STATEMENT IN SUPPORT OF
PROPOSED AMENDMENTS TO NRS CHAPTER 116 CONTAINED IN AB 396

Submitted by Michael Buckley
mbuckley@fennemorlaw.com May 12, 2025

In 1991 Nevada adopted the 1982 version of the Uniform Common Interest Ownership Act (UCIOA) as NRS Chapter 116.[1] Since its original approval by the Uniform Law Commission (ULC). UCIOA has been amended in 1994, 2008, 2014 and 2021.[2] Many of the UCIOA amendments have been adopted in Nevada, most recently in 2011.[3]

Not all UCIOA amendments are applicable in Nevada. In many cases, Nevada, whose housing inventory includes thousands of units in common interest communities, has often addressed concerns well ahead of UCIOA. For example, Nevada open meeting-type requirements for association meetings were in place well ahead of similar UCIOA amendments.[4]

My involvement with NRS 116 began in 1991 with the enactment of the Chapter[5]and has continued since then, through the Community Associations Institute (CAI), the Commission on Common Interest Communities and Condominium Hotels (Commission), which I chaired from its creation in 2003 until 2012, and, lastly, through the Section, and its common interest community subcommittee. I am not here, however, in any official capacity.

Section 5-9 of AB 396 amend NRS 116 is several important ways. (Section 7 is a conforming change.)

<u>Sections 5 and 6</u> address the interaction between the developer of a common interest community, referred to in NRS 116 as the "declarant," and the non-declarant owners.

<u>Section 6</u> deals with termination of a common interest community. As originally drafted, UCIOA Section 2-118 and NRS 116.2018 require at least 80% of the votes in the association to terminate the community. As explained in Comment 4 to the 2021 UCIOA amendments to 2-118:

> unless the declaration requires unanimous consent for termination, the declarant may be able to terminate the common interest community despite the unanimous opposition of other unit owners if the declarant owns units to which the requisite number of votes are allocated. Such a result might occur, for example, should a declarant be unable to continue sales in a project where some sales have been made. The 2021 amendments . . . retain the requirement that 80% of the unit owners agree to termination of the common interest community, but add the requirement of

[1] While the Chapter 116 numbering system for the most part follows UCIOA, (e.g., NRS 116.3102 is based on UCIOA 3-102), Nevada has, in some cases, renumbered the sections. To make things a little more confusing UCIOA formats its Sections as (a)(1), while NRS uses the (1)(a) format.
[2] The most recent version of UCIOA may be found at https://www.uniformlaws.org/committees/community-home?CommunityKey=66a8afd1-326a-4525-ad0f-accf961ed0b6,
[3] See, e.g., 2011 Statutes of Nevada, Chapter 389 (SB 204); 2009 Statutes of Nevada, Chapter 357 (SB 261)..
[4] See NRS 116.3108.
[5] AB 221

agreement by 80% of the unit owners other than the declarant. This prevents a declarant who has sold relatively few units from accomplishing a termination over the objection of most or all of the unit purchasers.

Section 6 of AB 396 adds this requirement to NRS 116.2118.

A similar change is found in Section 5's amendment to NRS 116.2117(4), which addresses amendments to the declaration that change the boundaries of a unit or its allocated interest. Presently, these changes must be approved by the unit owner(s) affected and a majority of the votes in the association. AB 396 requires that such approval include a majority on the non-declarant owners.

Section 5 and 8 include other uniform and non-uniform changes. The changes are found in Section 5's addition of a new subsection 9 to NRS 116.2117 and Section 8's amendments to NRS 116.335.

The uniform change to NRS 116 is based on the 1994 UCIOA amendments to Section 3-102(c)(3), covering the rule making authority of an association. This Section places restrictions on the content of rules and regulations, but specifically authorizes an association to adopt rules and regulation that:

> restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in common interest communities or regularly purchase those mortgages.[6]

Fannie Mae makes ineligible a project that "is primarily transient in nature" or that "is deemed to be ineligible under Freddie Mac's requirements because of condo hotel, resort, transient or short-term rental activity."[7]

Short term rentals in a condominium is a concern of lenders. According to a 2020 Fannie Mae survey:

> When asked to identify the risk factors for which their concerns have increased the most over the past year, 50 percent cited HOA financial instability, followed by deferred maintenance (33 percent), oversupply or overvaluation (28 percent), and hotel/resort use or short-term rentals (24 percent).[8]

The amendments to NRS 116.2117 and 116.335 are intended to make it easier for an association to limit leasing if necessary to satisfy the requirements of institutional lenders.[9]

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[6] In 2008, UCIOA added a new Section 3-120 to include in one place UCIOA's provisions relating to rules and regulations. This provision is now found in UCIOA 3-120(f)(3).
[7] https://selling-guide.fanniemae.com/sel/b4-2.1-03/ineligible-projects
[8] https://www.fanniemae.com/research-and-insights/perspectives/mlss-condo-lending
[9] "Institutional lender" is a commonly used term to refer banks and other commercial lenders. See, e.g., NRS 40.458(2), limiting deficiency judgments on residential mortgage loans held by "a banking or other financial institution."

The non-uniform change in these two provisions concerns the effect of extensive leasing and short term rentals on the availability of insurance. According to one source, "Many insurance carriers flat out do not allow short-term rentals. The property is at greater risk for both property and liability claims which could impact all owners within the community, not just the short-term rental units."[10]

The distinction between Section 5's amendment adding new subsection 9 to NRS 116.2117 and Section 8's amendment to NRS 116.335 is that Section 5 permits an association to amend the declaration to include leasing restrictions and Section 8 permits an association that has the existing ability to restrict leasing to take the much easier step of creating these restrictions by rules and regulations.

Section 9. NRS 116.3113(1) requires a homeowners association to maintain various types of insurance, including property insurance and commercial general liability insurance for claims arising with respect to the common elements, but only "to the extent reasonably available and subject to reasonable deductibles." Subsection 3 of the statute provides that "If the insurance . . . is not reasonably available, the association promptly shall cause notice of that fact to be given to all units' owners."

NRS 116.4109 requires an association to provide certain basic information to the purchaser of a unit in the community. For example, the "resale package" must include copies of the CC&Rs, the bylaws, the rules and regulations and the association budget. The statute is silent, however, on insurance. The statute permits a buyer to cancel the purchase agreement within 5 days after receipt of the resale package.

As a result of a significant number of insurers pulling out of the Lake Tahoe/Northern Nevada market due to increased fire risk, the cost and availability of insurance for common interest communities has become a major concern for buyers and sellers, who may not be aware of substantial insurance cost increases or notices of non-renewal received by the association, but not yet disclosed to owners within the community.

NRS 116.3113 requires that the association notify unit owners if the required insurance is not reasonably available. This same protection should be given to prospective owners. Section 9 of AB 396 will provide this protection by including insurance information as part of the resale package.

[10] https://abipdx.com/short-term-rentals-pose-problems-for-associations/