

# 09 SESSION REVIEW FOR REALTORS® COMMON-INTEREST COMMUNITIES

Bill	Effective Date	Description
<p><b><u>AB 396 of the 74th Session</u> – Common-Interest Communities</b> NVAR monitored this bill</p>	<p>Vetoed by the Governor after the end of the 74th Session; veto sustained at the start of the 75th session, therefore <b>this bill will not become law.</b></p>	<p>This comprehensive CIC bill was passed during the 2007 Legislative Session to address the CIC issues at that time. Since the Governor vetoed the bill after the conclusion of Session, legislators decided not to override the veto and to work on new bills during the 2009 Session to address the concerns identified in 2007 as well as new issues that have surfaced during the Interim.</p>
<p><b><u>AB 108</u> – Community Managers</b> NVAR opposed this bill</p>	<p>Failed to pass out of Assembly committee by the deadline and <b>will not become law.</b></p>	<p>This bill would have incorporated into statutes many existing requirements regarding community managers contained in the Nevada Administrative Code (NAC). This bill would have set forth the responsibilities and duties of a community manager, and would have added certain new responsibilities and duties not currently in NAC. This bill would have provided that a community manager acts as a fiduciary at all times and must exercise ordinary and reasonable care in performing his duties. AB 108 would have established certain new requirements pertaining to standards of practice for community managers and conduct warranting disciplinary action, such as provisions governing the acceptance of any compensation, gift or any other item of material value by the community manager. This bill would have established the requirements concerning the disclosures that a community manager must make before entering into a management agreement, and would have set forth the requirements of a management agreement. This bill would have required the executive board for a CIC to provide in the budget for the daily operation of the association an itemized list of expenses expected to be incurred in each month. It also would have required the executive board to include a statement that any money budgeted for non-recurring expenses, other than emergency repairs or services, may not be expanded without first obtaining the signature of at least two members of the executive board.</p>

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<p><b>AB 129 – Parking Restrictions in Common-Interest Communities</b> NVAR monitored this bill</p>	<p>Effective October 1, 2009</p>	<p>This bill prohibits an association of any CIC from restricting the parking of certain utility vehicles (weight of 20,000 lbs or less), law enforcement vehicles, and emergency vehicles in designated parking areas or driveway, while the person is engaged in his official duties, or if the person is the owner or tenant of a unit.</p>
<p><b>AB 204 – Super Priority of Common-Interest Liens</b> NVAR supported this bill</p>	<p>Effective October 1, 2009</p>	<p>This bill changes the 6-month threshold for super priority of a lien for an association to 9 months, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If such federal regulations require a shorter period, the period must be determined in accordance with federal regulations, except that the period must not be less than the 6 months preceding an action to enforce the lien, as currently provided in existing law.</p> <p>This bill also requires the executive board for a CIC to make available to each unit's owner information pertaining to a policy established by the association for the collection of any fees, fines, assessments or costs imposed against a unit's owner, including the owner's responsibility to pay such fees.</p>
<p><b>AB 207 – Exemption of Limited Purpose Associations</b> NVAR supported this bill</p>	<p>Effective July 1, 2009</p>	<p>This bill exempts a limited-purpose association created for a rural agricultural residential CIC from the requirement to:</p> <ol style="list-style-type: none"> <li>(1) pay a fee to the Real Estate Administrator for each unit in the association as required by NRS 116.31155 (except that the association must pay the fees if it intends to use the services of the Ombudsman for Owners in CICs and Condominium Hotels);</li> <li>(2) comply with certain rules for meeting of the executive board (open meeting law provisions); and,</li> <li>(3) conduct a study every 5 years of the reserves required to repair, replace and restore the major components of the common elements of the community, and take certain actions concerning the study.</li> </ol>
<p><b>AB 251 – Community Managers Certificates</b> NVAR monitored this bill</p>	<p>Effective July 1, 2009</p>	<p>This bill provides that the regulations governing the issuance of certificates for community managers must establish a procedure for a person who was previously issued a certificate and who no longer holds a certificate to reapply for and obtain a new certificate without undergoing any period of supervision by another community manager, regardless of the length of time that has passed since the person last acted as a community manager.</p>

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<p><b>AB 350 – Common-Interest Communities</b> NVAR monitored this bill</p>	<p>Effective July 1, 2009, except for the provision regarding fees for collection efforts, which is effective June 9, 2009, for the purpose of adopting regulations and January 1, 2010, for all other purposes, and for the public swimming pool provision, which is effective June 9, 2009.</p>	<p>AB 350 became the comprehensive common-interest community bill this session.</p> <p><b>Resale Package</b> This bill requires a public offering or a resale package to include a statement listing all current and expected fees for each unit.</p> <p><b>Past Due Obligations: Collection and Interest charged</b> This bill authorizes an association to charge reasonable fees for costs associated with collecting any past due obligation. It also eliminates the authority to charge interest on past due fines, and caps the interest on a past due assessments to the prime rate plus 2 percent, beginning when an assessment is 60 days past due.</p> <p><b>Meetings and Access to CIC Documents</b> This bill provides that:</p> <ul style="list-style-type: none"> <li>• a unit’s owner may receive a copy or summary of the minutes of a meeting of the units’ owners or executive board in electronic format at no cost to the owner or, if the association is unable to provide a copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and at 10 cents per page thereafter; and,</li> <li>• a meeting of the executive board must be held at a time other than during normal business hours at least twice per year.</li> </ul> <p>This bill also requires that the budget, books, records and other papers of an association be available for review at a location not to exceed 60 miles from the CIC.</p> <p><b>Community Managers</b> This bill incorporates into statutes many existing requirements regarding community managers contained in the Nevada Administrative Code (NAC). This bill sets forth the responsibilities and duties of a community manager, and adds certain new responsibilities and duties not currently in NAC. This bill provides that a community manager acts as a fiduciary at all times and must exercise ordinary and reasonable care in performing his duties. AB 350 establishes certain new requirements pertaining to standards of practice for community managers and conduct warranting disciplinary action, such as provisions governing the acceptance of any compensation, gift or any other item of material value by the community manager. This bill establishes the requirements concerning the disclosures that a community manager must make before entering into a management agreement, and sets forth the requirements of a management agreement.</p> <p><b>Public Swimming Pool Exemption</b> This bill exempts privately owned swimming pools used only by members of a private club from the definition of “public swimming pool” for purposes of supervision by the Health Authority.</p>

# 09 SESSION REVIEW FOR REALTORS® COMMON-INTEREST COMMUNITIES

Bill	Effective Date	Description
<p><b><u>AB 361</u></b> – <b>Maintenance of Units Vacant or in Foreclosure</b> NVAR monitored this bill.</p>	<p>Effective October 1, 2009</p>	<p>This bill provides that the association may, without liability for trespass, enter on the grounds of a unit that is vacant or that is in the foreclosure process, whether vacant or not, to maintain the exterior of the unit or abate a public nuisance on the exterior of the unit if, after notice and a hearing, the unit's owner refuses or fails to do so. The bill also provides that any amount of the costs for such maintenance or abatement which are not paid by the unit's owner will be a lien against the unit. Further, the bill provides that the lien has priority over certain other liens, claims, encumbrances and titles, except certain liens recorded before the declaration for the association was recorded and certain liens of assessments and taxes. Finally, the bill provides that the period of priority of the lien shall be indefinite, unless regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association provide for a shorter period of priority for the lien, but even if such organization's regulations provide for a shorter period of priority for the lien, the period of priority shall not be less than 6 months.</p> <p>This bill specifically authorizes a unit-owners' association to charge a unit's owner for the maintenance and abatement services provided.</p> <p>This bill further provides that a lien for such maintenance and abatement services has priority over a first security interest on the unit.</p> <p>This bill provides that a unit-owners' association may record in the office of the county recorder a request for a trustee or other authorized person to provide the association with a copy of the deed after the sale of a unit upon a deed of trust for any unit within the association.</p>
<p><b><u>SB 68</u></b> – <b>Maintenance of Security Walls</b> NVAR monitored this bill.</p>	<p>Effective October 1, 2009</p>	<p>This bill revises the responsibilities of unit-owners' associations of certain common-interest communities to provide that each such association is responsible for the maintenance, repair, restoration and replacement of any security wall which is located within the common-interest community, unless the governing documents provide otherwise.</p> <p>This bill similarly revises the law with respect to such security walls located in such common-interest communities which are governed by certain limited-purpose associations.</p> <p>This bill provides that if a common-interest community was created before October 1, 2009, the requirements of the bill do not apply to the common-interest community until January 1, 2013, unless the governing documents provide that the association is responsible for the maintenance, repair, restoration and replacement of the security wall.</p>

# 09 SESSION REVIEW FOR REALTORS® COMMON-INTEREST COMMUNITIES

Bill	Effective Date	Description
<p><b>SB 182 – Common-Interest Communities</b> NVAR monitored this bill.</p>	<p>Effective October 1, 2009, except the temporary community manager certificates section, which is effective June 9 for the purpose of adopting regulations and performing any other tasks necessary, and January 1, 2010, for all other purposes.</p>	<p><b>Compensation of Community Manager or Executive Board</b> This bill provides that a community manager or member of the executive board who asks for or receives compensation to influence his vote, opinion or action upon any official matter is guilty of a category D felony. The bill provides that a person who offers or gives any gratuity, compensation or reward, or makes a promise thereof, to a community manager or member of the executive board in exchange for a vote, opinion or action on any official matter is guilty of a category D felony.</p> <p><b>Use of Eminent Domain By CICs</b> This bill clarifies that existing law does not authorize an association to exercise the power of eminent domain.</p> <p><b>NRS 116 Supersedes CIC Documents</b> This bill clarifies that any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions NRS 116 is superseded by the provisions of NRS 116, regardless of whether the provision became effective before the enactment of the statutory provision being violated.</p> <p><b>Contracts with CICs</b> This bill revises existing law to prohibit an association’s ability to grant the private entity the right of first refusal with respect to extension or renewal of the contract for the furnishing of goods or services.</p> <p><b>ElectionS, Meetings and Hearings</b> This bill provides that a person who knowingly, willfully and with the intent to fraudulently alter the outcome of the election of a member to the executive board of an association or other votes of the units’ owners engages in certain acts pertaining to the ballot or the casting of votes in such election is guilty of a category D felony.</p> <p>This bill revise provisions relating to certain elections and meetings of an association by:</p> <ul style="list-style-type: none"> <li>• requiring members of the executive board to be units’ owners;</li> <li>• providing that officers of an association are not required to be units’ owners, unless the governing documents provide otherwise;</li> <li>• providing certain rights for candidates for election to an executive board;</li> <li>• reducing the votes necessary for removal of a member of an executive board from 35% of total number of voting members that vote in favor of removal to a majority of votes in a vote where the number of votes cast is at least 35% of total number of voting members;</li> </ul> <p><i>(continued on next page)</i></p>

# 09 SESSION REVIEW FOR REALTORS® COMMON-INTEREST COMMUNITIES

Bill	Effective Date	Description
<p><b>SB 182</b> (continued)</p>		<ul style="list-style-type: none"> <li>prohibiting an association from interfering with the collection of signatures for a special meeting or removal election; and,</li> <li>providing immunity from criminal or civil liability for an association, its officers, employees and agents for the disclosure or publication of certain information pursuant to certain duties required of the association or its officers, employees and agents.</li> </ul> <p>This bill revise provisions relating to board meetings and hearings by:</p> <ul style="list-style-type: none"> <li>requiring that meetings of the executive board be audio recorded and available in a certain manner;</li> <li>requiring that certain written complaints be placed on the agenda; and,</li> <li>providing due process protections to units' owners at certain hearings.</li> </ul> <p>This bill also revises existing law to allow public comments to be made at both the beginning and the end of a meeting.</p> <p><b>Entrance Fee</b> This bill provides that an association may not charge a fee for entry into the common-interest community against a person providing services to a unit, a unit's owner or a tenant of a unit's owner or against a visitor, guest or invitee of a unit's owner or a tenant of a unit's owner.</p> <p><b>Fines Imposed on Owner for Violation by Tenant or Invitee</b> This bill limits the imposition of fines against a unit's owner for violations of the governing documents by a tenant or an invitee of the unit's owner or the tenant, unless the owner:</p> <ul style="list-style-type: none"> <li>participated in or authorized the violation;</li> <li>had prior notice of the violation; or,</li> <li>had an opportunity to stop the violation and failed to do so.</li> </ul> <p><b>Acts of Omissions of Members and Officers</b> This provides that punitive damages may not be recovered against the members of the executive board or the officers of an association for acts or omissions that occur in their capacity as members or officers.</p> <p><b>Maintenance, Repair and Replacement of Common Elements and Units</b> This bill clarifies existing law concerning the respective duties of an association and the units' owners regarding the maintenance, repair and replacement of the common elements and the units.</p> <p><i>(continued on next page)</i></p>

# 09 SESSION REVIEW FOR REALTORS® COMMON-INTEREST COMMUNITIES

Bill

Effective Date

Description

**SB 182** (continued)

## **Reserves and Assessments**

This bill clarifies existing law by explicitly stating that notwithstanding any provision of the governing documents to the contrary, the executive board may, without seeking or obtaining the approval of units' owners, impose any necessary and reasonable assessments to establish adequate reserves. This bill also provides that any such assessments imposed must be based on the study of the reserves of the association conducted.

## **Erroneous Fees and Penalties**

This bill authorizes the filing of a civil action to recover certain fees, administrative penalties and interest that were imposed erroneously.

## **Access to CIC Documents**

This bill removes from the exemptions for the production of records those records which pertain to a contract between the association and an attorney.

## **Additional Rights for Owners**

This bill provide certain additional rights to units' owners by:

- increasing the scope and definition of prohibited retaliatory action;
- authorizing the exhibition of certain political signs in certain areas; and,
- mandating notice before interruption of utility service to a unit's owner.

## **Prohibition on Contracts with Executive Board or Officer**

This bill expands the prohibition against certain contracts between an association and a member of the executive board or officer to include contracts involving financing.

## **Drought Tolerant Landscaping**

This bill:

- provides that existing law concerning drought tolerant landscaping must be construed broadly; and,
- clarifies the definition of "drought tolerant landscaping" to include the use of mulches such as decorative rock and artificial turf.

## **Compliance with Governing Documents**

This bill provides that if a community manager fails or refuses to comply with the governing documents of the association or the provisions of NRS 116, any person or class of persons may bring a civil action for damages or other relief.

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# 09 SESSION REVIEW FOR REALTORS® COMMON-INTEREST COMMUNITIES

Bill	Effective Date	Description
<p><b>SB 182</b> (continued)</p>		<p><b>CIC Commission</b>            This bill increases the membership of the Commission by adding two members who are units' owners but who are not required to have served as members of an executive board.            This bill revises provisions relating to the Commission's duties by providing for the use of training officers to perform certain duties.</p> <p><b>Audit of CIC</b>            This bill clarifies that if the Commission or hearing officer orders an audit of an association, the audit is conducted at the expense of the association.</p> <p><b>Alleged Violations</b>            This bill clarify existing law to provide that confidential information obtained during an investigation of an alleged violation by the Real Estate Division must not be disclosed to any person, including a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed.</p> <p><b>Bond for Community Managers</b>            This bill provides that the Commission must adopt regulations requiring an applicant for a certificate as a community manager or the applicant's employer to post a bond.</p> <p><b>Temporary Community Manager Certificates</b>            This bill provides for the issuance of temporary certificates for community managers for a period of 1 year under certain circumstances, and directs the Real Estate Division to issue regulations in this regard.</p> <p><b>Information Provided to Parties to Arbitration</b>            This bill revises existing law to provide that upon selection or appointment of an arbitrator, the arbitrator must provide certain information concerning the procedures of the arbitration and applicable law to each party to the arbitration, and each party must return to the arbitrator an acknowledgment of the information provided by the arbitrator.</p>

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Bill	Effective Date	Description
<p><b><u>SB 183</u></b> – <b>Common-Interest Communities</b> NVAR monitored this bill</p>	<p>Effective October 1, 2009, except for:</p> <ul style="list-style-type: none"> <li>• restriction on voting by delegate, effective October 1, 2011</li> <li>• creation of separate accounts for fines and assessments, effective October 1, 2011</li> <li>• purchase and reservation deposits, which is effective July 1, 2009</li> </ul>	<p><b>Disclosures in a Unit’s Sale</b> This bill authorizes the Commission for Common-Interest Communities and Condominium Hotels, or the Administrator of the Real Estate Division with the Commission’s approval, to adopt regulations to require any additional disclosures in the sale of a unit as the Commission deems necessary.</p> <p><b>Voting by Delegates</b> This bill revises existing law to prohibit the use of delegates or representatives to exercise the voting rights of units’ owners in the election or removal of a member of the executive board. This bill also provide that this form of voting may occur only during the period that the declarant is in control of the association and during the 2-year period after the declarant’s control of the association is terminated. A master association which governs a time-share plan created pursuant to NRS 119 is excluded from these new provisions and is allowed to continue using delegates or representatives to exercise the voting rights of owners of time shares. A master association which governs a planned community that is exempt from the provisions of NRS 116 is also excluded from these new provisions.</p> <p><b>Prohibited Assessments</b> This bill prohibits an association from imposing an assessment against the owner of any property in the common-interest community that is exempt from real property tax pursuant to NRS 361.125 (churches and chapels). This bill provides that this prohibition applies to such owners who are not obligated to pay assessments as of January 1, 2009.</p> <p><b>Violations and Fines</b> This bill provides that:</p> <ul style="list-style-type: none"> <li>• a unit’s owner must receive notice of a violation and possible fine;</li> <li>• an association may not impose a fine against a unit’s owner or tenant of a unit’s owner for a vehicular violation of the governing documents committed by a person delivering goods to, or performing services for, a unit’s owner or tenant of a unit’s owner;</li> <li>• a member of the executive board cannot participate in hearings on fines if he has not paid his assessments; and,</li> <li>• the association must provide written confirmation when a fine is paid.</li> </ul> <p>This bill also requires an association to establish an account for a unit owner’s payments for fines, which must be kept separate from any account established for assessments.</p> <p><i>(continued on next page)</i></p>

# 09 SESSION REVIEW FOR REALTORS® COMMON-INTEREST COMMUNITIES

## Bill

## Effective Date

## Description

### **SB 183** (continued)

#### **Executive Board**

This bill provides additional ethical requirements for members of an executive board by requiring a member who stands to gain any personal profit or compensation from a matter before the executive board to disclose the matter to the executive board and to abstain from voting on the matter.

This bill increases the maximum term of office for a member of an executive board from 2 years to 3 years. This bill also provides that an association is not obligated to distribute any disclosure made by a candidate for the executive board if the disclosure contains information that is believed to be defamatory, libelous or profane.

This bill lengthens the period between which meetings of the executive board must be held from every 90 days to every quarter, but not less than every 100 days.

#### **Ancillary Audit**

This bill requires that a declarant deliver to an association an ancillary audit of the association's money and audited financial statements from the date of the last audit until the date the declarant's control ends. It also requires the declarant to pay for the costs of the ancillary audit.

#### **Reserve Study Specialists**

This bill eliminates the issuance of permits to reserve study specialists and instead provide for their registration.

#### **Signatories on CIC Accounts**

This bill requires certain signatures before money in the operating account of an association may be withdrawn, unless the withdrawal is to transfer money to the reserve account or to make automatic payments for utilities.

#### **Access to CIC Documents**

This bill excludes the books, records and other papers of the association which are in the process of being developed and have not yet been placed on an agenda for final approval by the executive board from the material which the board must make available upon the written request of a unit's owner.

#### **Official Publication of CIC**

This bill provides that if an official publication contains any mention of a candidate or ballot question or contains the views or opinions of the association concerning an issue of official interest, the official publication must, upon request, provide equal space and equivalent exposure to opposing views and opinions. In addition, the bill provides immunity from criminal or civil liability for an association and its officers, employees and agents who publish or disclose information pursuant to the duties imposed by this section.

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# 09 SESSION REVIEW FOR REALTORS® COMMON-INTEREST COMMUNITIES

Bill	Effective Date	Description
<p><b><a href="#">SB 183</a></b> (continued)</p>		<p><b>Prohibition on Contracts with Executive Board or Officer</b> This bill expands the prohibition against certain contracts between an association and a member of the executive board or officer to include contracts involving financing.</p> <p><b>Purchase and Reservation Deposits</b> This bill deems deposits made in connection with the purchase or reservation of units from a person required to deliver a public offering statement placed in out-of-state escrow companies as being deposited in this State if the escrow holder has a legal right to conduct business in the State, has a registered agent in this State and has consented to the jurisdiction of the courts of this State.</p> <p><b>Notice to Owner for Utility Interruption</b> This bill provides additional rights to units' owners by mandating notice before an association may interrupt utility service to a unit's owner.</p>
<p><b><a href="#">SB 216</a></b> – Shutters NVAR monitored this bill</p>	<p>Effective July 1, 2009</p>	<p>This bill provides that an association may not unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit shutters to improve the security of the unit or to reduce the costs of energy for the unit.</p> <p>This bill provides that an association may not unreasonably restrict, prohibit or withhold approval for a unit's owner to add shutters that are attached to certain common elements or limited common elements under certain circumstances.</p>
<p><b><a href="#">SB 351</a></b> – <b>Common-Interest Communities</b> NVAR monitored this bill</p>	<p>Effective October 1, 2009</p>	<p><b>Accounts and Investments</b> This bill provides that a unit-owners' association must deposit all funds of the association into certain financial institution and invest all funds of the association in certain investments.</p> <p><b>Change of Use</b> This bill clarifies existing law to provide that a change in the use of a unit which requires unanimous approval of the units' owners includes only changes to the boundary of a unit or the allocated interests of a unit.</p> <p><b>Vacancy on Board</b> This bill provides that the executive board of an association may not fill a vacancy on the board without a vote of the units' owners if the governing documents provide that the vacancy must be filled by a vote of the membership of the association.</p> <p><b>Reserves for Repair, Replacement and Restoration</b> This bill expands the requirements for reserves from the major components of the common elements to any other portion of the common-interest community which the association has a duty to maintain, repair, replace or restore in addition to the major components of the common elements.</p> <p>(continued on next page)</p>

# 09 SESSION REVIEW FOR REALTORS® COMMON-INTEREST COMMUNITIES

**Bill**

**Effective Date**

**Description**

**SB 351** *(continued)*

**Access to Documents**

This bill amends existing law to exempt architectural records submitted by a unit's owner from the records which must be made available by an association.

**Information Statement**

This bill amends existing law to add to the information statement provided as part of a purchase of a unit in a common-interest community a statement that the provisions of the Declaration of Covenants, Conditions and Restrictions or other governing documents may be superseded by provisions of NRS 116.

