

AB 192 amends NRS 116.3132 regarding the termination of declarant's control. Declarant's control terminates 60 days after conveyance of 75% of the units for associations with less than 1,000 units, and for common-interest communities of less than 1,000 units, or 90% of the units for associations with 1,000 units or more. Prior to the termination of declarant's control, at least 1 unit owner must be elected to the executive board and not less than 25% of the board must include unit owners, not later than 60 days after the conveyance of 25% of the units for associations with less than 1,000 units, and for common-interest communities of less than 1,000 units, or 15% of the units for associations with 1,000 units or more.

AB 238

AB 238 amends NRS 116.31086 by clarifying the bid procedures and adding new language which specifies that professional services, including legal services, are governed by the bid procedures. If an



association solicits bids for a project that will cost 3% or more of the annual budget for an association of less than 1,000 units, or 1% or more of the annual budget for an association of 1,000 or more units, the association must solicit at least 3 bids, if reasonably possible. A project includes the maintenance, repair, restoration, or replacement of common elements, as well as engineering, accounting, and legal services.

AB 474

AB 474 amends NRS 116.31155 by allowing the Real Estate Administrator increase the fees assessed against units to maintain the Office of the Ombudsman from \$3 to \$5 for associations organized as corporations under NRS Chapter 78, non-profit corporations under NRS Chapter 82, and other types of entities. The fees imposed on associations organized as trusts or other associations under NRS Chapter 81 or other chapters are imposed pursuant to NAC 116.445 and currently remains \$3.

SB 483

SB 483 increased the filing fees for the Nevada Secretary of State and the annual state business license fee. All initial fees and annual list fees will increase by \$25. In addition, state business license fees will increase from \$200 to \$500 for entities organized under NRS 78, 78A, 78B, 80, and 89. Most Nevada homeowners' associations are organized as non-profit corporations under NRS Chapter 82 and are not subject to the state business tax requirements. However, some older associations are organized under NRS Chapter 81, Miscellaneous Organizations, or various other chapters. It is not clear at this time whether the increase in the business license fee will affect these entities. A conversion process is available to convert an entity organized under a chapter other than NRS Chapter 82 to a Chapter 82 non-profit corporation. Please feel free to contact me to discuss the conversion process.

Please note that SBs 154 and 306, and ABs 141, 192, 238, and 474 take effect on October 1, 2015. SB 483 takes effect on July 1, 2015. Feel free to contact me with any questions you may have regarding these new bills, the foreclosure process in general, or any other questions you may have regarding your common-interest communities.

Sincerely,

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By:

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(Encl.)