Via Electronic Mail

April 12, 2026

Nevada Common-Interest Community Task Force
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Re: Agenda Item 4.A.5, CIC Task Force, April 14, 2026 Meeting — Public Comment

Agenda Item 4.A.5 should be rejected. It not only moves Nevada's CIC dispute-resolution system in the opposite direction of the problem lawmakers have long been trying to solve, it removes the simple and obvious solution. The low-cost referee program — not mediation, and not the now-proposed return to arbitration — should be the default. Little more by way of statutory change is needed.

Nevada lawmakers have long understood the real problem in most HOA disputes. Homeowners need an affordable, neutral written determination before the economics of the dispute force surrender. My attached policy paper, previously provided, explains that the central defect in Nevada's current governance-dispute track is not the absence of ADR, but the absence of reliable access to a determinative process. The current structure leaves the only processes capable of producing a merits determination — referee review or arbitration — subject to veto, while mediation remains available even though it cannot provide a neutral determination.

Mediation has shown itself ineffective given the nature of most HOA disputes: interpretation of declaration provisions. Mediation simply cannot decide them. It depends entirely on compromise, and when one side has the superior economic position, and/or seeks to advance an agenda, the predictable result is non-resolution. Mediation becomes a mere speedbump when one side has the resources and incentives to outlast the other in the courts. My examination of NRED ADR reporting over many years, as well as my own participation in the mediation program and the civil litigation that followed, bears this out. In practice, mediation, like civil litigation, is attractive to the better-resourced party — the party with the upper hand.

Arbitration can produce a determination, even if binding, but at a price many homeowners cannot reasonably absorb given the nature of most disputes. The 2013 legislative record makes clear that lawmakers understood that point. The Subcommittee was told arbitration costs were much too high to serve either homeowners or associations well. The cost exhibit submitted that year, and attached here, showed board-side attorney fees in arbitration reaching $17,325, $17,336, and even $20,000 in individual matters, while expressly excluding arbitrator fees. It must be assumed, absent any contrary NRED data, that those costs are materially worse today.

That cost structure does not merely make arbitration unattractive. As Assemblyman Ohrenschall stated during the March 27, 2013 Assembly Judiciary hearing on S.B. 370:

I do not have anything against arbitration or against the arbitrators, but everything I have seen shows that the price is much too high. Rather than having what we had always hoped for with alternative dispute resolution, something that is more efficient and less costly than taking the dispute through the courtroom, we end up with something that in some cases can be more costly and more time consuming. I do not think that is a service to the homeowners or to the associations. (Assembly Committee on Judiciary, March 27, 2013)

That observation was well founded then and, absent contrary NRED data, must be assumed even more true today. The proposed amendment may well hold owners hostage. Faced with the expense of arbitration, many owners will see mediation as the only viable option, only to discover that mediation cannot produce the determination they need. The cost of arbitration will pressure the weaker party into a process that predictably produces no determination at all.

That is why the referee program matters and should be the default — not arbitration. The Division's proposal offers no explanation why arbitration should be the preferred default or why the referee program should be eliminated. Here I echo Assemblyman Orrenschall question in 2013: "where are the statistics?" The Legislature did not identify the referee program as the problem. It identified the lack of an affordable determination as the problem.

The referee program was low cost, quicker, accessible without effectively requiring legal counsel, and capable of producing the one thing homeowners most often need: a written neutral determination. Just as important, it did not give the decision-maker the power an arbitrator can have to impose party attorney-fee exposure. That distinction changes the entire cost-benefit calculation facing a homeowner before litigation even begins. My attached paper explains why the referee path is the appropriate default for governance disputes: it is far less expensive than arbitration or district court litigation, it produces a written reasoned evaluation, it remains advisory and nonbinding, and it preserves access to court.

It also avoids attorney-fee shifting. Mandating a nonbinding referee determination alters the dynamic. Even without formal preclusive effect, it introduces a credible, low-cost merits assessment into a space that has long lacked one. The very act of rejecting such a determination adds functional tension: it requires a dissatisfied party to proceed in the face of a competent neutral contrary 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. If litigation follows, the board's decision also invites process-based judicial scrutiny. 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.

The problem after the 2013 legislation was not the referee concept itself. The problem was that the drafting kept the veto power. Even after lawmakers added the referee structure, either side could still avoid it. The obvious fix is therefore to preserve the referee program and remove the

veto power that prevents homeowners from reaching a low-cost neutral determination. Parties can still mutually agree to mediation or arbitration.

Agenda Item 4.A.5 does the opposite. It deletes the statutory "program" altogether and with it the referee program. That retreat is especially hard to justify because NRED itself supported the referee/program approach in 2013. In written testimony on A.B. 370, Administrator Gail Anderson stated that the Division supported a program under which parties could obtain a hearing or review on governing-document interpretation and assessment procedures, and that the program could operate at no cost to participants other than the filing fee. Her testimony also recognized that the existing arbitration structure was often costly to the participant who did not prevail and had a chilling effect on owners seeking to challenge a board action or simply obtain an interpretation of a rule, even if not binding.

Finally, Agenda Item 4.A.5 also fails to address the waiver problem created by the recent Nevada Supreme Court ruling in *Kosor v. SHCA*. As explained in my attached paper, the Court's 2025 ruling left NRS 38.310 waivable, as a mere claim-processing rule. The Task Force must recommend that the Legislature restore the mandatory character of ADR in express terms, unequivocally making compliance "jurisdictional."

For those reasons, the Task Force should reject Agenda Item 4.A.5 as drafted. Nevada should preserve the referee program, make it the default path for governing-document disputes unless the parties jointly elect another lawful route, and correct the waiver problem created by *Kosor*.

My policy paper, *Reforming Nevada CICs Dispute Resolution Systems*, is incorporated by reference, and I request that it be included in the Task Force record in connection with Agenda Item 4.A.5.

Sincerely,

/s/ signed

Mike Kosor
HOA homeowner and Founder
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Attachment: 1) *Reforming Nevada CICs Dispute Resolution Systems* 2) Arbitration fee FY 2010