Via Email
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Administrator, Nevada Real Estate Division (NRED)
Department of Business & Industry
3300 W. Sahara Avenue, Suite 325
Las Vegas, NV 89102

July 28, 2025

RE: Petition for Rulemaking Regarding Interpretation of NRS 116.31032-declarant control termination

Dear Administrator Chandra;

Pursuant to NRS 233B.100 and NRS 116.623, I hereby petition the Administrator of the Nevada Real Estate Division (NRED), in coordination with the Commission for Common-Interest Communities and Condominium Hotels (CICCH Commission), to initiate interpretative rulemaking adopting regulations to clarify ambiguities of NRS 116.31032 and related provisions related to declarant control termination. Clarification is necessary to close regulatory loopholes, resolve ambiguities, and advance the statutory intent for declarant transitions in Nevada common-interest communities.

I. Background and Need for Clarification

As amended by AB 192 in 2015, the statute provides in relevant part:

"the declaration may provide for a period of declarant's control of the association... Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earliest of:

(a) For a common-interest community with less than 1,000 units, 60 days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant;

(b) For a common-interest community with 1,000 units or more, 60 days after conveyance of 90 percent of the units that may be created to units' owners other than a declarant;"

However, ambiguity exists as to the following statutory phrases and their practical application:

1. **Turnover Threshold Validity**: Whether declarant control provisions recorded prior to the 2015 amendment (e.g., those requiring turnover at less than 75%) remain enforceable, or are deemed overridden by the amended 90% threshold pursuant to NRS 116.1206.
2. **Defining "Units That May Be Created":** How to ensure the denominator used for declarant turnover thresholds under NRS 116.31032 reflects a realistic, attainable unit count—given that the statute allows declarants to cite speculative or exaggerated totals without demonstrating feasibility based on land holdings, zoning, or entitlements.

3. **Sufficiency of "Statement of Maximum Units":** Whether a general "statement" under NRS 116.2105(1)(d), in the absence of a definitive numeric maximum, satisfies the statutory intent of setting a calculable, enforceable declarant turnover threshold—or whether rulemaking should require such statements to include a fixed, supportable number.

These gaps permit declarants so inclined to prolong their control, undermining the statutory framework designed to promote owner governance and weakening fair contract expectations of unit owners. They also enable behavior that, while not always constituting a technical breach, may amount to a constructive breach of contract—where declarants undermine the fundamental purpose of the declaration by inflating or ambiguously stating unit counts to indefinitely delay turnover. This tactic deprives homeowners of their right to governance and may violate the implied covenant of good faith and fair dealing under Nevada law.

Meanwhile, the Division has taken no compliance action where associations do not conduct the required election under NRS 116.31034 yet, submit annual reporting of conveyed units exceeding the declarant control termination threshold established in their governing documents. At the same time, the Division has not, to the best of the petitioner's knowledge, explained its interpretation of NRS 116.31032. Multiple attempts by the petitioner for declaratory orders and/or advisory opinions have been rejected, including a March 31, 2023 response asserting that "[the Administrator does] not find the language of NRS 116.31032 unclear…[the] petition does not demonstrate any need for further clarification or interpretation."

To the best of the petitioner's knowledge, no Nevada court has ruled directly on the interpretation of NRS 116.31032 post-AB 192. In May 2021, however, a Nevada Court of Appeals found that "Both Nevada common-interest ownership law and the master declaration required that the Declarant's control would terminate after conveying 75% of the units," where the governing documents so provided. (*Kosor v. NRED*, unpublished).

In contrast, it has been asserted by some declarant boards that AB 192, pursuant to NRS 116.1206, rendered any pre-2015 declaration-established threshold invalid. This position is flawed, arguably self-serving, and has no basis in law. It is the position of this petitioner that legacy pre-2015 CC&Rs with a lesser threshold do not violate the amended statute and cannot be retroactively conformed to a higher threshold.

Nowhere in the statute or elsewhere in Chapter 116 is there language nullifying or overriding earlier recorded provisions authorizing declarant control to terminate at a threshold lower than 90%. Rather, the statute expressly allows the declaration to "provide for a period of declarant control" and that control terminates "no later than the earlier of" certain thresholds. Therefore, if a declaration—recorded before or after AB 192—sets a turnover threshold less than 90%, that lesser threshold remains controlling. Nothing in the statute or associated legislative testimony suggests provisions of legacy declaration were voided or superseded by the amendment.

The Legislature could have required all large associations to amend their declarations to the 90% standard, but it did not. Instead, the statute created a default maximum threshold, not a mandatory override of recorded contractual provisions. It provided, as the bill's sponsors sought,

to allow declarants to contract for a higher threshold - going forward. Nothing in the law or legislative history indicates intent to nullify existing declarations.

Furthermore, NRS 116.2105(1)(d) currently permits a declaration to include a "statement" of the maximum number of units rather than a definitive numeric maximum. This introduces further ambiguity when applied to NRS 116.31032. Without a concrete number, turnover thresholds become unanchored. Even when a numeric maximum is stated, the statute imposes no obligation or affirmation the number is reasonably attainable based on available land, zoning, or infrastructure. This invites exaggerations and potential outright manipulation, enabling declarants to delay turnover by inflating maximum units far beyond what is feasible. Such gaps also erode the clarity needed for unit owners to assert their statutory rights and meet contractual conditions—an issue central to statute and contract compliance.

II. Request for Rulemaking

To address these issues, Petitioner respectfully requests that the Division in coordination with the CICCH Commission adopt regulations clarifying the following:

A. Legacy Turnover Thresholds Remain Enforceable

The amended NRS 116.31032 does not invalidate or override declarant turnover provisions recorded in governing documents prior to the 2015 amendment. Where a declaration sets a threshold lower than 90%, that lower threshold remains valid unless lawfully amended. This interpretation aligns with the statute's "no later than the earlier of" language and protects owners' contractual expectations.

B. Clarification of "Units That May Be Created"

Rulemaking should clarify that "units that may be created" must be tied to verifiable capacity. NRED should adopt a rule requiring that:

- A **numeric** number included in satisfaction of the "statement" pursuant to NRS 116.2105(1)(d);
- The number provided must be supportable through reasonable evidence of development feasibility, such as land control, zoning, and entitlements;
- Declarants be required to submit an affidavit or sworn statement of intent at the time of declaration or amendment, attesting to their development plan and the basis for their stated maximum unit count.
- Address legacy declarations where the statement of maximum number of units lacks a defined numeric.

These recommended rules would establish a good-faith projection of maximum unit development based on land availability, zoning, and infrastructure feasibility at the time of enactment. The requirement would provide an enforceable record to evaluate turnover thresholds strengthening the integrity of NRS 116.31032 compliance and NRS 116.2122 limiting declarant

increases in the *number* of units on the planned community beyond that *stated* in the original declaration.

Such regulation would both enforce legislative intent and address the constructive contractual ambiguity that currently frustrates compliance.

III. Conclusion

The requested rulemaking is necessary to close known ambiguities in the statute and prevent manipulative practices that delay declarant turnover contrary to the legislative intent. These regulations would restore confidence in the law, protect homeowners, and support NRED's enforcement responsibilities.

Respectfully submitted,

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Atch: March 31, 2023 letter, Re: Petition for declaratory order NRS 116.31032

JOE LOMBARDO
Governor

STATE OF NEVADA

TERRY REYNOLDS
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Deputy Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.nv.gov

March 31, 2023

Via U.S. Mail
Michael Kosor
12070 Whitehills St
Las Vegas, Nevada 89141

Re: Petition for declaratory order/advisory opinion, NRS 116.31032 dated February 7, 2023

Dear, Mr. Kosor:

The Nevada Real Estate Division ("Division") is in receipt of your February 7, 2023, request, "Petition for declaratory order/advisory opinion, NRS 116.31032" [sic]. The Division is also in receipt of form letters in support of your request from four (4) other homeowners of the Southern Highlands Community Association ("SCHA"). Pursuant to NRS 116.623(5)(a), the Division provides this timely response.

The Division understands you are requesting an opinion as to whether NRS 116.31032 specifically subsection (b), revised and effective October 1, 2015, provides deference to pre-existing Covenants, Conditions and Restrictions ("CC&Rs") provisions that set a lower threshold for the termination of declarant control than the threshold set by the statute.

The Division declines your request to readdress the issues presented in your request for a declaratory order or an advisory opinion for the following reasons.

First, you requested an advisory opinion on January 18, 2017, regarding AB 192 (2015 legislative amendments to NRS 116.31032). The Division issued a response on February 27, 2017, to your advisory opinion request on this same exact statute. In its opinion, the Division did not find the language of NRS 116.31032 unclear as to the period of declarant control for associations consisting of 1,000 units or more based on sale percentages.

Then, you sued the Division. In your 2018 claim against us, you again challenged the period of declarant control alleging amendments to the SCHA CC&Rs were illegal, and those arguments failed as determined by the Nevada Supreme Court who agreed with the Division that such arguments were time-barred pursuant to NRS 116.2117(2). Now, you again request interpretation of NRS 116.31032.

The purpose of petitions for declaratory orders or advisory opinions, as set forth in NRS 116.623, is to clarify provisions of NRS chapters 116, 116A, of 116B. Your petition does not demonstrate any need for further clarification or interpretation concerning NRS 116.31032.

Thank you for presenting your concerns to the Division.

Sincerely,

Sharath Chandra
Administrator

cc: *Via Email*
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