Reforming Nevada's CIC Dispute Resolution Systems

Executive Summary

The policy paper *Reforming Nevada CICs Dispute Resolution Systems* by the Nevada HOA Reform Coalition, proposes targeted amendments to NRS Chapters 38 and 116 to restore what Nevada's Legislature has long intended: a dispute-resolution system for common-interest communities (CICs) that can actually provide neutral determinations at low-cost, and without forcing homeowners or associations into expensive civil litigation.

The Core Statutory Reforms

1. Amend NRS 38.325 and 38.330 to a) establish a Referee Program as the default and b) restore the mandatory character of ADR for CIC disputes

For governance disputes arising under declarations, bylaws, and other governing documents:

- Referee review becomes the default process after a claim and answer are filed under NRS 38.320.
- Mediation or arbitration remain available, but only by mutual written agreement of the parties.
- The referee conducts a low-cost merits review and issues a written, nonbinding decision and limited award, treated as nonbinding arbitration under NRS 38.300–.360.
- Either party retains full access to civil court after the referee's decision.
- Courts lack jurisdiction over any civil action that has not first completed ADR..

These are not expansions of regulatory power. They are structural corrections designed to make Nevada's existing policy choice— accessible, nonjudicial resolution of CIC disputes—function as originally intended. This amendment removes the current system's most serious structural defect: a party's unilateral ability to block any determinative review and force disputes into cost-prohibitive litigation.

2. Amend NRS 116.757 and related provisions to strengthen oversight in administrative enforcement

For statutory violation complaints filed with the Nevada Real Estate Division (NRED):

- Create an Independent Review Officer to review on request Division closing complaints without referral to hearing.
- Clarify that confidentiality under NRS 116.757 does not bar:
    - internal oversight by the Commission or Review Officer,
    - redacted explanatory summaries to complainants, or
    - anonymized public reporting of enforcement outcomes.

These reforms preserve investigative confidentiality while restoring transparency, consistency, and public confidence in administrative enforcement.

The Problem These Amendments Address

Nevada relies on two parallel tracks to resolve CIC disputes:

1. Administrative enforcement for alleged statutory violations of NRS 116; and
2. Civil litigations, following what was intended to be mandatory, alternate dispute resolution (ADR) under NRS 38.300–.360 for disagreements involving governing documents.

Both tracks were designed to keep disputes out of court while still producing meaningful, neutral outcomes. Both now fall short of that objective.

Administrative Track (Statutory Violations)

Nevada's 2003 reforms made the state a national leader by creating a specialized investigation and hearing structure. But over time, operational opacity has undermined confidence in the system:

- Complainants have no meaningful review of Division decisions closing complaints.
- An expansive interpretation of confidentiality pursuant to NRS 116.757 has made enforcement outcomes largely invisible to the public and even to the CICCH Commission.

These are not failures of concept, but of oversight and transparency— deficiencies that can be corrected through the Review Officer and confidentiality clarifications proposed.

Governance Disputes Track (Declarations and Rules)

The Legislature's goal in bringing ADR to CICs mirrored the concerns driving administrative reform efforts: civil litigation was deemed too slow, too costly, and too procedurally rigid for the small-scale disputes that dominate common-interest community life. Mediation, the default process absent mutual consent, can encourage compromise, but it does not produce a neutral decision on the merits.

An analysis of Division reporting finds mediation in CIC disputes often functions as little more than a procedural waypoint to litigation. The fundamental defect is structural. The system conditions access to authoritative interpretation on the economics of litigation rather than the needs of governance

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. Lawmakers sought an affordable alternative to litigation —one capable of producing a determination. ADR has never done so. The fundamental defect is structural: either party may unilaterally block, in effect veto, the ADR pathway capable of issuing a decision, forcing the dispute into mediation (which cannot decide the merits) and then into civil litigation.

Prevailing-party attorney-fee provisions, embedded in nearly all CC&Rs, raise serious financial risks even when a complainant, typically by a homeowner, is simply attempting to enforce the protections the Legislature enacted, the obligations the developer imposed through the declaration, or amended by rule, without regulatory review. The result, homeowners are left to

abandon viable disputes without any neutral review of the merits. They become frustrated. The "system" is seen as broken or at a minimum, unfair.

Mandating, absent mutual consent, a nonbinding referee determination alters that dynamic. Even without formal preclusive effect, it introduces a credible, low-cost merits assessment into a space that has long lacked one. For both parties, the very act of rejecting such a determination adds functional tension: it may require proceeding in the face of a competent contrary neutral analysis, and in the case of an association, requires disclosure to members because the determination—unlike privileged legal advice—cannot be withheld under an advice-of-counsel rationale. In this way, the referee's nonbinding status becomes a strength rather than a weakness—it preserves party autonomy while creating a practical accountability mechanism that has been missing from the governance-dispute track since its inception.

This paper proposes a single structural correction drawn directly from the model introduced in A.B. 34 (2013): If parties do not mutually choose arbitration or civil litigation, the dispute defaults to the referee process. Importantly, the reform does not eliminate mediation or court access; it restores the missing middle step lawmakers originally intended—an affordable determination capable of informing both settlement and, if necessary, subsequent judicial review.

Opposition, primarily from industry stakeholders, draws on familiar legal themes—limits on agency authority, respect for party autonomy in dispute resolution, cost concerns, and freedom of contract. But those principles do not bar legislative design of procedural mechanisms to address public policy objectives governing how disputes are resolved before reaching court. Nevada already mandates ADR as a condition precedent to litigation. The dividing line was not the existence of a referee process, but whether that process, producing determinations without requiring mutual consent, could function as a default pathway.

Defaulting to the existing Division referee program, where a non-binding merits determination of a dispute is obtained, is not a regulatory expansion, but a targeted procedural adjustment required to make the Legislature's long-standing policy objectives—providing a meaningful, affordable alternative to civil litigation—function in practice.

The ADR "mandate'

The Nevada Supreme Court's 2025 decision in *Kosor v. SHCA* found that the NRS 38 ADR requirement is waivable and not jurisdictional. *Mandatory* is now no longer 'mandatory". Without legislative clarification restoring its mandatory character the effectiveness of CIC dispute resolution reform remains vulnerable to waiver and strategic avoidance. The fix requires lawmakers to make clear their long-standing intent that Nevada courts lack jurisdiction over civil actions based upon a claim that has not completed NRS 38's ADR program--mediation or the referee program-- and all administrative procedures in governing documents.

Accordingly

- **Appendix A** proposes amendments to NRS 38.310–.330 to restore the mandatory character of ADR and implement the referee-default structure.

Reforming Nevada CICs Dispute Resolution Systems

By Mike Kosor[1]

Introduction

"Neither the law governing cities, nor the law governing corporations, is well suited to common interest communities."[2] 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."[3]

Nevada's common-interest community (CIC) dispute-resolution and regulatory-enforcement system is bifurcated. 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 generally must proceed through the civil courts. Despite these separate pathways—and notwithstanding the long-recognized tension over how to classify CICs, and the Nevada Supreme Court finding they operate in the "quasi-governmental "space [4]—neither track consistently delivers what homeowners and lawmakers identify as an important need: a low-cost, neutral determination of whether an association or owner has complied with governing obligations.

CIC purchasers are understandably surprised by the extent to which the freedoms they associate with homeownership have been curtailed.[5] The legal and procedural complexity of common-

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[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.

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

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

[4] 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.

[5] 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).

interest community governance and the limited opportunity most buyers have to understand those rules before purchase adds further tension. 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. Furthermore, when the association violates a statutory duty under Chapter 116, but the violation does not cause an owner "actual damages," NRS 116.4117 does not provide that owner a civil cause of action to enforce the statute. Administrative enforcement becomes the only enforcement mechanism. 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.[6]

Susan French, Reporter for the American Law Institute (ALI) *Restatement (Third) of Property: Servitudes*, has described: "t[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."[7]

Industry actors have advocated adherence to the contract model for CIC enforcement, under which civil courts serve as the sole adjudicator of disputes. While lawmakers, urged by owners, seek alternatives capable of providing timely, proportionate, and affordable determinations.[8]

Nevada ultimately developed a dual-track system: administrative enforcement for statutory violations and an adapted alternative-dispute-resolution (ADR) structure intended to serve as a precursor to civil litigation for CC&R-based disputes. Yet for more than three decades,

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[6] Id. at 6.13 pg 238 (2000) (discussing ALI characterizations of judicial treatment in CIC disputes)

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

[8] 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).

legislators have repeatedly questioned whether this structure actually delivers the neutral, accessible determinations it was designed to provide.[9]

This paper addresses reforms to both tracks. Section I analyzes the administrative-enforcement system created in 2003 and concludes that it is structurally viable 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 here corrects the core structural defect that allows either party to avoid a merits determination altogether and replaces a system in which legal clarity turns on litigation economics rather than on the substance of the dispute.

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.[10] Throughout the 1990s, disputes—whether based on statutory duties or governing documents—could be addressed only through the civil courts.

When Nevada adopted Chapter 116 in 1991, the enforcement provision allowed "any person adversely affected" by a statutory violation to seek relief in court. At that time, no regulatory enforcement body existed, making private civil actions the primary enforcement mechanism.

In 1993, the Legislature replaced that broad standing with a requirement that a plaintiff show "actual damages."[11] This amendment converted what had been a broadly available compliance action into a damages-based civil remedy. Because many statutory governance violations—such as notice defects, election irregularities, open-meeting failures, or records-access violations—do not produce measurable financial loss, private civil enforcement ceased to function as a general tool for compelling statutory compliance. The full timeline for NRS 116.4117 amendments can be found at Appendix C.

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. That structural gap persists.

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[9] 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").

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

[11] See Chapter 573, AB 612(1993) (amending NRS 116.4117 by replacing "adversely affected" with "suffering actual damages").

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.[12] In 1999, lawmakers expanded the Ombudsman's authority to request records and maintain complaint and education databases.[13] Still, Nevada lacked the crucial components of effective regulatory oversight: investigative capacity and an adjudicatory forum.

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 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" [14] Nevada lawmakers heard similar testimony, emphasizing that homeowners faced disproportionate burdens when seeking to resolve even relatively minor disputes.[15]

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."[16] 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.[17]

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."[18] The administrative track thus emerged as the sole mechanism for enforcing statutory duties, absent actual damages,[19] explicitly separate from the civil-litigation pathway that continues to govern CC&R-based disputes today.

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12 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.

13 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.

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

15 *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)

16 *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)

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

18 *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)

19 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*

B. Current Administrative Process

A homeowner initiates the administrative process 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.[20]

The Division then determines whether "*good cause exists*" to refer the case to the Commission.[21] 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.[22]

If the Division concludes that a statutory violation occurred, it refers the matter to the Attorney General's Office (AG) for prosecution before the Commission.[23] The AG prosecutes on behalf of the state; the Commission presides over an evidentiary hearing and issues a public, authoritative order. If that order is later challenged in court, the AG also defends the Commission's decision against due-process or other legal attacks on judicial review.[24]

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

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Ranch Homeowners Ass'n, 133 Nev. 44, 49, 388 P.3d 83, 87 (2017) ("NRS 116.4117 requires a showing of actual damages."). Although injunctive relief may be available to prevent imminent harm, the statute does not provide a general private right of action to compel statutory compliance absent 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.

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

[21] 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.

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

[23] *See* NRS 116.785(2) (upon determining that a violation has occurred, "the Division shall submit the matter to the Attorney General for enforcement" before the Commission); see also NRS 116.745(1) (authorizing the Commission to conduct hearings and impose remedies for violations referred for enforcement).

[24] *See* NRS 233B.135 (providing for judicial review of final agency decisions, including those of the Commission); and NRS 228.110(1) (requiring the Attorney General to "represent the State and all state officers, departments, agencies, boards and commissions" in all legal proceedings).

providing binding, publicly accountable decisions. Because Chapter 116 limits private civil enforcement to situations involving actual damages, this administrative framework serves as the only enforcement mechanism lawmakers provided for governance-related violations that do not produce actual damages. Structurally, the system *could* work and includes an unusually valuable feature—rare among CIC regulatory models nationwide—employing an independent adjudicatory commission.[25]

Yet public trust in the system remains low. Because Nevada publishes no meaningful data capable of measuring homeowner satisfaction or 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.[26] What does exist is years of homeowner testimony and the Commission's own minutes reflecting persistent concerns with the investigative and disposition process.[27]

The deficiencies are not structural but operational: first**,** the absence of any mechanism to review Division closures prior to a hearing referral, 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. **T**he system's effectiveness depends almost entirely on how the Division exercises its gatekeeping and investigative functions.

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

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[25] *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).

[26] 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.

[27] 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).

failure remain hidden, homeowners perceive the process as opaque and unaccountable, and the Commission lacks the visibility and information it needs to carry out its statutory responsibility under NRS 116.665(2)(g) 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 provides no mechanism to review the Division's discretion in closing complaints it has investigated that do not result in referral. When the Division determines there is no "good cause" to proceed, the matter ends. A complainant has no pathway for review, and the Commission and public have very limited information to evaluate whether the Division's gatekeeping function is being exercised consistently and appropriately.

Reporting on Intervention Affidavits closed without referral to the Commission is inadequate, and improved reporting alone will not materially enhance transparency or accountability. To restore the balance the Legislature intended in 2003, this paper proposes the creation of an independent Review Officer (RO) to evaluate Division closure decisions upon written request. The RO would not alter jurisdiction or expand rights; it would introduce oversight into a gap the Legislature never affirmatively created and ensure closure decisions comport with the statutory purpose.

The RO would receive:

- a written statement from the complainant identifying alleged investigative deficiencies, and
- access to the case file.[28]

The RO would prepare a brief written recommendation[29], 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. [30] Alternatively,

[28] 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

[29] 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.

[30] 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), combining investigative and prosecutorial responsibilities with adjudicative or advisory roles within a single

the RO could be a contracted administrative-law professional funded through existing Ombudsman Fund resources and, if appropriate, cross-use 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 for its broader duty to evaluate the operation of Nevada's common-interest communities and the concerns of unit owners and other affected persons.

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 Commission is restricted from receiving the investigative information that informs its duty under NRS 116.615[31]

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.

[31] 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.)

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 receives 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.[32] 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**,**
(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.

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[32] 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.

SECTION II — Governance Disputes

A. Origins and 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*[33] that CC&R-based disputes complete required 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.

For many homeowners, meaningful access to a formal legal determination of their dispute is effectively out of reach. And while others may formally have access to the courts, the cost-versus-risk calculus often results in disputes going unresolved. The recognized reality is that civil litigation seldom functions as a forum in which right and wrong are neutrally tested in isolation; outcomes are frequently shaped by the parties' relative ability to sustain prolonged, resource-intensive conflict, a dynamic widely recognized in access-to-justice scholarship.[34] That dynamic is amplified in common-interest community disputes by prevailing-party attorney-fee provisions, which increase the financial risk faced by individual homeowners while associations fund litigation through assessments[35].

These consequences flow directly from the legal structure that treats governance disputes in common-interest communities as matters of private contract. So long as that framework remains in place, lawmakers must ensure that the pre-litigations system includes an accessible, neutral mechanism capable of producing a merits determination without requiring full-scale civil action. The ADR framework was intended to serve that function.

However, the 1995 ADR structure did not reliably provide a neutral interpretation of governing documents, a determination on the merits, or a binding outcome absent the mutual consent of the

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

[34] Deborah L. Rhode, *Access to Justice*, 69 Fordham L. Rev. 1785, 1786 (2001) (observing that financial barriers often determine whether litigants can effectively pursue legal rights); Deborah L. Rhode, *Access to Justice* 3 (2004) (noting that large portions of civil legal needs among low- and middle-income Americans go unmet due to cost); Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 Law & Soc'y Rev. 95, 97–103 (1974) (explaining how repeat players with greater resources and experience hold structural advantages in litigation); Judith Resnik, *Money Matters: Judicial Market Interventions Creating Subsidies and Awarding Fees and Costs in Individual and Aggregate Litigation*, 148 U. Pa. L. Rev. 2119, 2121–24 (2000) (discussing how fee structures and cost allocation affect access to courts and litigation dynamics).

[35] *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978) (the Court found fee shifting would deter individuals from bringing meritorious enforcement actions); *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 271 (1975) (recognizing that fee-shifting policy choices affect access to judicial enforcement).

parties. Either participant in ADR can satisfy its mandatory requirement[36] merely by attending mediation then proceed directly to civil court.

This structural feature had predictable consequences. Associations and other institutional respondents could comply with the statute's procedural requirement without submitting the dispute to any authoritative determination. The system required participation in process, but not submission to decision. As a result, disputes involving CC&R interpretation—precisely the category most in need of early clarification—can be funneled back into civil litigation, where cost, delay, and fee-shifting pressures disproportionately burden individual homeowners. The ADR framework therefore operated as a litigation staging mechanism rather than a true alternative forum for resolving governance disputes on the merits.

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 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.[37] The ALI likewise observed litigation is inherently ill-suited as an enforcement mechanism in CICs.[38] 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. [39] 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 if appropriate, and could not award attorney's fees.[40] The bill expressly preserved the right of any party to commence a civil action following issuance of the award.[41]

The effort met immediate and coordinated resistance from industry stakeholders and the State Bar's Common-Interest Communities Subcommittee. [42] 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

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

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

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

[39] 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.

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

[41] 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.

[42] Id.

governing documents" constituting improper state intrusion into private agreements and that any shift away from arbitration risked overwhelming the Division with complaints.[43]

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

B. Current Governance / ADR Process

Under that framework, three private dispute-resolution formats exist:

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

Mediation can facilitate discussion but does not generate a ruling, and its value depends on good-faith participation--an element that cannot be guaranteed in adversarial or escalated CIC conflicts.[44] It produces no written interpretation of the governing documents, no findings, and no determination of whether the respondent's conduct complies with its CC&Rs or bylaws. It is confidential.

In practice, therefore, the only ADR format 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. An analysis of Division reporting finds mediation in CIC disputes falls short of achieving ADR's purpose of reducing the burden on the court system, lowering costs for homeowners and associations, and encouraging quicker, mutually agreeable resolutions, often functioning as little more than a procedural waypoint to litigation.

C. The Core Problem Requiring Reform

Legislative efforts spanning nearly two decades reflect a consistent policy objective: homeowners should have access to a neutral decision-maker for governance disputes without having to incur the full costs of civil litigation. The 2013 effort to embed a referee process within the Ombudsman's workflow was the most direct attempt to close the structural gap left by the original ADR design. A Division-appointed hearing officer could have issued written decisions, applied Nevada property and CIC law, and provided a capped monetary award without attorney-fee exposure—introducing a neutral merits determination before litigation economics took over.

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[43] 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).

[44] In addition, mediators do not do findings of fact, and if findings of fact are required, it destroys the process.

Opposition focused precisely on that feature. Testimony argued that allowing a state-coordinated process to interpret CC&Rs without mutual consent—even if non-binding—would constitute improper intrusion into private contracts. Yet lawmakers later adopted the referee concept elsewhere in Nevada law, confirming recognition that a lower-cost, specialized forum had value. The dividing line in 2013 was therefore not whether a referee process should exist, but whether it could function as a default pathway capable of producing a merits evaluation absent mutual agreement.

That structural limitation remains today. Disputes over the meaning and application of governing documents continue to pass through default mediation without resolution, only to confront the economic barriers of civil litigation. In practice, access to authoritative interpretation depends less on the merits of a dispute than on a party's ability to absorb the financial and procedural risks of prolonged legal proceedings. The system intended to provide an alternative to litigation too often functions as a procedural waypoint on the way to it—or as a stopping point where disputes remain unresolved because the price of pursuing clarity is too high.

Characterizing this gap as protection of a purely private sphere misdescribes the legal landscape. Common-interest community governance in Nevada has never operated outside statutory structure. Associations derive their powers from state law, exercise authority over property rights within a legislatively defined framework, and operate under duties the Legislature has repeatedly shaped and revised. Providing a neutral forum to interpret governing documents does not expand state power; it supplies a procedural mechanism within a system the state already regulates.

Even if default participation in a referee program were framed as state involvement in private ordering—a premise not conceded—it would be materially less intrusive than measures Nevada law has long embraced. The Legislature has amended, superseded, and rendered unenforceable provisions of governing documents when they conflict with statutory standards or public policy. The proposed reform does none of that. It does not rewrite agreements or impose new substantive duties. It simply provides a low-cost interpretive step capable of producing a neutral assessment of existing obligations before litigation economics dictate the outcome.

What is missing from the current governance-dispute track is therefore not another forum, but a reliable procedural bridge to a merits evaluation. Today, the only written interpretations typically available come from the parties' respective attorneys—analysis that is adversarial, privileged, and often shielded from members and from neutral scrutiny. Nothing in the existing ADR structure introduces a transparent, nonprivileged, expert evaluation early enough to influence behavior or narrow disputes. The absence of that step allows disagreements to harden, increases reliance on litigation leverage, and leaves fiduciary decision-making insulated from independent review.

The defect is structural, not doctrinal. The system conditions access to authoritative interpretation on litigation economics rather than governance needs. Establishing a neutral, low-cost merits forum as a default pathway is not a regulatory expansion but a targeted procedural adjustment necessary to make the Legislature's long-standing policy objective—providing a meaningful alternative to civil litigation—function in practice. Because any referee decision remains nonbinding and subject to full judicial review, the reform affects procedure, not adjudicative authority.

D. ADR Program Reforms

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

1. Implementing Structure

Under existing law, an Intervention Affidavit (IA) under NRS 116.760 is tied to alleged statutory violations, which limits the Ombudsman's ability to assist in purely governing-document disputes that do not independently implicate a Chapter 116 violation. This reform therefore proposes establishing an intake process through which owners and associations may submit complaints concerning either alleged statutory violations or disputes involving interpretation or enforcement of governing documents. The Ombudsman's role at this stage would be limited to screening and procedural classification.[45] Complaints alleging statutory violations would proceed through the existing enforcement pathway. Disputes involving governing documents would be routed, absent mutual consent to an alternative, the referee program for neutral merits review.

This approach does not expand the Ombudsman's enforcement jurisdiction. It recognizes that homeowners often lack the legal knowledge necessary to distinguish between statutory violations and contract-based governance disputes. Rather than requiring residents to select the correct legal pathway at the outset—often without counsel—the intake function would ensure that disputes are directed to the appropriate process. If a submission falls outside the Division's enforcement authority, the Ombudsman would provide procedural direction to the correct forum rather than rejecting the matter outright.

Under the reformed structure:

- The claimant files an IA (or its functional equivalent for governance disputes).
- The Ombudsman screens the matter.
- If not frivolously and 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 neutral merits review.

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 monetary cap (as adjusted if the Legislature so chooses), or its inability to award attorney's fees.

[45] This intake structure would also improve transparency and policy oversight. By receiving and classifying governance-document disputes at the screening stage, the Ombudsman's office would gain visibility into recurring categories of contract-based conflicts that are currently dispersed across private mediation or civil litigation and therefore largely invisible to regulators. This information would not be used for enforcement in individual cases, but could inform reporting, pattern recognition, and future legislative or regulatory review. The intake and screening function would also create an opportunity for the Ombudsman's office to provide procedural education to homeowners and associations about available dispute-resolution pathways, helping reduce misfiling and improving access to the appropriate forum.

What A.B. 34 would have changed, and what this proposal now adopts, is not the referee program itself but the pathway into it: the Ombudsman would be authorized 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

Under the referee-default model, the served party must commit its position in writing in a form that becomes part of the record reviewed by a neutral decision-maker. The referee's review is based on the written claim and the written answer filed with the Division. This requirement promotes transparency and informed decision-making in a setting where, under the current framework, positions may remain informal or undefined while the financial risks of litigation continue to escalate. Simply put, before either side assumes the substantial costs and exposure associated with civil litigation, both parties should clearly state their positions and obtain a neutral evaluation of the dispute's merits.

Informal resolution is often presumed to have occurred within the association by the time a dispute reaches the statutory ADR stage. In practice, however, internal association dispute processes may be limited, perfunctory, or focused primarily on enforcement rather than neutral evaluation. In some cases—particularly where the association's legal position may be vulnerable—little or no substantive communication takes place before the matter escalates. At this stage, the need for clarity and neutral evaluation often outweighs the limited prospect of purely informal compromise.

Confidentiality rules that protect mediation communications serve an important purpose in many dispute settings. But in the CIC context, those protections also mean a party may participate procedurally while withholding a clear articulation of its legal or factual basis. As a result, a homeowner may be required to decide whether to abandon a claim or assume significant financial risk without ever receiving a substantive explanation of the association's interpretation of the governing documents, the facts it relies upon, or the rationale for its action. This uncertainty makes meaningful risk evaluation difficult and can deter legitimate challenges regardless of their merit.

In theory, fiduciary duties and statutory obligations of good faith require associations to act transparently and reasonably in their dealings with members. In practice, however, disputes over whether those duties have been met typically require formal adjudication to resolve. The referee-default model supplies that step, if missing, by requiring each side's position to be articulated and reviewed before litigation becomes the next stage.

Some stakeholders may argue that requiring a written merits position at this stage increases formality, encourages early attorney involvement, or reduces flexibility for informal resolution. In reality, most disputes that reach statutory ADR have already escalated beyond informal dialogue. The reform therefore does not transform a cooperative phase into an adversarial one; it introduces a neutral evaluation at the point where informal mechanisms have not produced meaningful engagement.

Nor does the referee process meaningfully escalate costs. The alternative is not cost-free discussion, but civil litigation—where fee exposure, discovery, and motion practice quickly exceed the limited scope and capped exposure of the referee program. By producing an early written assessment of the merits, the referee process can narrow issues, clarify legal positions, and encourage resolution before the far greater expense of court proceedings is incurred. In this respect, the referee-default model advances the very efficiency goals often cited by its critics.

The referee-default structure also reinforces a basic principle of association governance: when a board action is formally challenged, the association should be prepared to explain the basis for that action to the affected member. Requiring the association to commit its position in writing as part of the referee process promotes transparency and accountability to its own membership. This does not compel disclosure of privileged communications or litigation strategy; rather, it ensures that decisions affecting property rights and obligations are supported by an articulable rationale subject to neutral review.

In summary, 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.
• It avoids constitutional concerns because the referee award remains advisory and nonbinding.
• It reflects the Legislature's long-standing objective: ensuring that homeowners have access to a neutral merits determination of their governing documents without incurring prohibitive litigation costs.
• It minimally alters the existing ADR model, changing only the default pathway when parties cannot agree on an alternative.

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 -- Nominal Change

Although removing a respondent's ability to veto referee review appears modest, its impact is foundational. Under the current structure, a party can avoid any neutral evaluation simply by rejecting arbitration or referee review, thereby forcing the matter into mediation—which cannot resolve governing-document disputes—or into immediate civil litigation. This dynamic is not incidental; it creates a structural pressure point. It allows an association, or any similarly well-resourced respondent, to use cost, time, and prevailing-party fee exposure to chill access to any

neutral early determination. Legislative testimony across multiple sessions—most vividly in 2013—reflects the same pattern: only a very small fraction of governance disputes ever reach court, not because the system resolves them early, but because the cost and risk of litigation deter homeowners from pursuing a ruling at all. The merits remain unexamined not because homeowners lack substantive concerns, but because the only available path to a ruling requires incurring litigation risks that far exceed the stakes of any individual dispute. The result is an appearance of apathy that does not reflect disinterest or satisfaction, but a rational response to a system that makes clarity prohibitively risky to pursue. [46]

Industry opponents frequently argue that prevailing-party attorney-fee clauses serve as a necessary deterrent against frivolous litigation and that removing or softening fee exposure would unleash a wave of baseless claims. This concern often raised during legislative hearings misunderstands both the structure of CIC disputes and the incentives of the parties involved. It is correct that fee-shifting discourages litigation; indeed, this writer agrees. But the deterrent does not distinguish between frivolous claims and legitimate efforts to obtain clarity on governing-document obligations. In the HOA context—where parties often exist in radically unequal positions of knowledge, expertise, and financial capacity (a single homeowner versus an assessment-funded association), the risk of a fee award becomes not simply a deterrent but an absolute barrier to obtaining any neutral merits assessment.

Nor are CC&Rs the kind of freely negotiated contracts in which fee-shifting is traditionally justified. CC&Rs are adhesive instruments drafted by developers to serve the developer's interests during the build-out period; those interests often diverge from the governance needs of post-turnover associations and bear no resemblance to the justified expectations of ordinary purchasers.[47] Buyers rarely read these documents, cannot negotiate their terms, and yet are bound by them as servitudes enforceable against their property. To treat prevailing-party provisions in such instruments as if they reflected bargained-for risk allocation is a legal fiction that magnifies the chilling effect on owners seeking interpretive clarity.

To be clear, nothing in this reform eliminates fee recovery for genuinely frivolous actions. A party who knowingly or recklessly brings a meritless claim should remain subject to sanctions. But frivolousness requires knowledge--or a reasonable basis to conclude--that a claim lacks merit. The entire point of the referee-default reform is to make that determination low-cost, fast, and neutral**,** rather than financially ruinous. Neither the owner nor the association should be required to incur substantial attorney's fees simply to learn what the governing documents mean or whether a disputed action is permissible. A referee determination provides precisely the low-risk, low-cost filter the current system lacks aiding in distinguishing meritorious disputes from frivolous ones without forcing either party to gamble their financial security to obtain a ruling.

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[46] ADR-outcome data from the 2013 period was not available. The Ombudsman's quarterly ADR reports provided to the Commission since 2019 show a consistent pattern: for every claim reported as "successful" or "settled," approximately twice as many are categorized as "unsuccessful." Fewer than five percent of reported ADR matters proceed through the referee program during this period. The reports do not identify the types of disputes involved or the reasons why claims do not resolve or move forward, leaving the low utilization of the referee program an important but unreported unknown. This persistent pattern is consistent with concerns expressed in 2013 legislative testimony regarding the difficulty homeowners face in obtaining a merits determination under the existing ADR structure, though the reports themselves do not reveal the causes.

[47] See fn #10

Once a credible neutral has evaluated the issue and provided a well-supported interpretation, a party that elects to litigate against that assessment must still satisfy its obligation—if an association, its duty to consider that contrary information—before justifying to both its members and any reviewing court why further escalation is necessary despite the costs, risks, and availability of an independent expert opinion. The existence of a neutral determination does not formally bind the association, but it alters the fiduciary landscape in which the board must operate. A board choosing to depart from such a determination must be able to demonstrate that its decision reflects a reasoned and informed judgment, rather than unexamined reliance on a single interpretation without consideration of competent contrary analysis. In this posture, the board's process—not the ultimate correctness of its interpretation—becomes the focal point, particularly where litigation would impose substantial costs and extend conflict that could otherwise be resolved through accepted, low-cost neutral evaluation. The reform does not require courts to second-guess settled interpretations or abandon deference; it simply informs the context in which deference under the Business Judgment Rule[48] is evaluated once a qualified neutral has opined on the dispute's merits.

In practice, this creates a powerful disciplining effect. The HOA—or any party dissatisfied with the determination—retains access to the courts but cannot invoke that access reflexively or strategically. The referee's decision thus becomes the functional pivot point: it resolves the dispute in most cases, aligns the association's incentives with its governing duties, and eliminates the ability to weaponize litigation cost as a means of avoiding a merits determination. This is why the "nominal" reform—the removal of the veto—is crucial. It does not alter the substantive legal rights of either party; it corrects the incentive structure that presently prevents ADR from functioning as the Legislature intended.

And perhaps not insignificantly, what this reform reshapes is not homeowner or association rights, but the economic dynamics that currently favor prolonged litigation over early neutral evaluation.[49]

In practice, this creates a disciplining effect. The HOA—or any party dissatisfied with the determination—retains access to the courts but cannot invoke that access absent reflection. The referee's decision thus becomes the functional pivot point: it resolves the dispute in most cases, aligns the association's incentives with its governing duties, and eliminates the ability, to weaponize litigation cost as a means of avoiding a merits determination. This is why the nominal reform--the removal of the veto--is crucial. It does not alter the substantive legal rights of either

[48] 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.

[49] It bears noting that the existing structure—where the only path to a merits determination is civil litigation—creates substantial attorney-fee opportunities for lawyers on both sides of a dispute. This is not an accusation of misconduct, but a structural observation: when the default mechanism for resolving routine governance disagreements is full-scale litigation, counsel necessarily becomes the primary economic beneficiary of a system that otherwise leaves most homeowners unable to obtain clarity on their rights. A referee-default model materially reduces this dynamic by resolving the great majority of disputes before prevailing-party exposure attaches, thereby shrinking the volume of litigated cases and, with it, the fees that attorneys on both sides currently earn from the status quo.

party, *but it corrects the incentive structure that presently prevents ADR from functioning as the Legislature intended*.

F. Context for Recurring Objections

Opposition to the reforms proposed in this paper is likely to mirror the resistance encountered during the similar proposal in A.B. 34 (2013) framing it as an expansion of administrative power, an intrusion into private contractual relationships, and a disruption of existing dispute-resolution norms. These arguments draw rhetorical force from well-known principles—limits on agency authority, respect for freedom of contract, and concern over administrative burden—but they overstated the legal implications of the reform.

As the 2013 legislative record shows neither A.B. 34 nor the proposals here, direct the Division opine on governing-document disputes. The referee function remained a form of alternative dispute resolution, operating within the existing NRS 38 framework and preserving every party's right to seek judicial review. The proposal adjusts the process by which disputes reached court, not the substantive rights of the parties.

This distinction matters. Legislatures routinely structure procedural prerequisites to litigation—requiring mediation, screening panels, or other forms of pre-suit review—without converting private disputes into state adjudications. The 2013 proposal, and those presented here, operate within that same procedural space. The likely recurrence of these same objections today underscores a central point of this paper: the challenge is not legal impossibility, but institutional reluctance to provide a neutral, accessible merits forum before disputes escalate into full civil litigation.

G. Return "mandatory" ADR to 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.[50] The Court found NRS 38.310 does not create a right of judicial review or hinge on finality. 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 NRS 38.310 is merely a *claim-processing rule*—effectively recasting a mandatory obligation on the court as an optional step that depends on whether a party objects in time.[51] The Court acknowledged that "magic words" are not necessary to denote jurisdictional status- e.g. mandatory to confer authority to act. It nevertheless rejected the statute's mandatory language and failed to articulate any standard by which the Legislature might convey its intent in future enactments. Its justification appears one strictly related to

[50] 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.

[51] 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.

judicial efficiency. In so doing, the Court has not merely overlooked legislative authority—it has actively displaced it. [52]

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. [53]

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.

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

[52] 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 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 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.

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

Appendix A

Proposed Amendment to NRS 38

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

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. ….(unchanged).

Appendix B

Proposed amendment to NRS 116

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.

Appendix C

Legislative Evolution of NRS 116.4117:

This Appendix traces the key statutory changes to NRS 116.4117, Nevada's primary civil-remedy provision within the Common-Interest Ownership Act, and explains how those changes progressively narrowed private enforcement of statutory duties while making administrative enforcement increasingly necessary for governance-related violations that do *not* produce compensable economic harm. The current full statute is found at the end of this appendix.

1. 1991 — Original Broad Private Enforcement Model

When Nevada adopted Chapter 116 in 1991 under the Uniform Common-Interest Ownership Act (UCIOA), NRS 116.4117 authorized civil actions for "any person or class of persons adversely affected" by a statutory violation or a failure to comply with governing documents. Standing was not contingent on monetary loss, and private litigation was the primary mechanism for enforcing statutory duties at that time.

NRS 116.4117 read initially as follows:
If a declarant or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this chapter. The court may award reasonable attorney's fees.

Key outcomes:

- Private civil enforcement was broad and accessible to owners *adversely affected* -even without measurable damages.
- There was no specialized administrative enforcement body; litigation filled the enforcement role.

2. 1993 — Introduction of the "Actual Damages" Requirement

The Legislature amended NRS 116.4117 with AB 612 to replace the "adversely affected" standard with a requirement that a claimant be a person "suffering *actual damages*" from the failure to comply.

Policy impact:

- This was a decisive narrowing of private enforcement. A homeowner with a governance complaint but without measurable monetary injury (for example, procedural violations or loss of process rights) could no longer sue under this statute.
- The shift moved statutory enforcement toward a damages-dependent litigation model that does not reach many governance violations.

Note: For this Appendix , we were unable to find the bill committee meeting minutes to assess the sponsor or legislative intent. Comments are based on inference from design and context. It is

likely Legislators in 1993 were concerned about *opening floodgates of litigation* against associations, board members, and declarants for technical or procedural violations, *absent harm*. The Journal confirms that Judiciary amended A.B. 612 — but not **why** they chose a damages-based enforcement trigger, effectively leaving many statutory violations with no practical enforcement path.

3. 1997 — General remedy to defined litigation

The legislation SB 314 explicitly subjected any civil action to NRS 38 (introduced in 1995) and reorganized NRS 116.4117 into subsections tightening the universe of actors who could even attempt to use the statute. in adding subsection (2), it explicitly listed who may bring a civil action**.** Community managers are persons subject to Chapter 116 in the regulatory sense functionally removed from using the statute as a private civil enforcement tool. Finally, a "civil remedy" provided by this section was not exclusive of, any other available remedy or penalty.

It no longer reads like a broad enforcement mechanism. The 1997 change kept declarants and community managers subject to suit under NRS 116.4117(1), but subsection (2) does not grant them the right to bring an action under that same section. Traditional contract or declaration-based litigation remained available under general property and contract law with subsection (7) added- "The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty."

Key facts:

- The added language did *not* expand standing; it simply articulated that the remedy was not exclusive of other legal remedies.

Policy significance:

- Owners cannot bring a civil action whose purpose is to enforce a violation of Chapter 116 itself unless they have suffered actual damages. Although this language was sometimes interpreted as preserving alternative causes of action, it did not restore broad standing for owners who lacked actual damages.
- Administrative enforcement becomes the only enforcement mechanism the Legislature structured to address those statutory duties- but none existed.

4. 2003 — Creation of the Administrative Enforcement Track (SB 100)

By statute in 2003, Nevada created the Real Estate Division's administrative enforcement framework and the Commission for Common-Interest Communities and Condominium Hotels through Senate Bill 100. While not directly amending NRS 116.4117, this reform provided a new enforcement pathway *distinct from private litigation*. Investigations and hearings could be initiated administratively, allowing redress of statutory violations independent of monetary damages.

Policy outcome:

- Because private lawsuits could be brought only where actual damages existed, it created the first meaningful enforcement forum at all for a large category of statutory governance violations.

5. 2009 and 2011 Amendments (Clarifying Scope and Parties)

Subsequent amendments in 2009 and 2011 continued updating NRS 116.4117:

- AB 350(2009) precluded awarding punitive damages against the association, executive board and officers (for acts of omission).
- SB 182(2009) added community manger to actionable parties and provided owner class action
- SB 204(2011) provides that members of a HOA board are not personally liable to victims of crimes occurring on the property, and provides that punitive damages may not be awarded against a HOA or its board or officers under certain circumstances.

6. Structural Consequence of These Changes

Taken together, amendments to **NRS 116.4117** produced a clear statutory outcome:

- Private civil enforcement became limited to cases involving actual damages, excluding many governance-related statutory violations from practical private litigation.
- Administrative enforcement evolved as the only practical and plausible mechanism for addressing statutory duties in situations where owners lacked compensable harm.

7. Relevance to Current Reform

Understanding this evolution is critical for appreciating why administrative enforcement plays such a central role in Nevada's CIC framework today. The Legislature's early narrowing of private standing and damages requirement rendered many statutory violations unreachable through traditional civil litigation. In the absence of a meaningful civil remedy for procedural or institutional harms, the administrative track was intended to fill that gap. Ensuring the *effectiveness, transparency, and accountability* of that administrative system is therefore essential to fulfill the Legislature's policy objectives regarding fair, accessible enforcement of statutory duties.

NRS 116.4117 Effect of violations on rights of action; civil action for damages for failure or refusal to comply with provisions of chapter or governing documents; members of executive board not personally liable to victims of crimes; circumstances under which punitive damages may be awarded; attorney's fees.

1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages or other appropriate relief for a failure or refusal to

comply with any provision of this chapter or the governing documents of an association may be brought:

(a) By the association against:

(1) A declarant;

(2) A community manager; or

(3) A unit's owner.

(b) By a unit's owner against:

(1) The association;

(2) A declarant; or

(3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

3. Members of the executive board are not personally liable to the victims of crimes occurring on the property.

4. Except as otherwise provided in subsection 5, punitive damages may be awarded for a willful and material failure to comply with any provision of this chapter if the failure is established by clear and convincing evidence.

5. Punitive damages may not be awarded against:

(a) The association;

(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or

(c) The officers of the association for acts or omissions that occur in their capacity as officers of the association.

6. The court may award reasonable attorney's fees to the prevailing party.

7. The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

8. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

(Added to NRS by 1991, 578; A 1993, 2377; 1997, 3125; 2009, 2812, 2898; 2011, 2458)