Via Email February 5, 2026

Nevada Department of Business & Industry CIC Task Force

Subject: *CIC Task Force – Reconsideration and Framework Submission*

Dear Director Sanchez and Members of the CIC Task Force,

I respectfully submit the attached policy paper, *Reforming Nevada's CIC Dispute Resolution Systems* for Task Force consideration. Trusted, state-administered adjudication services tailored to common-interest communities are needed to provide accessible, affordable dispute resolution for CIC members and to reduce reliance on the courts, which for many homeowners are not a viable option. The recommendations are intended as practical reform steps toward that goal.

I ask that this correspondence and the attached materials be included in the Task Force record. Should the Task Force find it helpful, I would be pleased to appear to discuss any of these materials or provide additional information.

It is increasingly recognized that common-interest communities have developed into systems of private governance while they lack the public institutional support structures that typically accompany such authority. Clear state-level interpretation of frequently recurring statutory *and* governing-document provisions would be an enormous public service, reducing disputes by addressing uncertainty at its source. Expanding the State's interpretive and corrective role in this area merits Task Force consideration.

Homeowners' concerns have predictably persisted as the regulatory framework's interpretive role has largely fallen into disuse. The issue encountered, several noted in enclosure 3, Unresolved HOA Rulemaking demonstrates, are not isolated. The issue brief on virtual-only board meetings at enclosure 2 provides one simple but concrete example of statutory ambiguity in need of authoritative interpretation. Similar uncertainty surrounds board "workshops," competitive bidding requirements, and declarant control transition. Collectively, the examples raise a threshold question appropriate for Task Force review: **Are Nevada's current regulatory processes functioning as lawmakers intended, and if not, what changes are required?**

In meeting with Director Sanchez regarding the Task Force and its agenda, I was assured that the CIC reform suggestions submitted would receive consideration. At that time, I noted that many issues raised at that time and in this letter do not require new legislation: they fall within existing administrative and regulatory authority.

Homeowner confidence in the Division enforcement function has separately declined. Compounding this, significant areas of HOA governance remain outside regulatory oversight due to statutory limits.

Nevada's bold and innovative decision to establish a CIC regulatory structure did not occur by accident. Lawmakers recognized that associations exercise authority over housing that can take on governance-like characteristics. Limits were placed on that framework. Those limits deserve re-examination two decades later as association powers have expanded beyond basic property management into broader community governance.

Historically, the Division and Commission advanced legislative recommendations and sought statutory clarification based on issues observed in practice. In recent sessions, that forward-looking function has been difficult to identify. The Legislature's creation of this Task Force is itself a meaningful signal: lawmakers typically do not establish special review bodies where existing systems are widely viewed as clear, fair, and consistently protective.

It is my hope that many of the topics presented here are already the Task Forces' list for review. Given the absence of an as yet publicly identified set of priorities, homeowners have no way to know what concerns are and are not expected to be addressed. For that reason, I ask suggestion provided in this letter be placed directly into the record and be consider for deliberations. I do not request they move to the front of the line, only that they be given a clear and visible place in it.

I also note concern with public participation in the Task Force process itself. A principal reason lawmakers turned to a task force model for CICs was to expand stakeholder input — especially from homeowners — and allow broader vetting of potential reforms than is typically possible during the compressed legislative session. When meetings are held with only the minimum required public notice, conducted exclusively in virtual format, and structured around brief public comment periods, the process may satisfy statutory requirements but materially limit both the breadth and depth of stakeholder engagement—the very thing the Task Force is meant to foster. Absent a clearly articulated plan for broader participation before recommendations are finalized, the Task Force risks replicating the very constraints it was meant to overcome.

At the center of any reform should be Nevada homeowners — individuals and families whose financial obligations, governance rights, and housing stability are shaped by how statutes and governing documents are interpreted and applied. Governing documents can no longer be treated as purely private contracts divorced from the public consequences of their enforcement.

Homeowners do not expect every reform outcome to favor their position, but they will reasonably bristle in the absence of transparency. They expect clarity in the reasoning behind regulatory interpretations and meaningful opportunities to be heard before policies or practices become entrenched. Without that visibility and participation, it becomes difficult for members to understand why certain practices are permitted, to assess whether outcomes are fair, or to have confidence that the system is operating as intended.

The establishment of the CIC Task Force presents an important opportunity to address long-standing statutory ambiguity and needed reform across the full landscape of HOA governance. Stronger institutional support structures for CICs are both timely and necessary. I appreciate the significant time and effort Task Force members are dedicating to this work.

Respectfully submitted,
/s/ Mike Kosor

Mike Kosor
NVHOAReform.com

Enclosures:

1. *Reforming Nevada's CIC Dispute Resolution Systems* (Policy Paper)
2. Virtual-Only Board Meetings and Statutory Compliance Concerns (Issue Brief)
3. Unresolved HOA Rulemaking and Clarification Requests

NEVADA HOA REFORM COALITION
EMPOWER·ADVOCATE·REFORM

Reforming Nevada CICs Dispute Resolution Systems

By Mike Kosor[1]

Abstract

Nevada's framework for addressing common-interest community (CIC) disputes operates on two distinct tracks: administrative enforcement of statutory duties and private dispute resolution of governance and governing-document disputes. This paper examines both tracks and identifies targeted reforms necessary to restore their intended function.

Section I analyzes the administrative-enforcement system created in 2003, which empowered the Nevada Real Estate Division and the Commission for Common-Interest Communities to investigate and adjudicate alleged violations of NRS Chapter 116. The paper concludes that this system is structurally sound and reflects a deliberate legislative design to provide an accessible, non-judicial forum for enforcing statutory obligations. However, it identifies operational deficiencies that undermine transparency, review, and public confidence—particularly the absence of any mechanism to review investigative closures prior to hearing referral and an overly expansive application of confidentiality that limits Commission oversight. Two targeted reforms are proposed to restore transparency and accountability without expanding jurisdiction or altering substantive rights: the creation of an independent Review Officer to provide limited oversight of investigative closure decisions, and a confidentiality reform to ensure appropriate administrative access and meaningful disclosure of outcomes.

Section II addresses governance disputes arising from the interpretation and application of governing documents. It explains why the Legislature's longstanding objective—providing a reliable, lower-cost alternative to litigation capable of producing a neutral determination—has not been achieved under the current ADR framework. Mediation cannot resolve interpretive disputes, and arbitration or referee review remains available only by mutual consent, allowing either party to avoid any merits determination and forcing disputes into costly litigation or non-resolution. The paper identifies this consent-based structure as a structural defect and advances a focused reform: making referee review the default post-ADR mechanism absent agreement to arbitration. This reform preserves court access while correcting the chilling effect that prevents homeowners from obtaining interpretive clarity before litigation. Finally, the paper addresses a Nevada Supreme Court's 2025 which rendered the "mandatory" ADR requirements of NRS 38.310 effectively waivable suggesting a narrow legislative clarification expressly stating that ADR compliance is a jurisdictional.

Together, these reforms address both sides of Nevada's CIC dispute-resolution system—strengthening administrative enforcement of statutory duties and restoring access to neutral, low-cost determinations in governance disputes—while remaining consistent with existing jurisdictional boundaries and legislative design.

[1] 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.

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Released 2/5/26

Introduction

Obligations of common-interest community (CIC) ownership are established in the governing document, along with a foundational document — in Nevada, typically nonprofit articles of incorporation. The distinctive feature of a CIC is that ownership carries mandatory obligations to support common property, or other facilities, or the activities of an association, whether or not the owner used the common property or facilities, or agrees to join the association.[2]

A problem facing association members is the difficulty in figuring out what the rules and obligations are and how to comply with them. Simply pulling together all the applicable sources of rules can be a daunting task. Understanding them and resolving conflicting rules is more difficult, and determining what the default rules are in the absence of express rules can be even harder.[3]

When disputes arise over those rule and obligations, CICs occupy an uneasy space between public governance and private corporate law. As Professor Susan French observed, "neither the law governing cities, nor the law governing corporations, is well suited to common interest communities."[4] 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."[5]

Despite this recognition, most states, including Nevada, lack a pre-litigation forum for resolving CIC disputes that can issue a neutral determination of statutory *and* governing-document obligation without the need for mutual party consent.[6] One local Maryland jurisdiction however, demonstrates that comprehensive administrative adjudication of common-interest community disputes is legally possible where governing-document interpretation is expressly placed within a public regulatory framework and supported by a true quasi-judicial tribunal.[7] The Montgomery County (Maryland) Commission on Common Ownership Communities provides a structured

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[2] See *Restatement (Third) of Property: Servitudes* § 6.2 cmt. at 77 (2000)

[3] See *Making Common Interest Communities Work: The Next Step, by Prof. Susan French, UCLA School of Law research paper No. 05-12, pg 7.*

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

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

[6] According to materials published by the Community Associations Institute, seventeen states provide some form of statutory pathway to alternative dispute resolution for common-interest community disputes, although the scope and structure of those programs vary. Pennsylvania is identified as the only state in which the state Attorney General has express statutory authority to receive complaints involving certain internal governance matters under consumer protection law. *See* 68 Pa. Cons. Stat. § 3322. Based on review of these programs, none appears to require parties to participate in a neutral dispute process capable of issuing a determination — even if non-binding — absent mutual consent.

[7] Montgomery County Code, Chapter 10B; see also Md. Code, Real Property § 11B-111.7 (authorizing local dispute resolution mechanisms for common-ownership communities). The CCOC is empowered to conduct hearings and issue binding decisions subject to judicial review.

dispute-resolution system that progresses from mediation to a formal hearing before a panel authorized to issue binding decisions, with limited judicial review.[8]

Nevada's approach in the early 2000s was innovative and, outside of the Montgomery County model, comes closer than most to addressing the unique governance structure of CICs. But that was over two decades ago, CICs have evolved, and gaps in the present system are now evident. Nevada chose a more limited design—strengthening statutory enforcement while preserving civil litigation for governing-document disputes. Montgomery County demonstrates that comprehensive administrative adjudication of common-interest community disputes is legally feasible where governing-document interpretation is expressly placed within a public regulatory framework and supported by a quasi-judicial tribunal. Nevada chose a more limited design—strengthening statutory enforcement while preserving civil litigation for governing-document disputes—and the reforms proposed here operate within that existing architecture.[9]

Nevada's CIC dispute-resolution and regulatory-enforcement system is bifurcated. Generally, 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.[10] Despite these separate pathways—and notwithstanding the long-recognized tension over how to classify CICs under the law, and the Nevada Supreme Court finding they operate in the "quasi-governmental "space [11]—neither track consistently

[8] Montgomery County treatment of COCs (CIC in Nevada) rests on a broader consumer-protection classification model that Nevada has not adopted. It functions as an administrative forum with screening authority. It has first-instance authority, strongly encourages mediation, and a complaint can be dismissed if the complaining party rejects mediation. If the responding party rejects mediation, the law requires the CCOC to hold a hearing on the complaint at which the responding party is not allowed to present any defense. Penalties can be assessed against a party who unreasonably refuses to participate in mediation or who unreasonably withdraws from a pending mediation. If the dispute isn't resolved in mediation, it proceeds to a formal hearing before a three-member CCOC panel. The process is quasi-judicial: parties can present evidence, examine witnesses, and the hearing is transcribed or recorded. Decisions of the hearing panel are binding on the parties and have the force of law under the Montgomery County Code (Chapter 10B). Parties may file a motion to reconsider and then appeal the decision to the Montgomery County Circuit Court (which reviews the record rather than holding a new trial).

[9] The contrast between Nevada and Montgomery County suggests that whether certain categories of governance disputes should remain exclusively within the civil-litigation framework warrants future legislative examination. A comprehensive reclassification of governance disputes within an administrative forum would represent a structural policy decision beyond the scope of this paper.

[10] Neveda law provides a member or association suffering actual damages from failure to comply with Nevada HOA laws or any provision of the governing document may bring a civil action for damages or other appropriate relief. See NRS 116.4117

[11] 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.

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 can be understandably surprised by the extent to which the freedoms they associate with homeownership have been curtailed.[12] At the same time, enforcement practices among CICs vary widely, waiver problems persist, and volunteer boards are often guided by advisors whose incentives are not always aligned with de-escalation.[13] 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.[14]

Ordinances must be enforced by local officials, while CC&Rs (covenants, conditions, and restrictions- the core governance document) 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]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."[15]

Industry actors have repeatedly advanced a contract-centered model of CIC enforcement in which disputes are framed as private-law matters for judicial determination rather than issues for

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

[13] *See, e.g.,* J. Koves, *Governing the Ungovernable: Private Community Associations and the Limits of Volunteer Governance*, 32 Barry L. Rev. 1 (2024) (discussing reliance of volunteer boards on professional managers and counsel); Ryan Gabrielson & Allison Sherry, *How HOA Foreclosures Turn Small Debts Into Big Profits for Lawyers*, ProPublica (Oct. 2023) (describing fee and foreclosure practices that can create incentives for escalation rather than informal resolution); Grant S. Nelson, *The Impact of Common Interest Communities on the American Housing Market*, 56 Fordham L. Rev. 915 (1988) (explaining how lien and fee structures influence enforcement behavior).

[14] See *Restatement (Third) of Property: Servitudes* § 6.2 cmt. at 238 (2000)

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

public regulatory oversight.[16] While lawmakers urged by owners seek alternatives capable of providing timely, proportionate, and affordable determinations.[17]

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 litigation for CC&R-based disputes. For more than three decades, legislators have repeatedly expressed concerns with the effectiveness of this structure.[18]

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.

An authoritative State interpretation of commonly encountered rules and provisions in common-interest communities is needed — including recurring provisions in governing documents that routinely shape governance disputes yet lack an accessible, authoritative interpretive forum. Such interpretive clarity would be an enormous public service and would reduce disputes by addressing uncertainty at its source. [19] Opting of a CIC is not an option and declaration for a CIC

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[16] Industry stakeholders have long framed common-interest community governance as a matter of private contract, with disputes over governing documents treated as issues for judicial enforcement rather than public regulatory adjudication. *See* Evan McKenzie, *Privatopia* (1994); Andrea J. Boyack, *Common Interest Community Covenants and the Freedom of Contract Myth*, 49 Real Prop. Tr. & Est. L.J. 63 (2014); Community Associations Institute, *Community Association Governing Documents* & *Public Policy Statements*.

[17] 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).

[18] 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").

[19] See Susan F. French, *Making Common Interest Communities Work: The Next Step* (2005). French observes that simply identifying all of the legal sources governing common-interest communities can be daunting, and that understanding and reconciling them can be even more difficult for laypersons. Governing documents are often lengthy and technical, and the addition of overlapping statutory requirements can further complicate

function like a constitution for the community.[20] Changing covenant terms is cumbersome at best and impossible in some cases. Thus, there is a great need to have some initial control of the legitimate subject matter for regulations of private community covenants. The broader question of expanding the State's role in consumer protection, with the potential to meaningfully affect outcomes before disputes arise, warrants careful examination and should be a core policy discussion — but is outside the scope of this paper.

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.[21] 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.[22] In 1999, lawmakers expanded the Ombudsman's authority to request records and maintain complaint and education databases.[23] Still, Nevada lacked the crucial components of effective regulatory oversight: investigative capacity and an adjudicatory forum outside civil litigation.[24]

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

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interpretation. She suggests that states could provide an enormous public service by assembling this information in accessible form and by offering authoritative interpretations of provisions frequently encountered in governing documents. This type of state involvement has parallels in established consumer-protection frameworks, where states regulate and clarify the terms of standardized, non-negotiated arrangements, limit the unilateral expansion of authority absent meaningful approval, and thereby reduce confusion, prevent disputes, and protect individuals operating at an informational disadvantage. Such state involvement would reduce uncertainty, prevent disputes, and support the fair operation of community associations.

[20] *Restatement (Third) of Property: Servitudes* § 6.10 cmt. at 196 (Am. L. Inst. 2000)

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

22 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.

23 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.

[24] Effective regulatory oversight generally depends on the ability to investigate potential violations and to provide a neutral forum for resolving disputes arising under the governing standards.

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 should ordinarily be the last resort because of their expense and hostile character" [25] Nevada lawmakers heard similar testimony, emphasizing that homeowners faced disproportionate burdens when seeking to resolve even relatively minor disputes.[26]

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."[27] 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.[28]

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."[29] The administrative track thus emerged as the sole mechanism for enforcing statutory duties, absent actual damages,[30] explicitly separate from the civil-litigation pathway that continues to govern CC&R-based disputes today.[31]

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

[26] 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)

27 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)

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

[29] *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)

[30] 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.

[31] States have generally been reluctant to create an administrative adjudication system for disputes arising under HOA governing documents because those documents are treated as private servitude instruments, and interpreting them often determines property rights, contractual obligations, and use restrictions traditionally reserved to courts. Expanding a housing or real-estate regulator's authority to issue binding interpretations of CC&Rs would shift a core judicial function into the executive branch and require court-like due-process

B. Current Administrative Process

The administrative process is initiated 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 informal resolution with the parties. The Ombudsman then prepares a written report and transmits the matter to the Division for investigation.[32]

The Division then determines whether "*good cause exists*" to refer the case to the Commission.[33] 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.[34]

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[35]—employing an independent adjudicatory commission.[36]

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procedures, neutral adjudicators, formal records, and judicial review. As a result, even where states have established complaint and enforcement mechanisms, interpretation of governing documents has largely remained within the civil-litigation pathway.

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

[33] 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.

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

[35] A review of states with active CIC regulatory or ombuds programs identified few comparable public adjudicatory structures; outside Nevada, the most developed examples located were the Montgomery County, Maryland Commission on Common Ownership Communities (binding hearing panel decisions), Arizona's Department of Real Estate administrative hearing process for certain HOA and condominium disputes, and Florida's condominium arbitration program. *See* Montgomery County Code ch. 10B; Ariz. Rev. Stat. §§ 32-2199.01 et seq.; Fla. Stat. § 718.1255.

[36] *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).

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 than administrative closure—the assessment must necessarily be qualitative.[37] What does exist is years of homeowner testimony and the Commission's own minutes reflecting persistent concerns with the investigative and disposition process.[38] Importantly, because enforcement and any subsequent defense are carried out by the State, individual owners are not required to fund the action or an appeal, removing the resource disparity that typically deters private enforcement.[39]

In design, this framework provides meaningful public enforcement. In practice, however, its effectiveness depends on how the Division implements it. The deficiencies are not structural but operational: first, the absence of any mechanism to review Division closures prior to a hearing referral, including situations where complaints are closed through unreviewable enforcement discretion rather than a formal finding that no violation occurred; 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 can remain hidden, homeowners in turn perceive the process as opaque and unaccountable, and the Commission lacks the visibility and information it should have to carry

[37] 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.

[38] 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).

[39] *See* NRS 116.745(1)–(3) (authorizing the Division to investigate alleged violations and refer matters for prosecution); NRS 116.760(5) (Attorney General represents the Division in proceedings before the Commission); NRS 233B.130 (judicial review of administrative decisions, with the agency represented by the Attorney General).

out its statutory responsibility[40] 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's CIC enforcement framework explicitly assigns distinct roles to investigation and adjudication. The Division investigates alleged violations, while the Commission—not the Division—was given adjudicatory authority under Chapter 116. That structure reflects a legislative choice to separate fact-gathering from the issuance of authoritative legal determinations, while also providing a necessary level of public visibility into how the law is applied.

Nevada has no public-facing mechanism to review the Division's discretion in its administration of complaints that do not result in referral.[41] Available data indicate that a majority of Intervention Affidavits are concluded administratively without visible adjudication or a publicly documented outcome. When matters do not reach the Commission, no public written interpretation or precedential guidance results.

Administrative discretion is a necessary feature of any enforcement system. A structural concern arises not from the existence of discretion, but—in the case of the Division—from its apparent concentration at the gateway to adjudication. [42] When the Division is able to determine, absent review, which alleged statutory violations ever reach the public light of an adjudicatory forum, discretion does more than manage workload; it profoundly influences how the statute is interpreted in practice. That dynamic has significant consequences both for the development of the law and for homeowner confidence in the enforcement process.

[40] See NRS 116.665(2)(g)

[41] In many regulatory enforcement systems, complainants have access to some form of review or reconsideration of staff determinations not to pursue enforcement, whether through internal appeal, supervisory review, or oversight by a board or inspector general. *See, e.g.,* 5 U.S.C. app. §§ 2–4 (federal Inspectors General oversight of agency investigative functions); Cal. Gov't Code § 12529.5 (requiring complaint tracking and review procedures for certain licensing enforcement); Tex. Occ. Code § 51.207 (providing for review of enforcement complaint handling by state licensing agencies). These mechanisms vary in scope but illustrate that investigatory discretion is often paired with some form of procedural review or accountability.

[42] Division complaint-disposition summaries presented to the Commission for FY25 reflect approximately 130 Intervention Affidavits investigated. (see NRED Ombudsman report to CIC Commission 6/10/25 for the period July 1, 2025- April 30, 2025) Of these, only about one-fifth advanced to Commission hearing, while a majority were categorized as administratively resolved, "unsubstantiated", terminated, or otherwise closed without referral. The reporting categories do not describe the legal reasoning or corrective measures associated with these outcomes.

Confidentiality has a rightful place. But under its current application, investigative-level decisions produce no public reasoning, no precedential guidance, and no opportunity for oversight—even in aggregate form. This is discussed further in the next section.

To be clear, the problem is not discretion itself. It is the absence of a feedback mechanism capable of evaluating how discretion functions at the point where statutory interpretation is effectively filtered.[43] Without such a safeguard, the legislative design—investigation followed by Commission adjudication—cannot be verified in practice and risks drifting from its intended balance.

While improved reporting is necessary and would be beneficial, transparency alone does not create accountability. To safeguard the balance lawmakers intended in 2003 and restore homeowner confidence in the Intervention Affidavit process, 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 substantive rights; it would introduce structured oversight into a gap the Legislature never affirmatively created and help ensure that case routing, closure decisions, and administrative actions, remain aligned with statutory design.

The RO would receive:

- a written statement from the complainant identifying alleged investigative deficiencies, and
- access to the case file.[44]

The RO would prepare a brief written recommendation[45], 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. [46] Alternatively,

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[43]Administrative discretion is widely recognized as a necessary feature of enforcement systems, but scholarly sources emphasize that unchecked discretion can undercut legitimacy unless accompanied by institutional accountability. See *Jerry L. Mashaw, Bureaucratic Justice* (1983) (describing procedural safeguards that balance discretion and accountability); Kenneth C. Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* (5th ed.) (discussing internal oversight and reporting as mechanisms to bound discretionary enforcement); ACUS Recommendation 2016-2 (noting that transparency and review mechanisms enhance confidence in administrative adjudication).

[44] 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

[45] 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.

[46]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),

the RO could be a contracted administrative-law professional funded through existing Ombudsman Fund resources and, if appropriate, cross-used 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.

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 to inform its rulemaking functions and its broader understanding of how Nevada's common-interest community laws operate in practice, affect unit owners, and others.[47]

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

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.

[47] *See* NRS 116.615

Commission is restricted from receiving the investigative information that informs its duty under NRS 116.615[48]

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 appears to receive 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 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.

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.[49] 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**,**

[48] 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.)

[49] 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.

(2) limited internal access to investigative materials for Commission and RO review**,** and
(3) public procedural guidance promoting consistency and accountability.

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

In contrast to statutory enforcement matters, disputes arising exclusively from governing documents generally fall outside the authority of both the Division and the Commission, leaving private litigation as the default path to resolution.[50] Nevada, as with other states requires an alternative forum for resolution of disputes (ADR) prior to civil litigation.[51] A combination of mediation and adjudication services can resolve many disputes without resorting to the courts. One advantage of creating a state-run service, which Nevada uses, instead of simply mandating that associations engage in alternative dispute resolution is that a body of decisional law can be built up that will help in carrying out the educational function and inform efforts to clarify and improve the statutory law.[52]

A. ADR 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[53] 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[54] 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

[50] Absent a violation of NRS 116 neither the NRED or CICCH Commission have jurisdiction. *See* NRS 116.745-.750

[51] See NRS 38.310. "civil action' is defined includes an action for money damages or equitable relief. The term does not include an action in equity for injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title to residential property. (NRS 38.300) According to materials published by the Community Associations Institute, seventeen states provide some form of statutory pathway to alternative dispute resolution for common-interest community disputes, although the scope and structure of those programs vary.

[52] To this observer little if any information harvesting is done from the Division's ADR role.

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

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

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.[55] The ALI likewise observed litigation is inherently ill-suited as an enforcement mechanism in CICs.[56] 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. [57] 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, an award capped at $7,500, and could not award attorney's fees.[58] The bill expressly preserved the right of any party to commence a civil action following issuance of the award.[59]

The effort met immediate and coordinated resistance from industry stakeholders and the State Bar's Common-Interest Communities Subcommittee. [60] 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.[61]

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

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

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

[57] 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.

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

[59] 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.

[60] Id.

[61] 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).

litigation capable of providing owners and associations with an authoritative determination of their respective rights and obligations.

B. Current Governance / ADR Process

Nevada's framework offers a full range of private dispute-resolution formats:

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

All process options are private providing faster alternatives to resolution than litigation. They differ primarily in the role of the third party[62], the decision-making process, and expense. If actual damages are in play, rare in HOA disputes, the referee program has a cap (currently $7,500). In practice, 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.

C. The Core Problem Requiring Reform

The Legislature has repeatedly signaled that homeowners should have access to a neutral, fast and low-cost decision-maker on governance disputes. [63] In practice, however, that access often does not exist.

Courts are neutral but costly and slow. They are structured primarily to resolve disputes involving measurable harm or requests for coercive relief. When the issue is simply the interpretation of a covenant, voting provision, conflict-of-interest rule, maintenance obligation, or procedural requirement, the civil litigation model is poorly matched to the dispute.

Under the current framework, there is no mechanism that reliably produces a timely, neutral, and substantive merits determination. Mediation, which the statute requires, is designed to facilitate settlement and cannot issue a binding or advisory interpretation of governing documents. If either party declines to proceed to arbitration or referee review, the dispute moves directly into civil litigation. As a result, the only pathway capable of producing an authoritative interpretation is one that is procedurally complex, slow, and costly.

This structural design produces predictable outcomes.[64] Disputes over governing-document meaning often remain unresolved not because the issues lack importance, but because the

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[62] Arbitrator: Functions like a private judge, focusing on evidence and legal arguments. Referee: Functions as an evaluator, focusing on the interpretation and application of the HOA's specific covenants, conditions, and restrictions (CC&Rs). Mediator: Facilitates communication and does not make a decision.

[63] 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.

[64] Ombudsman quarterly Alternative Dispute Resolution (ADR) reports to the Commission for Common-Interest Communities and Condominium Hotels indicate that only a small percentage of matters—generally under five

available decision-making pathway is ill-suited. The system nominally provides dispute resolution, but functionally withholds neutral interpretation unless a party is willing to commit to full-scale litigation.

D. ADR Program Reforms

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

1. Implementing Structure

Rather than routing governance disputes first through mediation—which cannot provide a merits interpretation—the reform proposed here adjusted the ADR routing framework to the function A.B 34(2013) sought to create: access to an affordable, neutral determination outside of court.

- 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 absent mutual agreement to use an alternative.

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.

percent—proceed through the referee program, the only ADR mechanism designed to provide a neutral interpretation of governing documents. The reports do not identify the types of disputes involved or explain why cases do not advance to referee review. While causation cannot be determined from the limited available data, the persistent underutilization of referee review is consistent with the current structure, under which either party may decline to participate in that process, resulting in disputes concluding without a merits-based determination.

- 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

A reformed process culminating in a written referee determination changes the dynamic entirely.[65] 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 parties are operating in a materially different fiduciary and informational landscape, shaped by the presence of a neutral, expert evaluation.

Under the current structure, disputes proceed first to mediation, which cannot provide an interpretation of the disputed governing documents. If the parties do not voluntarily proceed to arbitration or referee review, litigation becomes the only path to a determination. As a result, the meaning of the governing documents is often filtered through the cost, delay, and risk of civil litigation rather than through an accessible, expert assessment. Removing a party's ability to "veto" referee review ensures that neutral evaluation occurs as a matter of course rather than by mutual agreement alone.

Preparation for referee review is similar in scope and formality to mediation. It is suitable for direct owner participation, unlike arbitration, which is more formal and typically requires structured presentation of evidence and legal argument. The reform does not compel settlement or eliminate access to the courts; it simply ensures that disputes receive the kind of neutral, early evaluation the existing ADR framework was designed—but presently unable—to provide reliably.

[65] The availability of a low-cost neutral merits' determination invites reconsideration of the continuing utility and equity of broad prevailing-party attorney-fee provisions in governing documents.

This structural shift is especially significant for owners. Associations are typically already operating through counsel, while individual owners often are not. Referee review is designed as an evaluative process focused on interpretation of governing documents and application of established standards. The interpretation requires little, if any, formal advocacy but generally is what owners seek. It introduces neutral legal analysis at precisely the stage where information and representation imbalances are greatest, without forcing either party to incur the substantial costs and procedural burdens of arbitration or litigation.

In many regulatory settings, this kind of interpretive function would fall naturally to an agency or ombudsman charged with providing guidance and oversight. Common-interest communities, however, are treated as private-law communities governed through covenants layered onto statutory mandates. That structure limits the ability of regulators to issue authoritative interpretations of governing documents, leaving a gap between informal mediation and formal adjudication. Referee review directly targets and fills that gap, supplying expert analysis within the HOA framework.

In practical terms, referee review functions similarly to a "legal aid" type program for owners, but in a Division controlled neutral and non-advocacy form. Because regulators cannot interpret private servitudes and private legal advice is often financially out of reach or disproportionate, referee review is the only mechanism in the existing framework capable of delivering neutral, expert interpretation of governing documents without placing either party in a yet more elevated adversarial posture.

The presence of a neutral merits determination also changes the context in which further decisions are made. A party who believes its interpretation is correct retains the right to seek judicial review, but does so after confronting an independent assessment of the dispute—effectively a "second opinion" in the case of an association.

Once a credible neutral has evaluated the issue and provided a well-supported interpretation, a party that elects to litigate against that assessment must justify that decision in light of the available expert analysis. For an association, this includes its fiduciary obligation to consider contrary information before committing collective resources to continued escalation. For an owner, it likewise reflects a reasoned risk–benefit determination; proceeding in the face of an adverse neutral interpretation may also increase the likelihood that a court views the claim as lacking a reasonable basis. The existence of a neutral determination does not formally bind either party, but it shifts the focus from positional assertion to informed judgment.

This informational shift has important implications for judicial review. Courts applying the Business Judgment Rule traditionally defer to board decisions made in good faith, with due care, and within the scope of authority. A referee determination does not alter that doctrine or require courts to second-guess substantive outcomes. What it does change is the decision-making context. When a board proceeds in the face of a neutral expert interpretation its position is flawed, the adequacy of its deliberative process becomes more visible and more meaningful. The presence of a contrary, independent analysis informs whether the board's action reflects a reasoned and informed judgment based on adequate information, which is the core premise underlying judicial deference under the Business Judgment Rule. In this way, referee review

reinforces—rather than undermines—the process-based foundations of the Business Judgment Rule.[66]

This shift in process also addresses a less visible consequence of the current structure. Many owner-initiated disputes the resolution of which may provide significant benefit to the community as a whole, yet the cost of obtaining that clarification is borne entirely by the individual who raises the issue. Absent support an owner will tolerate the status quo. The result can appear to be owner apathy, when in fact it often reflects a rational decision to avoid a system in which the cost of clarity is disproportionate to the issue in dispute. By introducing a neutral evaluation before that cost threshold is reached, the reformed structure changes not only how disputes are decided, but which disputes are decided at all.

In this way, the referee's decision becomes a true functional pivot point, especially for an unrepresented owner, in the dispute-resolution process. It resolves many disputes directly, informs settlement discussions in others, and narrows the range of issues that genuinely warrant judicial intervention. The reform does not alter substantive legal rights or eliminate court access. *It corrects an incentive structure that currently allows the only low-cost decision-making mechanism to be bypassed,* ensuring that neutral evaluation becomes a realistic and accessible part of the system rather than an optional exception.

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.[67] The Court found NRS 38.310 does not create a right of judicial review or hinge on finality.[68] 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.[69]

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[66] 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

[67] 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.

[68] 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").

[69] 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

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**.** [70]

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[71]. 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.[72] 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

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supposed to 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

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

[71] 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.

[72]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.

proportionate, neutral process the Legislature intended. The statutory revisions presented in **Appendix A** reflect this imperative.

G. Future Review of Fiduciary Deference Standards

This paper proceeds on the assumption that Nevada's existing fiduciary-deference framework, including statutory reinforcement of the Business Judgment Rule in the common-interest community context, will remain in place. The referee-default reform proposed here is designed to function within that framework by improving the informational basis upon which boards make decisions and courts apply deference.

At the same time, Nevada's codification of fiduciary protections for association boards is unusually strong when compared with general corporate governance standards and the approach reflected in the American Law Institute's *Restatement (Third) of Property: Servitudes*.[73] Nevada law emphasizes judicial deference to board decisions made in good faith and within the scope of authority, leaving limited avenues for owners to obtain substantive review of governance decisions.

Nevada's present structure appears to reflect a legislative choice intended primarily to protect volunteer governance and promote decisional stability. This raises questions about how fiduciary accountability and homeowner protections are maintained. The policy question is whether fiduciary accountability is appropriately sustained in a governance system where judicial review is limited — and, in Nevada's case, statutorily reinforced — while boards exercise regulatory and financial authority over private property in a manner courts have recognized as functionally similar to local governance. In this setting, the strength of mandated judicial deference itself becomes part of the accountability design question. Where boards exercise regulatory authority over the use and value of private property in ways that resemble public governance, is the appropriate scope of judicial deference one that remains largely confined to process rather than substantive reasonableness? This is a matter that warrants legislative and policy examination. Recent scholarship examining fiduciary standards during the declarant-control period has similarly observed that the strength of statutory deference in common-interest communities can influence how effectively accountability mechanisms operate in practice.[74]

The referee-default reform addresses an immediate and structural access-to-determination problem without altering the underlying standard of judicial deference. However, the interaction between Nevada's statutory deference framework and the evolving governance role of common-interest communities warrants continued examination. Future legislative or task-force review may consider whether the current balance between decisional protection and accountability

[73] The *Restatement (Third) of Property: Servitudes* frames association governance through a more explicit fiduciary lens and recognizes judicial oversight where boards act outside their authority, in bad faith, or in a manner that is unreasonable in light of the community's legitimate interests. See *Restatement (Third) of Property: Servitudes* §§ 6.13–6.14. Nevada's statutory framework, by contrast, places heavier emphasis on deference to board decision-making processes, reflecting a distinct policy balance between autonomy and accountability.

[74] See, e.g., [Author], *Fiduciary Governance and Judicial Deference During Declarant Control in Common-Interest Communities* (2026) (analyzing how statutory business-judgment protections interact with accountability and oversight mechanisms in association governance).

remains well-calibrated, particularly as communities mature beyond the declarant-control period and disputes increasingly involve interpretation of long-term governance obligations rather than development-phase decisions.

Raising this question does not suggest that existing fiduciary protections are improper or ineffective. Rather, it recognizes that Nevada's approach reflects a specific policy balance that may merit periodic reassessment as the scale, complexity, and economic impact of common-interest communities continue to grow. The referee reform proposed here complements, rather than prejudges, that broader conversation by ensuring that boards and owners alike have access to neutral interpretive guidance before disputes escalate into costly litigation.

Appendix A

Proposed Amendment to NRS 38

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]** that has not completed **[been submitted, to mediation or if the parties agree, or has been referred to]** mediation or a program established pursuant to NRS 38.325[30] 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 of a claim pursuant to subsection 1 is jurisdictional. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

NRS 38.320 (unchanged)

NRS 38.325 Program of dispute resolution: Authority of Division to establish; procedure for claim referred to program. [If the Division establishes a program:]

1. Upon receipt of a written claim and answer filed pursuant to NRS 38.320 **[in which all the parties indicate that they wish to have the claim referred to such a program,]** the Division **[may]** shall refer the parties to the program unless all parties, in writing, elect mediation or arbitration pursuant to NRS 38.330.

2. The person to whom the parties are referred pursuant to the program shall review the claim and answer filed pursuant to NRS 38.320 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 person shall issue a written decision and award not to exceed $15,000 and provide a copy of the written decision and award to the parties. The person may not award to either party costs or attorney's fees.

3. Any party may, within 60 days after receiving the written decision and award pursuant to subsection 2, commence a civil action in the proper court concerning the claim. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been referred to a program pursuant to the provisions of NRS 38.300 to 38.360,

inclusive. If such an action is not commenced within 60 days after receiving the written decision and award pursuant to subsection 2, 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.

NRS 38.330 Procedure for mediation or arbitration of claim; payment of costs and fees upon failure to obtain a more favorable award or judgment in court.

1. **[Unless a program has been established and the parties have elected to have the claim referred to a program,]** Parties upon written agreement to mediation of a civil action [the parties] shall select a mediator from the list of mediators maintained by the Division pursuant to NRS 38.340. ….

Bold Bracket [ ] yellow shading notes deleted text, Red is added text

Appendix B

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.

Attachment 2: Virtual-Only HOA Board Meetings and the Statutory Requirement of "Place"

Issue

Some Nevada common-interest communities (CICs) now conduct executive board meetings exclusively through virtual platforms, without offering any physical location for owners to attend. In several associations, this has become the sole executive board meeting model.

This raises a central statutory question:

Does a virtual platform alone satisfy Nevada's requirement that notice of executive board meetings include the "time and place" of the meeting under NRS 116.31083?

Nevada law does not currently provide a clear answer. Chapter 116 does not define "place," nor does it expressly authorize boards to eliminate a physical meeting location.

Virtual access can expand participation, but the legal issue is whether remote attendance may replace — rather than supplement — the opportunity to attend at a physical location.

Following the COVID-19 pandemic, many associations temporarily shifted to virtual meetings. In the absence of formal regulatory interpretation or legislative clarification, in-house counsel "opinions" have treated virtual platforms as sufficient to satisfy the statutory "place" requirement. These opinions have legal authority. As a result, a significant governance practice affecting owner access has developed without clear statutory or regulatory confirmation.

Regulatory and Fiduciary Considerations

To date, there has been no formal regulatory rulemaking or authoritative interpretation addressing whether a virtual platform alone satisfies the statutory requirement of a meeting "place."

The Nevada Real Estate Division has been asked directly to identify the statutory authority permitting common-interest communities to conduct executive board meetings on a permanent virtual-only basis without designating any physical place for owner attendance. In response, the Division provided general reference materials, including statutes addressing electronic participation by directors, pandemic-era guidance, and advisory commentary regarding virtual meeting logistics. However, the response did not identify any statute, regulation, formal opinion, or adjudicative determination concluding that a virtual platform alone satisfies the statutory requirement in NRS 116.31083 that meeting notices include a "place."

In addition, a formal petition for rulemaking was submitted under NRS 233B requesting clarification of whether "place," as used in NRS 116.31083, may be satisfied solely through a virtual platform. To date, six months later, that petition has not resulted in rulemaking, a formal interpretive determination, or written denial. The legal question therefore remains unresolved through both regulatory guidance and the Administrative Procedure Act process.

Notably, when similar questions arose for public bodies during and after the COVID-19 pandemic, the Nevada Legislature addressed the issue directly. In 2021, lawmakers amended the Open Meeting Law to expressly authorize remote meeting formats and to impose additional transparency requirements when physical meeting locations are not provided. In particular, when a public body meets using remote technology without offering a physical location, it must comply with heightened notice and disclosure obligations, including expanded access to supporting materials for agenda items—reflecting a legislative judgment that when physical access is reduced, informational access must expand. No comparable statutory clarification or regulatory rulemaking action has occurred for common-interest communities under Chapter 116, despite the same shift in governance practices.

This contrast highlights a related issue the Task Force may wish to examine if virtual meeting are deemed appropriate: whether they should similarly be paired with enhanced transparency requirements.

As a result, this governance practice is evolving without express statutory authorization or formal regulatory confirmation. This "not prohibited, therefore allowed" approach effectively treats silence in the statute as a grant of governance authority. This dynamic shift the source of authority from the Legislature and the regulatory process to private often informal legal interpretation.

Uncertainty has also created a dynamic in which advisory legal interpretations are effectively shaping governance practices in the absence of statutory or regulatory clarification. When counsel fill that gap, the legal risk does not rest with the advisor—it rests with the association and its members. Association face:

- Owner disputes and challenges
- Administrative complaints
- Potential litigation regarding meeting validity
- Erosion of owner trust and participation

Conclusion

This is not merely a question of technological convenience, but of governance authority and the adequacy of regulatory performance. A significant shift in CIC governance practices has occurred in practice, yet regulators have not provided clear legal clarification or enforcement guidance. As a result, virtual-only meetings increasingly occur by default rather than by clearly established legal authority. Virtual meeting technology can improve accessibility, but Nevada law does not clearly authorize boards to eliminate physical attendance entirely. When governance practices evolve without timely statutory or regulatory guidance, uncertainty and inconsistent application are the predictable result. Clarification would promote consistency, reduce fiduciary risk, and strengthen confidence in the State's oversight of CIC governance.

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Attachment 3: Unresolved HOA Rulemaking and Clarification Requests under NRS Chapter 116,

Released 2/3/2026

The following matters are offered as a menu of issues for phased Task Force consideration. They identify areas where Nevada law or regulation may be ambiguous, inconsistently applied, or in need of clarification. Formal petitions under NRS Chapter 233B have been submitted on many of these topics, as noted (*).

1. **Review the use of "workshops."** Clarify whether and under what conditions board gatherings constitute "meetings" under NRS 116.31083, and whether additional safeguards are needed to ensure owners can observe board deliberations on community business and be physically present when governance matters are discussed so owners may participate collectively*
2. **Review virtual-only meetings.** Clarify the meaning of "place" in NRS 116.31083(5) and whether physical attendance must remain available when boards meet. Consider whether any authorization of virtual-only formats should be paired with enhanced transparency requirements (see Issue Paper, Attachment 2).*
3. **Clarify director eligibility and conflict-of-interest rules.** Address ambiguities in NRS 116.31034 and NRS 116.31084, including recusal standards and protections for directors serving during declarant control.*
4. **Consider prohibiting** declarant-controlled boards from contracting with affiliated service provider (NRS 116.31086). Declarant-controlled boards cannot negotiate arm's-length contracts with affiliated venders. This is especially impactfully when the affiliate is the community manger leaving owners with no true fiduciary oversight of the community's governance.*
5. **Adress the tension in NRS 116's director duty standards:** Executive board members are subject to the business-judgment rule (NRS 116.23102(1)(a))**,** are fiduciaries, (NRS 116.3102(1)), while American Law Institute's Restatement (2000) (§ 6.14) and UCIOA's (§ 3-103(a)) explicitly embed heightened trustee standard- the most demanding fiduciary obligations recognized under law- for declarant-appointed directors, while non-developer-appointed directors subject to exercising a degree of care and loyalty required of officers or directors of a nonprofit corporation- a lessor standard than under NRS 116. Consider codifying (or via regulation, if available) Delaware's framework *MFW*-based (Kahn v. M & F Worldwide Corp safe harbor) fairness review for conflicted transactions and *Zapata*-based oversight for construction defect decisions.
6. **Clarify termination of declarant control.** Review application of NRS 116.31032 ("no later than" termination of declarant control) and NRS 116.2105(1)(d) statements of maximum units to prevent uncertainty or inflation of potential unit counts.*
7. **Review confidentiality provisions.** Review NRS 116.757 in light of *Reno* (NSC 2011) and the Division's application of complaint confidentiality, and consider whether greater transparency is appropriate to inform owners and support accountability in enforcement outcomes.*
8. **Clarify competitive bidding requirements.** Review application of NRS 116.31086.*

9. **Address board action by email outside meetings.** Clarify interaction between NRS 116.31085 and corporate statutes (e.g., NRS 82.276) where boards approve contracts outside noticed meetings and later "ratify" those actions.*
10. **Protect candidate communication rights.** Request Task Force review of NRS 116.31034 to determine whether its current language or application results in unintended restrictions on a candidate's ability to communicate campaign materials directly to owners.*
11. **Clarify fiduciary duty enforcement standards** under NAC 116.405. Review whether the regulation's current language and application provides clear and consistent standards for determining fiduciary breaches by executive board members.*
12. **Clarify board meeting agenda notice requirements**. Review the requirements of NRS 116.31083 to determine whether the statute's language provides sufficiently clear and consistent standards for agenda notice, including what items must be included and the level of detail required given general application practices. *
13. **Review the HOA budget adoption process.** Evaluate whether post-adoption owner "approval" procedures under NRS 116.31151 function as intended and whether additional owner input opportunities should be considered.
14. **Review Nevada's dispute resolution systems.** Consider reforms involving both administrative (NRS 38) and governing document disputes (see policy paper *Reforming Nevada's CIC Dispute Resolution Systems*).
15. **Review declarant removal of owner-elected directors.** Clarify statutory language permitting a declarant to remove an owner-elected director during declarant control (NRS 116.31032 & 116.089).*
16. **Define allowable common expenses.** Clarify NRS 116.019 to distinguish shared property obligations from discretionary lifestyle programming tied to mandatory assessments.*
17. **Consider safeguards for declarant-affiliated contracting**. Review circumstances in which declarant-controlled boards contract with declarant-affiliated management companies (NRS 116.31086) and consider whether additional structural conflict-of-interest protections are appropriate during the period before owner control
18. **Owner communication rights.** Consider requiring associations provide a reasonable method for owners to communicate with one another and the board (similar to provisions in the 2008 UCIOA amendments not adopted in Nevada).
19. **Reserve expenditure transparency.** Consider requiring line-item disclosure of planned reserve expenditures as part of the annual budget under NRS 116.31151.
20. **Declarant control timeline disclosure.** Consider requiring declarants provide at least annually, and to prospective buyers, a good-faith estimate of when control of the CIC is anticipated to terminate.
21. **Limits on reserve special assessments.** Consider whether statutory limits or owner-approval requirements should apply.
22. **Electronic access to supporting documents.** Consider requiring electronic access for owners to supporting documents (budgets, contracts, etc.) at the time agendas are released where board action is possible (with an exception for very small associations).
23. **Owner notice of statutory changes.** Consider adopting rules that require owners be informed of changes enacted to NRS that may directly impact them.

24. **Declarant annexation notice.** Consider mandatory notice when a declarant adds acreage to an association (NRS 116.2105).
25. **Independent oversight of HOA elections.** Consider independent oversight mechanisms for executive board elections, given that elections are often administered by vendors hired by the incumbent board.
26. **Clarify repose period for declaration amendments.** Clarify application of the repose period under NRS 116.2117(2) and whether it applies to all amendments or only those adopted by the association.

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