



1 **MRCN**  
MICHAEL M. EDWARDS, ESQ.  
2 Nevada Bar No. 6281  
DEREK R. NOACK, ESQ.  
3 Nevada Bar No. 15074  
**FREEMAN MATHIS & GARY, LLP**  
4 770 East Warm Springs Road, Suite 360  
Las Vegas, Nevada 89119  
5 Tel.: 725.258.7360  
Fax: 833.336.2131  
6 Michael.Edwards@fmglaw.com  
Derek.Noack@fmglaw.com  
7 *Attorneys for Defendant*  
*Pennie Mossett-Puhek*  
8

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 ANDREA COLLIER, as trustee of the JACT  
TRUST,

12 Plaintiff,

13 vs.

14 PENNIE MOSSETT-PUHEK, individually;  
15 ANTHEM HIGHLANDS COMMUNITY  
ASSOCIATION, a Nevada Non-Profit  
16 Corporation; CARMEN EAASA, an individual;  
K.G.D.O. HOLDING COMPANY, LLC d/b/a  
17 TERRA WEST MANAGEMENT SERVICES,  
18 a Nevada limited liability company; DOES I  
through X and ROE BUSINESS ENTITIES I  
19 through X, inclusive,

20 Defendants.

Case No.: A-22-852032-C

Dept. No.: 8

**DEFENDANT PENNIE MOSSETT-  
PUHEK’S MOTION FOR  
RECONSIDERATION REGARDING HER  
COUNTERMOTION TO DETERMINE  
HER SCOPE AS THAT OF  
ASSOCIATION BOARDMEMBER AND  
TO DISMISS/MOTION TO STRIKE  
CLAIMS FOR PUNITIVE DAMAGES OR,  
ALTERNATIVELY, MOTION FOR  
SUMMARY JUDGMENT ON PUNITIVE  
DAMAGES**

HEARING REQUESTED

21  
22 Defendant, PENNIE MOSSETT-PUHEK (hereafter “Ms. Mossett-Puhek”), by and through her  
23 counsel of record, the law firm FREEMAN MATHIS & GARY, LLC, hereby requests pursuant to  
24 EDCR 2.24 for this Court to reconsider its prior decision to deny Ms. Mossett-Puhek’s countermotion  
25 to determine her scope as that of association board member and to dismiss/motion to strike claims for  
26 punitive damages or alternatively, motion for partial summary judgment of plaintiff ANDREA  
27 COLLIER, as trustee of JACT TRUST’s (hereafter “Plaintiff”) claims for punitive damages.

1 Ms. Mossett-Puhek had also moved for partial summary judgment pursuant to NRCP 56 to find  
2 Ms. Mossett-Puhek’s alleged scope of conduct as that of a homeowner’s association board member.  
3 Ms. Mossett-Puhek also requests this Court reconsider its prior denial of Ms. Mossett-Puhek’s motion  
4 to accept Plaintiff’s judicially admitted fact that Ms. Mossett-Puhek’s scope of conduct was in her role  
5 as an association board member.

6 For the reasons set forth herein, The Court is duty-bound to render a definitive legal ruling on  
7 the scope of the authority in question, for this adjudication is indispensable to safeguarding the integrity  
8 of the judicial process—ensuring that solely the proper parties and causes of action proceed to trial,  
9 thereby preventing the squandering of resources and the perversion of justice. To abstain from such a  
10 ruling, particularly by rejecting Plaintiff’s own judicial admissions, would represent a profound judicial  
11 abdication, erroneously delegating to the jury the interpretation of this pivotal authority. Such an error  
12 would impose irreparable harm upon Ms. Mossett-Puhek, forcing her to expend extraordinary effort  
13 and expense in defending against Plaintiff’s inconsistent and multifaceted theories of scope—a burden  
14 that constitutes nothing short of a grievous manifest injustice, undermining the foundational principles  
15 of fairness and due process. Ms. Mossett-Puhek must not be compelled to navigate and rebut these two  
16 irreconcilable theories propounded by Plaintiff, as doing so would erode the very essence of equitable  
17 adjudication.

18 The Court recently ruled at the February 12, 2026 hearing on Ms. Mossett-Puhek’s joinder to  
19 the motion that the statutory combination of NRS 116.31183 and NRS 116.4117 precluded any suit  
20 against her as a mere “unit owner” and thus also precluded any of application of punitive damages  
21 against her pursuant to NRS 116.4117 since she was acting in the capacity of her role as association  
22 board. Given this legal ruling, which is now the operative law in this case, Ms. Mossett-Puhek requests  
23 the Court reconsider its prior decision in finding of a factual question as to Ms. Mossett-Puhek’s  
24 admitted scope as association board member and subsequent denial of her motion to strike punitive  
25 damages against her.

26 ///

27 ///

1 This Motion for Reconsideration is based on the pleadings and papers on file in this action, the  
2 following memorandum of points and authorities, the affidavit and declaration set forth herein, all the  
3 exhibits, and any oral argument that may be permitted at the time of hearing.

4 DATED this 20th day of February, 2026.

5  
6 **FREEMAN MATHIS & GARY, LLP**

7 */s/ Derek R. Noack*

8 MICHAEL M. EDWARDS, ESQ.

9 Nevada Bar No. 6281

10 DEREK R. NOACK, ESQ.

11 Nevada Bar No. 15074

12 770 East Warm Springs Road, Suite 360

13 Las Vegas, Nevada 89119

14 *Attorneys for Defendant Pennie Mossett-Puhek*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 Due to the Court’s prior denial of Ms. Mossett-Puhek’s motion to dismiss the individual  
18 punitive damages against her and a ruling finding a question of fact as to the judicial admission that  
19 she was in the scope as an association board member as alleged in Plaintiff’s Amended Complaint, Ms.  
20 Mossett-Puhek is required to move this Court to reconsider its prior decision, based upon a claimed  
21 erroneous application of the relevant analyses, its new rulings in this case, binding case law and statutes.

22 At the February 12, 2026 hearing, the Court ruled that the statutory scheme of NRS 116.31183  
23 and NRS 116.4117 precluded any suit against her as a mere “unit owner” and thus also precluded any  
24 of application of punitive damages against her pursuant to NRS 116.4117 since she was acting in the  
25 capacity as association board member. Given this legal ruling, which is now operative as ruling under  
26 the law in this case, Ms. Mossett-Puhek requests the Court now reconsider its prior decision in finding  
27 of a factual question as to Ms. Mossett-Puhek’s admitted scope as association board member and denial  
of her motion to strike punitive damages against her.

Per the operative ruling and applicable case law, **Plaintiff cannot take a legal position  
alternative to her pleadings and the rule of law in this case**, which establish that Ms. Mossett

1 Puhek’s actions were only taken in her board member capacity. The Court ruled that Ms. Mossett-  
2 Puhek, as an individual unit owner, cannot legally issue or take any HOA enforcement action against  
3 Plaintiff. She can only do so in her role as **board member**. Further, this Court has now ruled that Ms.  
4 Mossett-Puhek is not subject to punitive damages under the NRS 116.4117 as a board member.

5 **Plaintiff also expressly alleges in her Amended Complaint that Mossett-Puhek acted at all**  
6 **times in her role as a board member**. This judicially admitted fact is dispositive of Ms. Mossett-  
7 Puhek’s scope being determined as a board member in this case.

8 However, Plaintiff’s Amended Complaint still presently maintains claims for punitive damages,  
9 as well as other causes of action, as against Ms. Mossett-Puhek **individually**, which are no longer  
10 appropriate given Ms. Mossett-Puhek’s capacity as being that of a board member.

11 The allegations against Ms. Mossett-Puhek underpinning Plaintiff’s First Cause of Action for  
12 the statutory claims are identical to the additionally pled common law claims. As punitive damages  
13 are expressly not available against Ms. Mossett-Puhek under Nevada law for a HOA board member’s  
14 duties, Plaintiff cannot be legally allowed to do an improper “end-around” the statutory scheme by  
15 simply alleging other causes of action against Ms. Mossett-Puhek. Allowing this strategic attempt  
16 would undue the statutory scheme of NRS 116 completely and render the protections for HOA  
17 volunteers as useless. A determination on Ms. Mossett-Puhek’s scope is thus a matter of law for the  
18 court to decide before trial. The claims in this case can only be maintained as against Anthem Highlands  
19 Community Association, not individually against Ms. Mossett-Puhek. The statutory scheme protects  
20 her and all other volunteer HOA board members from being sued individually. Otherwise, no unit  
21 owner would serve on an association board.

22 **As emphasized, Plaintiff alleges Ms. Mossett-Puhek “served as an officer and/or director**  
23 **of Defendant ANTHEM HIGHLANDS COMMUNITY ASSOCIATION at all times relevant to**  
24 **this action.**” See *Amended Complaint* (hereafter “FAC”), filed October 12, 2023, at ¶2.<sup>1</sup> In her specific  
25 cause of action for the NRS 116 violations, Plaintiff alleges “Mossett-Puhek (as well as any unnamed  
26

---

27 <sup>1</sup> Defendant notes that this is one of **many** allegations that allege the same thing – official action that can only be taken by a board member.

1 Defendants) acted within the course and scope of their role within the executive board of Anthem when  
2 Defendants engaged in this conduct toward Collier.” *See id.* at ¶104. Each of the alleged actions made  
3 towards Ms. Mossett-Puhek thus must fall within her role as a board member.

4 Pursuant to NRS 116, Plaintiff’s pursuit of punitive damages against Ms. Mossett-Puhek, an  
5 association board member, is legally futile. Under NRS 116.1114 and NRS 116.4117(5), punitive  
6 damages against an association board member for taking part in board related actions are barred. The  
7 February 12, 2026 ruling by the Court has already reflected this. Furthermore, the issuance of a notice  
8 of violation, which is a non-discretionary, mandatory board function under the Association’s Fire and  
9 Enforcement Policy to avoid allegations of unequal enforcement, does not rise to the level of  
10 oppression, fraud, or malice that is required for punitive damages.<sup>2</sup>

11 As such, Plaintiff cannot dispute **her own allegations** and the law of the case that Ms. Mossett-  
12 Puhek acted at all times in this case in the role of an Anthem HOA board member. Thus, Plaintiff’s  
13 claims for punitive damages must be summarily dismissed/stricken as to Ms. Mossett-Puhek.

14 Alternatively, partial summary judgment should be granted in favor of Ms. Mossett-Puhek on  
15 the issue of punitive damages, since she was acting at all relevant times in her capacity as an association  
16 board member.

17 Pursuant to NRS 116.1114 and NRS 116.4117(5), punitive damages against an association  
18 board member or officer for actions undertaken within the bounds of their association duties are barred.

19 Plaintiff’s additionally pled common law causes of action for Breach of Covenant of Good Faith  
20 and Fair Dealing; Breach of Fiduciary Duty; Conspiracy; and Slander of Title all plead and all similarly  
21 require that Ms. Mossett-Puhek’s actions were taken in her role as an Anthem HOA board member.  
22 Indeed, the intracorporate conspiracy doctrine categorically bars any claim that Ms. Mossett-Puhek,  
23 acting solely in her capacity as a volunteer HOA board member, could have "conspired" with the  
24 Community Manager, as both were agents of the homeowner’s association, the Anthem HOA. Issuing  
25 violations or carrying out other routine board functions are quintessential official acts performed on  
26

---

27 <sup>2</sup> Defendant notes that the issuance was non-discretionary and mandatory under the applicable governing documents, and that a unanimous determination by the full board found that a violation did, in fact, exist.

1 behalf of the homeowners association, not the independent, separate conduct of distinct persons  
2 necessary to establish a conspiracy. Plaintiff's calculated pleading strategy, recasting these protected  
3 official board actions as independent common-law claims, directly undermines the vital protections  
4 NRS Chapter 116 affords volunteer HOA board members. These statutory safeguards, rooted in  
5 Nevada's policy of citizen volunteerism, exist to protect and shield volunteers from burdensome  
6 litigation over their performance of official duties. Allowing such artful repackaging would erode  
7 legislative intent, deter qualified volunteers from serving, and expose board members to unwarranted  
8 personal exposure for routine association governance. As the district court rightly concluded at the  
9 February 12, 2026 hearing, these reframed claims cannot proceed without subverting the clear statutory  
10 framework designed to protect volunteer service in Nevada's common-interest communities. This  
11 Court should intervene to prevent the manifest injustice of forcing Ms. Mossett-Puhek through trial on  
12 claims that Nevada law deems legally untenable at the threshold.

13 Motivations or alleged personal animus of a HOA board member does not serve to take Ms.  
14 Mossett-Puhek outside her board member role, because the actions allegedly taken can **only be**  
15 **performed by a board member**, regardless of motive.

16 As there is no factual question that Ms. Mossett-Puhek was acting within her scope as a board  
17 member, no punitive damages claim may be maintained against Ms. Mossett-Puhek since it is  
18 undisputed she was an Anthem HOA board member exercising the business judgment rule during all  
19 of the relevant times of this legal dispute. Further, any argument that Plaintiff may raise regarding a  
20 factual distinction is moot as (1) Ms. Mossett-Puhek could **only exercise board member powers as a**  
21 **board member**; and (2) Plaintiff is bound by her own pleadings, which allege Ms. Mossett-Puhek to  
22 be acting as a board member at all times.

23 Given the recent February 12, 2026 ruling and its implications on the law of the case, this motion  
24 for reconsideration requests this Court now follow and issue a ruling as to whether Ms. Mossett-Puhek  
25 was, or was not, within the scope of her role as association board member so the parties may predictably  
26 move forward at the time of trial. This requires the Court's interpretation of the governing documents  
27 and related statutes, which is a task that **cannot** be deferred to a jury.

1       **II. Plaintiff is bound to her allegations that Defendant Mossett-Puhek was acting in her**  
2       **capacity as a board member at all times.**

3       It is well established law that a plaintiff is bound by the factual allegations made in a complaint.  
4       *S. Nevada Adult Mental Health Servs. v. Brown*, No. 78770, 2021 WL 5370820 at \*3 (Order of  
5       Reversal, Nov. 17, 2021) (citing *Kingsbury v. Copren*, 43 Nev. 448, 455, 187 P. 728, 728 (1920), reh'g  
6       denied, 189 P. 676 (stating that “it appeared from the complaint itself, as a matter of law, that there  
7       was no uncertainty as to the capacity in which plaintiff s[ought] to hold the defendant responsible”  
8       and that the plaintiff was “bound by the material allegations of her complaint”)). Plaintiff is not free  
9       to abandon her allegations where convenient for her and to resume them where she wished.  
10      Ultimately, she was the master of her pleadings at the outset of this litigation, and she was able to  
11      modify or amend her pleadings in accordance with the operative scheduling order. She did not do this,  
12      and so she is bound by the material allegations in her complaint. *Id.*

13      Here, there is no uncertainty about Defendant Mossett-Puhek’s alleged role in this case.  
14      Plaintiff has been **unequivocally clear** that Ms. Mossett-Puhek only served as a board member for  
15      purposes of this action and that she was at all times in the scope and authority of her duties. The  
16      February 12, 2026 ruling has confirmed this.

17      There are **no** allegations pled regarding any conduct that Defendant Mossett-Puhek took that  
18      were not the sole province of one wielding the powers of a homeowners association board member.  
19      Plaintiff explicitly pled, multiple times, that Defendant Mossett-Puhek acted solely within her role as  
20      a board member, utilizing the powers of a board member. As explained above, Plaintiff is bound by  
21      the allegations in her complaint, and she cannot abandon those allegations when it suits her when  
22      inconvenient for her. It is **inarguable** that Plaintiff’s allegations list conduct by Defendant Mossett-  
23      Puhek as that could only be undertaken by a board member. Accordingly, Plaintiff is bound by these  
24      allegations and this Court must apply the law that Defendant Mossett-Puhek’s scope is that only **as a**  
25      **board member of the homeowners association.**

26      ///

27      ///

1           **III. The Court Must Decide Scope as a Threshold Legal Issue Because Scope Determines**  
2           **the Proper Defendants and Viable Causes of Action—Motive and Alleged Self-**  
3           **Interest Do Not Create a Jury Question**

4           The Court’s prior ruling leaves unresolved a dispositive legal issue that must be decided as a  
5 matter of law before this case may proceed further: whether Defendant Pennie Mossett-Puhek’s  
6 alleged conduct occurred within the scope as a board member acting on behalf of the homeowners’  
7 association, and therefore whether punitive damages may be sought against her. Scope of authority is  
8 not a collateral factual issue, it is the legal fulcrum upon which the identity of the proper defendants  
9 and the viability of every cause of action turn. Without a threshold scope determination, the case risks  
10 proceeding on claims that are legally barred regardless of any factual findings a jury could make.

11           Nevada law makes clear that where the material facts concerning the nature of the challenged  
12 conduct are not genuinely disputed, scope and statutory immunity are questions of law for the Court.  
13 The allegations in the complaint uniformly concern HOA enforcement activity: violation notices,  
14 hearings, fines, architectural review decisions, and communications with management and  
15 governmental entities. These are not personal acts divorced from association governance; they are the  
16 very functions assigned to an HOA board under Chapter 116. Even more telling – **none of these**  
17 **actions is within the capability of an individual unit owner, only a board member.** The plaintiff  
18 has repeatedly alleged, indeed judicially admitted, that Ms. Mossett-Puhek acted in her capacity as an  
19 officer or board member and that the association is liable for her conduct under respondeat superior.  
20 Those admissions require the Court to decide scope and the resulting legal consequences, not defer  
21 that determination to a jury.

22           The Court has expressed concern that a jury must decide whether Ms. Mossett-Puhek’s actions  
23 were motivated by self-interest rather than the interests of the association. Respectfully, that concern  
24 does not create a factual issue that precludes this Court from adjudicating the matter, as recognized by  
25 this Court in its February 12, 2026 ruling. As a matter of law, enforcement actions taken pursuant to  
26 Chapter 116 are, by definition, undertaken in the interest of the association. Enforcement exists to  
27 preserve common-interest standards, protect common elements, and maintain uniform compliance

1 with the governing documents. There is no separate category of “personal” enforcement under Chapter  
2 116. Critically, the plaintiff has not pled, nor produced any evidence of, personal financial gain,  
3 improper pecuniary benefit, or any concrete self-dealing by Ms. Mossett-Puhek. Allegations of  
4 hostility, animus, or disagreement with enforcement decisions do not constitute self-interest and do  
5 not transform authorized enforcement into ultra vires conduct, and more importantly, **do not make**  
6 **the function less of a board member function**. Absent evidence of personal benefit, enforcement  
7 actions remain association actions as a matter of law.

8         Moreover, alleged motive does not create a jury question as to scope or authorization. Nevada  
9 law draws a clear distinction between the nature of the act and the alleged motive behind it. The scope  
10 inquiry asks whether the conduct was of the type the board member was empowered to perform, not  
11 why the plaintiff believes it was performed. Motive does not convert authorized conduct into  
12 unauthorized conduct, and it does not defeat the Business Judgment Rule or statutory immunity. Once  
13 the Court determines that the challenged actions fall within the enforcement authority granted by  
14 Chapter 116 and the governing documents, good faith is presumed as a matter of law, and the analysis  
15 ends. Allowing motive to redefine scope would collapse statutory immunity entirely, because any  
16 enforcement action could be recharacterized as “personal” based solely on a plaintiff’s subjective  
17 belief.

18         If the Court determines that Ms. Mossett-Puhek acted within the scope of her authority,  
19 Nevada’s statutory and common-law protections apply immediately and decisively. The Business  
20 Judgment Rule supplies a presumption of good faith for discretionary governance decisions, and that  
21 presumption is codified for HOA board members under NRS 116.31034(10). Chapter 116 does not  
22 authorize individual-capacity liability for enforcement decisions; any statutory remedy runs, if at all,  
23 against the association. Relatedly, NRS 116.4117 does not permit a unit owner to sue a board member  
24 individually for acts taken on behalf of the association, and NRS 116.31185 forecloses punitive  
25 damages arising from good-faith enforcement actions. Once scope is established, all individual claims  
26 against Ms. Mossett-Puhek must be dismissed as a matter of law without reaching motive, intent, or  
27 credibility.

1           Conversely, if the Court were to conclude that Ms. Mossett-Puhek acted outside the scope of  
2 her authority, the plaintiff’s claims still cannot proceed. Chapter 116, including NRS 116.31183, does  
3 not create individual-capacity causes of action against board members at all, and therefore cannot  
4 support liability for conduct deemed ultra vires. Without a viable statutory claim, there is no  
5 underlying tort to sustain derivative claims such as conspiracy or punitive damages. An outside-the-  
6 scope finding would also defeat respondeat superior as to the association, leaving no proper defendant  
7 for the enforcement-based claims pled in this case.

8           This is precisely why scope must be decided by the Court now. Leaving scope unresolved and  
9 submitting questions of motive or alleged self-interest to a jury risks an advisory verdict on claims that  
10 may not legally exist depending on the scope determination the Court is required to make. As the  
11 accompanying exhibit demonstrates, no jury finding on motive can alter the legal consequences that  
12 flow from scope. Reconsideration is therefore warranted so the Court can resolve this controlling legal  
13 issue, identify the proper defendants and viable causes of action, and ensure the case proceeds, if at  
14 all, within the framework mandated by Nevada law.

15           **IV.     LEGAL STANDARDS AND ARGUMENT**

16           **A.     Motion For Reconsideration Standard**

17           Pursuant to EDCR 2.24 and Nevada case law, a court may reconsider a previously decided  
18 issue if the law or fact were overlooked or misapprehended in the prior Court’s decision, or in  
19 circumstances where reconsideration would have promoted substantial justice. *Nevius v. Warden*, 114  
20 Nev. 664, 667, 960 P.2d 805, 806 (1998). In the present case, it is clear that the Court overlooked the  
21 facts of this case or misapprehended the facts. Further, new legal rulings in the case mandate  
22 revisitation of the previous decision. Based on the below arguments that set forth the clear issues  
23 listed above, this Court should grant reconsideration because no material facts exist that would allow  
24 a reasonable jury to find in favor of Plaintiff.

25           As set forth herein, Defendant Ms. Mossett-Puhek has met her burden of proof regarding the  
26 absence of a genuine issue of material fact that would preclude summary judgment in her favor. Ms.  
27 Mossett-Puhek is alleged to have acted at all times in the scope as an Anthem HOA board member

1 and has established that her actions taken in relation to the three issued Anthem HOA violations against  
2 Plaintiff were in her official capacity as an Anthem HOA board member. As a result, the burden shifts  
3 to Plaintiff. Plaintiff has not raised any genuine issue of material fact that would preclude this Court  
4 from entering summary judgment in favor of Ms. Mossett-Puhek. Plaintiff failed in her FAC to include  
5 allegations of legally sufficient individual actions by Ms. Mossett-Puhek in relation to the issued  
6 violations in this case. Accordingly, summary judgment should be entered in Defendant Ms. Mossett-  
7 Puhek’s favor, with punitive damages claims also being stricken as against her.

8 **B. Punitive Damages are Unavailable as to Ms. Mossett-Puhek Under Nevada Law**

9 NRS 116.1114 reads in pertinent part as follows:

10 The remedies provided by this chapter must be liberally  
11 administered to the end that the aggrieved party is put in as good a  
12 position as if the other party had fully performed. Consequential,  
13 special or punitive damages may not be awarded except as  
specifically provided in this chapter or by other rule of law.

14 Pursuant to NRS 116.4117 (4), the statute sets forth that “Except as otherwise provided in subsection  
15 5, punitive damages may be awarded for a willful and material failure to comply with any provision  
16 of this chapter if the failure is established by clear and convincing evidence”.

17 Pursuant to NRS 116.4117(5), punitive damages may not be awarded against:

- 18 (a) The association;  
19 (b) The members of the executive board for acts that occur in their  
20 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.

21 Additionally, the State of Nevada codified the business judgment rule in NRS 78.138, which presumes  
22 a corporate member acted in good faith and provides the sole method of holding individual directors  
23 liable for corporate decisions. NRS 78.138(3) sets forth that directors and officers, in deciding upon  
24 matters of business, are presumed to act in good faith, on an informed basis and with a view to the  
25 interests of the corporation. *See* NRS 78.138(3). “That statute, enacted in 1991, requires the claimant  
26 to (1) rebut the business judgment rule and (2) demonstrate a breach of fiduciary duty involving  
27 intentional misconduct, fraud, or another known violation the law. NRS 78.138(7).” *Guzman v.*

1 *Johnson*, 137 Nev. 126, 130; 483 P.3d 531, 536 (2021). Under current Nevada law, a Plaintiff thus  
2 must allege “particularized facts demonstrating the requisite breach of duty” to rebut the business  
3 judgment rule. *See id.*, 137 Nev. at 127; 483 P.3d at 534.

4 Here, Plaintiff’s Amended Complaint alleges Ms. Mossett Puhek “served as an officer and/or  
5 director of Defendant ANTHEM HIGHLANDS COMMUNITY ASSOCIATION (“Anthem”) at all  
6 times relevant to this action. *See* FAC, ¶2. The second paragraph of Plaintiff’s Amended Complaint  
7 also sets forth that “Mossett-Puhek conducted business and otherwise engaged in the activity at all  
8 times material to this Complaint and as further described herein in Clark County, Nevada.” *See id.*  
9 Paragraph 104 of Plaintiff’s Amended Complaint alleges “Mossett-Puhek (as well as any unnamed  
10 Defendants) acted within the course and scope of their role within the executive board of Anthem when  
11 Defendants engaged in this conduct toward Collier. *See id.* ¶104. Plaintiff’s allegations then fail to set  
12 forth any individual actions that Mossett-Puhek allegedly undertook outside the course and scope of  
13 her position as an Anthem HOA board member during the relevant times of this lawsuit. Plaintiff is  
14 bound by her allegations, and cannot stray from them when convenient. Critically, the Court ruled  
15 during the February 12, 2026 hearing that Ms. Mossett-Puhek was acting at all times in her capacity as  
16 association board member.

17 Plaintiff’s only allegations of the circumstances involving the underpinning violations issued  
18 against her relate to Ms. Mossett-Puhek’s role as a member of the Anthem HOA board. FAC at ¶¶ 2,  
19 104.

20 NRS 116.4117(5) protects volunteer association board members, such as Ms. Mossett-Puhek  
21 here, from claims for punitive damages for acts that occur under their duties for the association. As  
22 Ms. Mossett-Puhek’s alleged acts with respect to each of the three issued HOA violations to Plaintiff  
23 all were within the scope of her duties as an association board member, punitive damages cannot be  
24 maintained against Ms. Mossett-Puhek.

25 Simply put, there is nothing here to show that Ms. Mossett-Puhek was acting outside her duties  
26 as an HOA board member (and Plaintiff alleged that Ms. Mossett-Puhek was acting solely as board  
27 member), and so punitive damages against her are disallowed by NRS 116.4117(5).

1           Therefore, no punitive damages claim may be maintained against Ms. Mossett-Puhek in her  
2 individual capacity since she was an Anthem HOA board member acting in the scope of her role on  
3 the board and exercising the business judgment rule during all of the relevant times of this legal  
4 dispute.

5           **C. *Chur* is also applicable to this case.**

6           During the hearing on Ms. Mossett-Puhek’s prior motion, the Court made a determination that  
7 *Chur* is not applicable, as it only applied to liability to a director from the corporation itself. This is an  
8 incorrect reading of *Chur* and an incorrect holding regarding the applicability of NRS 78.138.

9           *Chur* is abundantly clear that “NRS 78.138(7) provides the **sole avenue** to hold directors and  
10 officers individually liable for damages arising from official conduct.” *Chur v. Eighth Judicial Dist.*  
11 *Court in & for Cnty. of Clark*, 136 Nev. 68, 72–73, 458 P.3d 336, 340 (2020). There is no carve out or  
12 limitation for homeowners association or other specialized corporations. There is nothing indicating  
13 that there are other limitations that would apply to this case. Simply put, if the actions arise from  
14 official conduct – **which all the alleged actions in this case do**, than NRS 78.138(7) is the sole avenue  
15 to hold Ms. Mossett-Puhek liable, precluding punitive damages.

16           In fact, a federal court in the District of Nevada recently analyzed the exact issue in this case –  
17 whether NRS 78.138 applied to the directors and officers of a homeowners association when sued by  
18 a homeowner. *See Seelig v. Old Vegas Manor & Estates Homeowners Ass’n*, 22-CV-1976-APGEJY,  
19 2021 WL 5771121 (D. Nev. Dec. 6, 2021). The *Seelig* court commented on the situation, noting that  
20 NRS 78.138 applied to the directors of the homeowners association, as it was still a corporation. *See*  
21 *id.* at \*8<sup>3</sup>. Similarly, other Nevada courts have held that NRS 78.138(7) applies in cases of a third-  
22 party suing for liability. *See Califano v. Valley Health System, LLC*, 2021 WL 11732544, at \*5  
23 (Nev. Dist. Ct.) (applying NRS 78.138 in an action brought about against directors in a tortious discharge

---

24 <sup>3</sup> “NRS § 82.221 outlines the duties of officers and directors of nonprofit corporations. **NRS § 78.138** is its companion  
25 statute applicable to officers and directors of private corporations. Both statutes provide that officers and directors should  
26 exercise their “powers in good faith and with a view to the interests of the corporation.” NRS §§ 82.221(1); 78.138(1). Both  
27 likewise explain the circumstances in which officers and directors may be personally liable for  
wrongdoing. *See* NRS §§ 78.138(7); 82.221(4). I have no reason to believe that Nevada would treat nonprofit corporate  
officers differently than private corporate officers in the context of individual liability. The two statutes also provide similar  
approaches to individual director and officer liability. So I predict the state's general treatment of the two statutes would be  
the same.”

1 case). Ultimately, this Court must find that NRS 78.138(7) applies and the statute, through *Chur*,  
2 precludes the impossibility of punitive damages against Ms. Mossett-Puhek.

3 Nevertheless, the Court has also now ruled on February 12, 2026 that Ms. Mossett-Puhek was  
4 acting the capacity of her role as association board member, which precludes punitive damages against  
5 her under the provisions of NRS 116.4117.

6 **D. The Court’s consideration of motive was improper.**

7 In making its decision, the Court previously considered the alleged motivations of Ms. Mossett-  
8 Puhek in instituting HOA violations against Plaintiff. This was wholly improper and not in line with  
9 the applicable statute.

10 NRS 78.138(7) can be circumvented only if (among other factors) the breach involves  
11 intentional misconduct, fraud, or a knowing violation of law. This was also discussed in *Chur*, where  
12 the Nevada Supreme Court discussed what a “knowing violation of law” constituted. The *Chur* court  
13 adopted the definitions of “intentional” and “knowing” as utilized by the Tenth Circuit, and held that  
14 “the claimant must establish that the director or officer had knowledge that the alleged conduct was  
15 wrongful in order to show a “knowing violation of law” or “intentional misconduct” pursuant to NRS  
16 78.138(7)(b).” *Chur*, 136 Nev. at 75, 458 P.3d at 342 (2020). In the same paragraph, the *Chur* court  
17 also held that this definition necessarily denoted a higher standard than gross negligence. *Id.* Most  
18 importantly, it was **knowledge**, not **motive**, that controlled whether the statute would apply or not.  
19 Accordingly, the Court’s focus on the motive behind Ms. Mossett-Puhek’s alleged actions was  
20 improper and not in line with the proper analysis of the issue.

21 NAC 116.405 enumerates separate factors for evaluating board members' fiduciary  
22 performance: (1) actions "outside the scope of the authority granted in the governing documents" and  
23 (2) actions "for reasons of self-interest, gain, prejudice or revenge." This deliberate separation reflects  
24 legislative intent that scope is an objective assessment of authority under statutes and documents, not  
25 colored by subjective motive. Allowing motive to dictate scope would merge these, rendering the  
26 regulation's structure meaningless.

27 ///

1 In this case, the conduct ascribed to Mossett-Puhek (e.g., involvement in compliance  
2 communications, hearings, and association notices) is emblematic of a board member’s duties under  
3 NRS 116.3103 and the governing documents. Allegations of a “vendetta” or retaliatory intent do not  
4 alter this; they simply seek to infuse motive where *Chur* deems it immaterial. To pre-empt arguments  
5 that ancillary details (e.g., hearing demeanor or notice timing) generate factual disputes, such elements  
6 relate to execution style, not the acts’ essential official character. Allegations of not getting board  
7 permission to issue a violation, contacting a governmental agency for assistance, or unilaterally  
8 changing the violation type must fall within a direct prohibition or requirement of a board member’s  
9 duties under statute or the governing documents.

10 Notably, Plaintiff has not provided any evidence that these are unlawful acts or prohibited  
11 actions by a board member. Although alleged to be unlawful and outside the scope, there is no  
12 underlying statute specifically requiring or prohibiting these actions, making this determination a  
13 matter of law since it involves statutory and governing document duties. Permitting motive to govern  
14 scope would dismantle the legislative structure, enabling any enforcement decision to be reframed as  
15 personal upon claims of prejudice—an outcome *Chur* expressly repudiates.

16 **E. Given that Ms. Mossett-Puhek only acted as a board member, any claim of**  
17 **conspiracy must now be dismissed per the intracorporate conspiracy doctrine.**

18 It is well established law in Nevada that, under the intracorporate conspiracy doctrine, “[a]gents  
19 and employees of a corporation cannot conspire with their corporate principal or employer **where they**  
20 **act in their official capacities.”** See *Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284, 303, 662 P.2d  
21 610, 622 (1983) (emphasis added); see also 15A C.J.S. Conspiracy § 11 (2024) (addressing the  
22 intracorporate conspiracy doctrine). As discussed thoroughly above, Ms. Mossett-Puhek, as pled by  
23 Plaintiff and established in this case, was at all times acting as an agent and board member of Anthem.  
24 Because of this, the intracorporate conspiracy doctrine applies, and therefore the conspiracy claim  
25 against Ms. Mossett-Puhek must be dismissed.

26 ///

27 ///

1           **F. The legislative history of the relevant statutes demonstrates that Plaintiff lacks**  
2           **standing under NRS 116.4117(2) to bring civil claims against Ms. Mossett-Puhek**  
3           **individually as an executive board member, warranting the claims dismissal.**

4           Not only do the allegations and established facts support dismissal of Ms. Mosset-Puhek, but  
5 the legislative history of the statues, evidencing policy considerations, also support dismissal. In  
6 drafting statutes, the legislature is always careful when enumerating parties and entities that the statutes  
7 are meant to apply to, especially when a list of entities is included in the statute. Here, in the relevant  
8 statue, a “board member,” nor any variation of the term, may have suit brought against them or punitive  
9 damages levied upon them. Nor does the statute’s list have any indication that it is an open,  
10 nonexclusive list. One can only conclude that this omission was intentional, and the intent is clear.

11           NRS 116.4117 strictly limits standing to bring civil actions for violations of Chapter 116 or the  
12 governing documents, reflecting the Legislature's deliberate policy to shield volunteer board members  
13 from individual liability suits by single unit owners. Subsection (2) provides:

14           Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS  
15 116.3111, a civil action for damages or other appropriate relief for a failure or refusal to  
16 comply with any provision of this chapter or the governing documents of an association may  
17 be brought: (a) By the association against: (1) A declarant; (2) A community manager; or (3)  
18 A unit’s owner. (b) By a unit’s owner against: (1) The association; (2) A declarant; or (3)  
19 Another unit’s owner of the association. (c) By a class of units’ owners constituting at least 10  
20 percent of the total number of voting members of the association against a community  
21 manager.

22           Notably absent is any provision authorizing an individual unit owner to sue a member of the executive  
23 board personally. This omission is intentional: The Legislature has carved narrow, enumerated paths  
24 for private enforcement while protecting those who serve in governance roles from personal exposure  
25 to suit by disgruntled owners.

26           The 2009 amendments (enacted in the 75th Session, e.g., via AB 350 and SB 182) underscore  
27 this protective intent. The Legislature simultaneously expanded NRS 116.31183's retaliation  
prohibition to include community managers and at the same time, it amended NRS 116.4117 to clarify  
standing—expressly permitting class actions by at least 10% of voting members against community  
managers (subsection (2)(c))—while leaving no pathway for individual owners to sue board members.

1 See Declaration of Derek R. Noack in Support of Defendant Pennie Mossett-Puhek’s Motion for  
2 Reconsideration, ¶4 – **Exhibit 1** – 2009 Nevada Legislature amendment portions. This was no  
3 oversight; it created balanced remedies without exposing volunteer board members to individual suits.  
4 The result protects a defined class of governance participants (board members, officers, and  
5 managers—not a "class of one" but a protected cohort encouraging voluntary service) from the burden  
6 of personal litigation.

7 Plaintiff, as a single unit owner, falls squarely outside the enumerated categories in NRS  
8 116.4117(2)(b). She may sue the association, a declarant, or another unit owner—but not an individual  
9 board member like Ms. Mossett-Puhek for official-capacity acts. Any claims against Ms. Mossett-  
10 Puhek personally (including those related to the issued violations) fail for lack of standing. This  
11 statutory bar is jurisdictional and dispositive; no genuine issue of material fact alters it.

12 For these reasons, and incorporating the prior arguments on official-capacity conduct and punitive  
13 immunity under NRS 116.4117(5), the Court should grant summary judgment dismissing all claims  
14 against Defendant Ms. Mossett-Puhek in her individual capacity as a board member.

15 If the legislature were to open up board members to a suit from every dissatisfied homeowner,  
16 **there would likely be no board members at all.** The position is voluntary, unpaid, and frequently  
17 unappreciated. Adding in the potential for lawsuits for every miscommunication, violation, or other  
18 action would do nothing but ensure that no individuals would volunteer to become board members.  
19 This cannot have been the intent of the legislature, further cementing the conclusion that board  
20 members are not subject to lawsuits like this case.

21 **G. “Attorney eyes only” does not cure issues of financial discovery given Plaintiff’s**  
22 **counsel’s attempts to use for settlement and disdain for Ms. Mossett-Puhek**

23 Ms. Mossett-Puhek also hereby presently requests a protective order under NRCP 26(c) staying  
24 discovery related as to punitive damages, such as Defendant's financial condition or net worth, until  
25 such time as this Motion for Reconsideration is ruled upon. Given the February 12, 2026 ruling and  
26 this pending motion, the conditions within the previously entered into stipulation and order have not  
27 been met so as to trigger any obligation to produce punitive damages discovery by Ms. Mossett-Puhek.

1 Nevada law mandates bifurcation of punitive damages proceedings under NRS 42.005(3), requiring the  
2 trier of fact to first determine if punitive damages are warranted before addressing the amount. *See* NRS  
3 42.005(3); *In re W.N. Connell & Marjorie T. Connell Living Tr.*, 135 Nev. 658, 437 P.3d 1057 (2019)  
4 (affirming bifurcation requirement).

5         Moreover, financial discovery for punitive damages is only permissible if Plaintiff demonstrates  
6 "some factual basis" for the claim. *See Hetter v. Eighth Judicial Dist. Court*, 110 Nev. 513, 519-20,  
7 874 P.2d 762, 766 (1994) (holding that tax returns or financial records are discoverable on punitive  
8 issues only after a factual basis is shown; otherwise, such discovery is unduly burdensome and  
9 invasive). Here, the prior February 12, 2026 ruling by the Court finding Ms. Mossett-Puhek's capacity  
10 as being that of an association board member along with the pending nature of this Motion for  
11 Reconsideration which argues punitive damages claims should be dismissed completely as to Ms.  
12 Mossett-Puhek since she was in her role as boardmember, allowing punitive discovery prematurely  
13 would prejudice Defendant and contravene Nevada's policy of protecting privacy in financial matters  
14 until a viable punitive claim is established. Courts routinely stay such discovery pending resolution of  
15 dispositive motions or the liability phase to avoid unnecessary intrusion. Granting this alternative relief  
16 would promote efficiency and fairness, particularly since punitive damages are unavailable as a matter  
17 of law and allowing discovery to continue would be harmful and invasive to Ms. Mossett-Puhek.

## 18         **V. CONCLUSION**

19         Plaintiff's claims in this matter are targeted at the Anthem HOA regarding Plaintiff taking issues  
20 with prior courtesy notices and violations issued on behalf of the Anthem HOA. Ms. Mossett-Puhek's  
21 alleged actions in this matter were all taken on behalf of the Anthem HOA within the scope of her role  
22 on the Anthem HOA board. Each statutory and common law claim that Plaintiff has alleged against  
23 Ms. Mossett-Puhek requires Ms. Mossett-Puhek to be acting within her course and scope as an HOA  
24 board member. It is not legally possible for Ms. Mossett-Puhek to be involved in the issuance of HOA  
25 courtesy notices and notices of violation without being in the scope of her role as a board member.  
26 Individuals living within the Anthem community simply cannot be involved in the courtesy notice and  
27



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

ANDREA COLLIER, as trustee of the JACT TRUST,

Plaintiff,

vs.

PENNIE MOSSETT-PUHEK, individually;  
ANTHEM HIGHLANDS COMMUNITY ASSOCIATION, a Nevada Non-Profit Corporation; CARMEN EAASA, an individual; K.G.D.O. HOLDING COMPANY, LLC d/b/a TERRA WEST MANAGEMENT SERVICES, a Nevada limited liability company; DOES I through X and ROE BUSINESS ENTITIES I through X, inclusive,

Defendants.

Case No.: A-22-852032-C

Dept. No.: 8

**DECLARATION OF DEREK R. NOACK, ESQ. IN SUPPORT OF DEFENDANT PENNIE MOSSETT-PUHEK’S MOTION FOR RECONSIDERATION REGARDING HER COUNTERMOTION TO DETERMINE HER SCOPE AS THAT OF ASSOCIATION BOARDMEMBER AND TO DISMISS/MOTION TO STRIKE CLAIMS FOR PUNITIVE DAMAGES OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT ON PUNITIVE DAMAGES**

I, Derek R. Noack, Esq., do hereby declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in the State of Nevada, and I am a partner with the law firm of Freeman Mathis & Gary, LLP, counsel for Pennie Mossett-Puhek (“Defendant” or “Mossett-Puhek”) in the civil action identified as Andrea Collier, as trustee of the JACT TRUST, Plaintiff, vs. Pennie Mossett-Puhek, et al., Case No. A- 22-852032-C, currently pending in the Eighth Judicial District Court, Clark County, Nevada (“Subject Action”). I am the attorney responsible for the primary handling of this matter.



1 **PROOF OF SERVICE**

2 ***Andrea Collier v. Pennie Mossett-Puhek, et al.***  
3 **Case No.: A-22-852032-C**

4 The undersigned does hereby declare that I am over the age of eighteen (18) years and not a  
5 party to the within entitled action. I am employed by Freeman Mathis & Gary, LLP, 770 E Warm  
6 Springs, Suite 360, Las Vegas, Nevada 89119. I am readily familiar with Freeman Mathis & Gary  
7 LLP’s practice for collection and processing of documents for delivery by way of the service indicated  
8 below.

9 On February 20<sup>th</sup>, 2026, I served the following document(s): **DEFENDANT PENNIE  
10 MOSSETT-PUHEK’S MOTION FOR RECONSIDERATION REGARDING HER  
11 COUNTERMOTION TO DETERMINE HER SCOPE AS THAT OF ASSOCIATION  
12 BOARDMEMBER AND TO DISMISS/MOTION TO STRIKE CLAIMS FOR PUNITIVE  
13 DAMAGES OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT ON  
14 PUNITIVE DAMAGES**

15 on the interested party(ies) in this action as follows:

16 Timothy P. Elson, Esq.  
17 **THE LAW OFFICES OF TIMOTHY  
18 ELSON**  
19 8965 S. Eastern Ave. Suite 382  
20 Las Vegas, NV 89123  
21 *Attorney for Plaintiff*

22 Edward D. Boyack, Esq.  
23 Daniel C. DeLuca, Esq.  
24 **BOYACK ORME & ANTHONY**  
25 7432 W. Sahara Avenue, Suite 101  
26 Las Vegas, NV 89117  
27 *Attorneys for Defendants Anthem Highlands  
Community Association, Carmen Eassa, and  
K.G.D.O. Holding Company, LLC d/b/a Terra  
West Management Services*

16 **x By Electronic Service.** Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I  
17 caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this  
18 captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, States  
19 of Nevada. A service transmission report reported service as complete and a copy of the service  
20 transmission report will be maintained with the document(s) in this office.

19 **\_ By Mail.** By placing said document(s) in an envelope or package for collection and mailing,  
20 addressed to the person(s) at the address(es) listed above, following our ordinary business practices. I  
21 am readily familiar with the firm's practice for collection and processing of mail. Under that practice,  
22 on the same day that mail is placed for collection and mailing, it is deposited in the ordinary course of  
23 business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

22 I declare under penalty of perjury under the laws of the States of Nevada that the foregoing is  
23 true and correct.

24 */s/ Natasha Hopkins*  
25 An employee of FREEMAN MATHIS & GARY, LLP

# Exhibit 1



**BILL SUMMARY**  
75<sup>th</sup> REGULAR SESSION  
OF THE NEVADA STATE LEGISLATURE

PREPARED BY  
RESEARCH DIVISION  
LEGISLATIVE COUNSEL BUREAU  
Nonpartisan Staff of the Nevada State Legislature

---

---

**SENATE BILL 182 (Enrolled)**  
Regarding Common-Interest Communities

**Summary**

Senate Bill 182 makes it a crime for anyone to knowingly and fraudulently alter the outcome of an election of an executive board member or any other vote of a unit owners' association of a common-interest community, or conspire to falsify or tamper with a ballot. The bill makes it a crime for any community manager or member of an executive board to request or receive compensation in order to influence his vote or official action. Similarly, it is a crime for a person to offer or give compensation intended to influence such a vote.

The bill also makes various changes pertaining to the election or removal of executive board members, as well as to the recording of board meetings, allowances for public comment, and consideration of sanctions and complaints at board meetings. Punitive damages may not be recovered against an executive board member or association officer for acts or omissions that occur in their capacity as members or officers.

Additionally, the measure:

- Requires the Real Estate Division, Nevada's Department of Business and Industry, to adopt regulations concerning the filing and disposition of petitions for certain orders and opinions;
- Clarifies that associations do not have the power of eminent domain and that Chapter 116 of *Nevada Revised Statutes* supersedes any conflicting provision in the governing document of a common-interest community;
- Expands the rights of units owners to authorize the display of certain political signs in certain areas, and to prohibit associations from interfering with the collection of signatures for a petition or from interrupting utility service unless charges have gone unpaid;
- Limits the imposition of fines against a unit's owner, tenant, or invitee for certain violations and prohibits an association from charging a fee to enter the association against a person providing services or visiting a unit, unit's owner, or tenant;

- Authorizes court action to recover certain fees and penalties imposed by the State;
- Clarifies that an executive board has authority to impose necessary assessments based on an approved reserve study to adequately fund reserves without obtaining approval of units' owners;
- Expands the prohibition against certain contracts between an association and a member of the executive board to include contracts that involve financing; and
- Supports the use of drought tolerant landscaping.

Finally, S.B. 182 expands membership of the Commission for Common-Interest Communities and Condominium Hotels, revises the authority of the Commission to pay certain fees, provides for the issuance of temporary certificates for community managers, prohibits the disclosure of certain confidential information, provides for certain duties of an arbiter if one is appointed, and makes certain revisions concerning nonbinding arbitration.

#### **Effective Date**

The provisions concerning the adoption of regulations for the issuance of temporary certificates are effective on June 9, 2009, and on January 1, 2010, for the issuance of those certificates. The remainder of the bill is effective on October 1, 2009.

# LEGISLATIVE HEARINGS

## MINUTES AND EXHIBITS

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
March 13, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:39 a.m. on Friday, March 13, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Suite 5100, Governor's Office, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Maurice E. Washington  
Senator Mark E. Amodei

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

Karen D. Dennison, Real Property Law Section, State Bar of Nevada  
Gail J. Anderson, Administrator, Real Estate Division, Department of Business  
and Industry  
Bill Bradley, Nevada Justice Association

**CHAIR CARE:**

The hearing is open on Senate Bill (S.B.) 172.

**SENATE BILL 172:** Revises provisions governing the sale of subdivided land.  
(BDR 10-867)

Senate Committee on Judiciary  
March 13, 2009  
Page 12

SENATOR PARKS:

I did see they are equivalent to a general partnership, an informal type of general partnership.

SENATOR CARE:

The difference is that if you are a for-profit organization and you have not organized as a limited liability company or a corporation, by default, you are a general partnership. The parallel here is if you are a nonprofit and have not incorporated, this is a default as well. You will become an unincorporated nonprofit association. It would fall under the statutes created if this bill passes.

SENATOR PARKS:

This is seen as a solution rather than creating a greater problem.

SENATOR CARE:

These are legitimate associations. They are nonprofit associations that have chosen not to incorporate. A chapter in NRS governs nonprofits that have incorporated. There is no NRS chapter setting forth rules for the treatment of unincorporated nonprofit associations.

VICE CHAIR WIENER:

By doing this, there will be some structure and remedies if things go awry for an unincorporated nonprofit association. There would be some accountability for those clubs or associations that are already in play. There are probably thousands of these associations in Nevada.

SENATOR CARE:

That is the idea. Otherwise, we only have case law. With this bill, we could go to a statute.

VICE CHAIR WIENER:

There being no further witnesses, we will close the hearing on Senate Bill 169.

CHAIR CARE:

Senate Bill 182 and Senate Bill 183 extensively deal with homeowners' associations. You will want to read those bills.

**SENATE BILL 182**: Makes various changes relating to common-interest communities. (BDR 10-795)

Senate Committee on Judiciary  
March 13, 2009  
Page 13

**SENATE BILL 183**: Revises various provisions governing common-interest communities. (BDR 10-70)

CHAIR CARE:

There being nothing further to come before the Committee, the hearing is adjourned at 9:21 a.m.

RESPECTFULLY SUBMITTED:

---

Kathleen Swain,  
Committee Secretary

APPROVED BY:

---

Senator Terry Care, Chair

DATE: \_\_\_\_\_

Senate Bill 182 and Senate Bill 183  
Materials



Presented by Senator Michael A. Schneider  
to the Senate Committee on Judiciary  
March 18, 2009

EXHIBIT D Senate Committee on Judiciary

Date: 3-18-09 Page 1 of 82

# BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE  
FOR COMPLETE TEXT

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

5. The executive board shall not require a unit's owner to pay an amount in excess of \$10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section.

Sec. 24. NRS 116.31183 is hereby amended to read as follows:

116.31183 An executive board, a member of an executive board, *a community manager* or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

1. Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

2. *Recommended the selection or replacement of an attorney, community manager or vendor;* or

~~{2-}~~ 3. Requested in good faith to review the books, records or other papers of the association.

Sec. 25. NRS 116.31187 is hereby amended to read as follows:

116.31187 1. Except as otherwise provided in this section, a member of an executive board or an officer of an association shall not:

(a) On or after October 1, 2003, enter into a contract or renew a contract with the association to provide *financing*, goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing *financing*, goods or services to the association.

2. The provisions of this section do not prohibit a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant or an affiliate of a declarant from:

(a) Receiving any commission, personal profit or compensation from the association, the declarant or an affiliate of the declarant for any *financing*, goods or services furnished to the association;

(b) Entering into contracts with the association, the declarant or affiliate of the declarant; or

(c) Serving as a member of the executive board or as an officer of the association.

Sec. 26. NRS 116.325 is hereby amended to read as follows:

116.325 1. The executive board shall not and the governing documents must not prohibit a unit's owner or an occupant of a unit from exhibiting ~~{a political sign}~~ *one or more political signs* within such physical portion of the common-interest community as that owner or occupant has a right to occupy and use exclusively ~~{if the political sign is}~~, *subject to the following conditions:*

(a) *All political signs exhibited must not be* larger than 24 inches by 36 inches.

requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 29. NRS 116.4117 is hereby amended to read as follows:

116.4117 1. ~~HH~~ ***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 ~~has a claim~~ ***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 ~~caused by~~ ***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; ~~or~~
- (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. ~~Punitive~~ ***Except as otherwise provided in NRS 116.31036, 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.

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

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

Sec. 30. NRS 116.600 is hereby amended to read as follows:

116.600 1. The Commission for Common-Interest Communities and Condominium Hotels is hereby created.

2. The Commission consists of ~~five~~ ***seven*** members appointed by the Governor. The Governor shall appoint to the Commission:

(a) One member who is a unit's owner residing in this State and who has served as a member of an executive board in this State;

(b) ***Two members who are units' owners residing in this State but who are not required to have served as members of an executive board;***

(c) One member who is in the business of developing common-interest communities in this State;

~~(e)~~ (d) One member who holds a certificate;

Adjourned at 11:56 p.m.

Approved:

BARBARA E. BUCKLEY  
*Speaker of the Assembly*

Attest: SUSAN FURLONG REIL  
*Chief Clerk of the Assembly*