



2019 End of Session Report

Community Associations Institute's (CAI) Nevada Legislative Action Committee (NV LAC) had a busy legislative session. The gavel dropped on Nevada's 80th Legislative session on June 3 closing another 120-days of long hours, stress, and non-stop debating for legislators. During the session, over 1,000 bills and resolutions were introduced and nearly 700 passed.

As usual, some high-profile bills died, such as: banning the death penalty; authorizing the use of red-light cameras; physician-assisted suicide; raising the age limit for purchase of tobacco products from 18 to 21; and adding a 10 percent tax at electric vehicle charging stations.

But many other bills did pass: the clean energy bill; moving municipal elections to even-year cycles; ban on bump stocks and background check requirements for private gun sales; prohibiting parking in electric vehicle charging stations unless you are charging your car; and a law that allows proof of vehicle registration to be kept on a digital device.

Trying to keep up with all the bills, those that passed and those that did not, requires a lot of focus and scrutiny. Not everyone will be happy; but the legislative results are in, and we, as Nevadans, need to be aware of our new laws.

Specific laws that impact on our HOA communities were carefully monitored and addressed by our Nevada Chapter Legislative Action Committee (LAC) and our CAI Nevada Chapter lobbyist, Garrett Gordon. A few bumpy moments of turbulence threatened an otherwise smooth "ride." Thanks to quick responses from LAC members and grassroots, we enjoyed a fairly uneventful legislative year.

Brief descriptions of bills that were passed and impact HOAs are below (all legislation addressed below is effective October 1, unless otherwise noted):

Bills that Passed

- **Assembly Bill 31 – Community Managers' and Reserve Specialists' Background Checks** - AB 31 is a bill that takes existing regulations requiring Community Managers and Reserve Study preparers to apply to the Real Estate Division, and as part of the application, submit fingerprints to allow the Federal Bureau of Investigation to conduct an investigation of an applicant's background. It also deletes provisions authorizing the Commission for Common Interest Communities and Condominium Hotels to adopt regulations requiring background investigations. This is not a new requirement, rather, an existing one moved from regulation to statute.
- **Assembly Bill 161 – Pets** - Associations with governing documents that permit pets cannot amend those documents to prohibit an owner from keeping at least one pet and can no longer discriminate on the basis of breed.
 - Developers may still create new pet-free community associations. Section 1(4) allows the original declaration (which would include all NEW developments) to prohibit pets.

- Section 5 (a) further protects an EXISTING association’s right to prohibit pets if the prohibition is in the declaration as of October 1, 2019. After that date an existing association cannot amend its declaration from allowing pets to prohibiting pets.
 - If an association amends its declaration or adopts a rule to restrict the number of pets an owner may keep, the owner’s current pets are “grandfathered in”: the association cannot require the owner to reduce the number of pets if the pets conformed to the previous restriction or rule.
 - Associations may adopt reasonable restrictions on the ownership of pets by a unit’s owner, such as ownership of a dangerous or vicious dog as defined in NRS 202.500.
 - “Pet” means any domesticated bird, cat, dog, or aquatic animal kept within an aquarium or other animal agreed upon by the association and the unit’s owner.
- **Assembly Bill 335 - Resale Package** - Assembly Bill 335 makes a number of changes to the resale package process and the deadlines for responding to various requests made regarding the resale packages. The days as specified in NRS 116.4109 (e.g.e, ten days; three days) are now noted as referring to calendar days. Also, portions of AB 335 became effective upon the bill’s signage by the Governor and other portions become effective on January 1, 2020. The material portions of AB 335 that became effective upon signage were the following:
 - A. The ten days an association has to provide the resale package information identified in NRS 116.4109(1)(a) through (f) is clarified to be ten calendar days (which would include weekends and holidays);
 - B. The resale package information provided to an owner or owner’s agent pursuant to NRS 116.4109(1)(a) through (f) must remain good for 90 calendar days. This means that, among other things, all charges and assessments that are anticipated or likely to come due from the selling owner and all assessments that will be levied against the selling owner or the membership in its entirety in those 90 calendar days need to be disclosed in the resale package;
 - C. A copy of the Statement of Demand that is prepared after being requested by an owner, owner’s agent, or holder of a security interest must be provided to all ‘interested parties’ which includes the unit’s owner selling the unit and the prospective buyer of the unit. AB 335 does not define ‘interested parties’ to mean only the unit’s owner selling the unit and the prospective buyer. Rather, it simply states that those two parties are interested parties for purposes of NRS 116.4109, in addition to whomever else may be considered an ‘interested party’;
 - D. Amendment to NRS 116.3102 by adding a new subsection 1(o) thereto, which expressly provides an association with the authority to impose a fee for the opening or closing of an owner’s file (commonly referred to as a ‘new owner set up’ fee or other similar designation), subject to any limitations that may be in an association’s declaration. That fee: (1) must be based on the actual cost the association incurs for such a service (often as charged by the management company to the association, per the terms of the management contract); (2) must not exceed \$350; and (3) must not be charged to both the seller and the purchaser of the unit at issue. Moreover, the maximum amount of \$350 can be increased with inflation but not more than 3 percent each year and cannot exceed the \$350 limitation. Also, the ‘set up’ fee is also a fee that is included in the amounts that are specified as secured under an association’s statutory lien pursuant to NRS 116.3116(1).
 - E. The material portions of AB 335 that will take effect on January 1, 2020, are as follows:
 - F. The maximum fee that can be charged for the resale package certificate is whatever the Commission determines by regulation but cannot exceed \$185, except that an additional ‘rush’ fee can be charged for a certificate requested to be furnished within three calendar days of the

request. Such additional fee to be determined by the Commission. The maximum amount can be increased with inflation but not more than 3 percent each year. As it stands now, NAC 116.465 already limits the resale package certificate to \$160 and a 'rush' fee of no more than \$125;

- G. Increases the Statement of Demand fee to \$165. The maximum amount can be increased with inflation but not more than 3 percent each year;
- H. The remaining changes in AB 335 are conforming changes that reflect the substantive changes noted above.

- **Assembly Bill 393 – Prohibiting Foreclosure during a Government Shutdown** - The 35-day federal government shutdown (December 22, 2018, to January 25, 2019), the longest US government shutdown in history, brought into focus a potential moral dilemma for associations. Do we begin or continue a foreclosure when the property owner's paycheck is directly affected by the shutdown? LAC believes the collective mindset in our industry was a resounding no.

But fear not, our representatives in the federal government were there to help, and indeed took swift and decisive action. The Federal Employee Civil Relief Act, Senate Bill 72, was introduced on January 9, 2019, and a similarly named bill originating from the House of Representatives, HR 588, was introduced on January 16, 2019. Unfortunately, tragically, neither bill even made it out of committee in their respective chambers. So close.

Thus, the Nevada Legislature set out to codify into Nevada law that which was attempted and failed at the federal level. On March 21, 2019, Assemblyman Jason Frierson introduced AB 393. The bill, amended twice and supported by the CAI Legislative Action Committee, passed the assembly on April 23 and passed the senate on May 24, each time with unanimous, bi-partisan support. It went into effect the very day Governor Steve Sisolak signed it into law, June 8, 2019.

AB 393 generally prohibits the foreclosure of a unit in a common-interest community owned by a federal worker, tribal worker, state worker, or household member of such a worker during a government shutdown, specifically during the period commencing on the date that a shutdown begins and ending on the date that is 90 days after the date on which the shutdown ends. The law also applies to the landlord of such a worker.

The law additionally states that any person who knowingly conducts a foreclosure sale in violation of these provisions is guilty of a misdemeanor and is liable for actual damages, reasonable attorney's fees, and costs incurred by the injured party.

The foreclosure protections provided in AB 393 are similar to those in existing law that protect a service member on active duty or deployment.

- **Senate Bill 117 - Discriminatory CC&Rs** - SB 117 provides that if any written instrument, including a declaration, contains a provision that purports to forbid or restrict a conveyance, encumbrance, sale, lease, or mortgage to any person on the basis of race, color, religion, ancestry, national origin, disability, familial status, gender, sexual orientation, or gender identity or expression is void (as opposed to voidable). Further, rather than requiring the declaration be amended, SB 117 allows an association with an offending provision to record a form provided by the NRED to declare the provisions void.

- **Senate Bill 212 – Towing** - Before towing a vehicle, an operator must place a notice on the vehicle in a residential complex, the date and time, the vehicle will be towed, if the owner of the property and the tow operator have an agreement. A vehicle may be towed immediately if a notice was previously posted on the vehicle, for a similar reason, or three or more times for any reason in the last six months; even if the vehicle was previously towed. A vehicle can be towed immediately if parked in a space that is marked for a resident or a unit in a residential complex. The bill amends NRS 706.4477 which defines “residential complex” as a group of apartments, condominiums, or townhomes. It does not impact NRS 116.3102 which deals with the powers of associations to remove vehicles improperly parked, pursuant to NRS 487.038, which is the towing law for the State of Nevada. This bill does not change associations’ ability to tow vehicles from areas owned or leased by the association.
- **Senate Bill 382 – State Bar Real Property Bill** - With respect to community associations, Senate Bill 382 (SB 382) made three notable changes, which, overall, had a positive and/or neutral effect upon the community association industry.

First, it added a new provision to NRS 116 specifying that NRS 116 does not apply to non-residential associations absent an express provision in the non-residential association’s declaration that NRS 116, or one of the limited portions thereof, applies. This change is not relevant to homeowners, but it will affect persons creating, purchasing, or management non-residential associations.

Second, SB 382 clarified that unit owners are not entitled to a mailing of information (estimated legal costs, explanation of benefits and adverse consequences, and disclosures that will be required for resales) regarding a prospective legal action under NRS 116.31088(2) ten days prior to commencement or ratification of a civil action where the owners do not have a right to vote on the action. It has been the standard in the industry that such a mailing was never required where owners were not entitled to vote on the matter and otherwise had access to the information if desired or necessary. However, due to confusion by some individuals regarding the existing language this clarification was added to the section.

Finally, and most notably, SB 382 removed changes of “use” from the unanimous approval requirement for amendments to an association’s declaration under NRS 116.2117(4). Unpublished Nevada case law has indicated that the Nevada Supreme Court may consider any governing document section falling under a section titled “use” as being subject to the previous unanimous consent requirement for an amendment under NRS 116.2117(4). Now, associations may amend their governing documents without a concern that an amendment may be deemed a “use” amendment requiring unanimous approval.

- **Senate Bill 392 – Ombudsman’s Office** - This is a perennial bill to move the Ombudsman’s office from the Real Estate Division to the Attorney General’s office and has been re-appearing every session for quite a few years now. Finally, with some amendments, it has passed, and in a form that should be very helpful to the Real Estate Division and the industry as a whole.

Now, instead of moving the Ombudsman to the supervision of the AG’s office, they will provide additional help to the Real Estate Division in preparing affidavits and reports. Also, the Division will hire a CPA to assist in auditing and looking into association finances where there are problems and issues. The Director of Business and Industry is authorized to establish a task force to study issues of concern to common interest communities in Nevada, and, if appropriate, to recommend the enactment of

legislation or adoption of regulations that would be beneficial to common interest communities in this state. If the task force is established, it must include members that represent the Real Estate Division, the Ombudsman's office, the Attorney General's office, and representatives of the common interest community industry.

So, a bill that we have fought very hard against for many years, was successfully turned into something positive for everyone by working together with all interested parties. All in all, this is a great success story, something we don't always have a lot of when dealing with legislation!

A Bill that Failed (Thanks in large part to NVLAC efforts)

- **Super Priority Lien (AB 369)** – Sometimes the most important bill in a legislative session is the one that does not pass. This was the case with AB 369, a bill sponsored by Las Vegas Assemblywoman Sandra Jauregui and supported by Legal Aid. As originally proposed, AB 369 eliminated the super priority lien, which is the statutory provision that allows an association to recover up to nine months of assessments when a lender forecloses. In fact, the bill eliminated an association's ability to foreclose its lien at all. Instead of judicial or non-judicial foreclosure, an association would only be able to pursue its claim to past due assessments in small claims court, where it could obtain a money judgment. A money judgment is nothing more than a piece of paper. To collect, an association must spend more money to locate and execute on the debtor's assets. Thanks to our lobbyist and the efforts of LAC's Grassroots supporters sending over 8,400 emails to Nevada legislators, AB 369 did not pass out of the Assembly. However, Assemblywoman Jauregui vowed to work on it during the interim in the belief that, with more time, she can mobilize the support she needs to get to the root of the problem.

The above laws and their potential impact on our HOA communities were carefully monitored and addressed by our Nevada Chapter Legislative Action Committee (LAC) and our CAI Nevada Chapter lobbyist, Garrett Gordon. A few bumpy moments of turbulence threatened an otherwise smooth "ride." Thanks to quick responses from LAC members and Grassroots, we enjoyed a fairly uneventful legislative year.

For more information on NV LAC's activities and community association legislation in Nevada, visit www.caionline.org/NVLAC.

Your Assistance is Needed

The CAI Nevada LAC uses professional, paid lobbyists as a vital and integral part of the legislative process. As volunteers, CAI NV LAC members significantly rely on this highly effective professional representation. To help fund the CAI NV LAC advocacy activities in 2019 and beyond, donations are vital to our continued successes. We encourage donations from Nevada community associations and individuals. Please visit www.caionline.org/lacdonate/ and donate to "Nevada" to support our continued efforts.

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