



# 2017 Legislative Update

June 21, 2017

John E. Leach, Esq.



LEACH JOHNSON  
SONG & GRUCHOW

## Session Overview

### 120 Days in Review

Legislators, lenders, realtors, CAI declare "SPL truce" and work together.

Common sense HOA legislation receives bipartisan support.

The conference committee process and SB258.

2017 Session priorities affecting HOAs and/or management companies.

- Employment
- Alternative Energy: wind, solar and electric vehicles
- Water
- Electronic notice, elections by acclamation, documents and signatures
- Recreational marijuana

## Major Legislation Affecting Community Associations

- ▶ SB 33 - Servicemembers Civil Relief Act
- ▶ SB 195 - Various changes to Board elections, transfer of declarant rights, D&O insurance, executive session
- ▶ SB 239 - Condo water and sewer leaks
- ▶ SB 255 - Electronic delivery of governing document changes
- ▶ SB 258 - Courtesy Notices and Photos
- ▶ SB 281 - HOA entitled to excess proceeds from County tax sale
- ▶ SB 320 - Towing unregistered vehicles from HOA parking lot
- ▶ SB 476 - CCICCH homeowner members must reside in unit
- ▶ SB 490 - Making Foreclosure Mediation permanent

## Other Legislation of Interest

- ▶ AB 138 Rain barrels: rooftop rain collection from single family dwelling
- ▶ AB 413 Electronic documents, signatures and notaries; See also AB 746
- ▶ AB 161 Rental agreement disclosures and presumptions
- ▶ AB 455 Insurers may email or post notices and documents on the internet
- ▶ SB 145 Incentives for alternative energy systems
- ▶ SB 188 Expansion of anti-discrimination in housing
- ▶ SB 203 Corporate directors and officers: breach of fiduciary duty
- ▶ SB 267 Expedited lender foreclosure of abandoned property
- ▶ SB 270 Water rights proof of claim
- ▶ SB 314 Wind energy systems

## SB 33: NV's Servicemembers Civil Relief Act

- ▶ Federal Servicemembers Civil Relief Act, 50 U.S.C.A. § 3901 *et seq.*
- ▶ SB 33 - NV's Servicemembers Civil Relief Act
  - ▶ Protects Active Duty Servicemembers from foreclosure by lenders and HOAs.
  - ▶ Protection may also extend to servicemember's "dependents."
  - ▶ HOA and its debt collector must follow both.
  - ▶ These laws are NOT identical.

Effective Dates Upon Passage and Approval

## HOAs and Nevada's SCRA

- ▶ Association may not initiate foreclosure during any period that the servicemember is on active duty or deployment or for 1 year following.
  - ▶ "Initiate foreclosure" means taking actions set forth in NRS 116.31162(4)(a) - i.e. the "60 day letter".
- ▶ Violation is a crime; may be liable for actual damages, attorney's fees and costs. Court will consider any due diligence taken before initiating foreclosure in determining whether to reduce liability.
- ▶ Association can seek relief from a court.
  - ▶ Court must determine that servicemember's (or dependent's) ability to pay assessments is not "materially affected" by the servicemember's active duty or deployment.

## “Servicemember” Defined

### State SCRA

- ▶ Member of the “Military”
  - ▶ The armed forces (i.e., Army, Navy, Air Force, Marine Corps and Coast Guard)
  - ▶ A reserve component thereof, or
  - ▶ The National Guard

### Federal SCRA

- ▶ Member of the “uniformed services”
  - ▶ The armed forces (i.e., Army, Navy, Air Force, Marine Corps and Coast Guard)
  - ▶ The commissioned corps of NOAA (National Oceanic and Atmospheric Administration) and the Public Health Service
  - ▶ In some cases, members of the National Guard

## “Active Duty” Defined

“Active Duty” is  
BROADER  
than being  
deployed.

- ▶ Full-time duty in the active military service of the United States, including National Guard and Reserve on active duty orders pursuant to 10 USC 1209 and 1211.
- ▶ Soldier who works fulltime at local military base and comes home each night is “Active Duty”.

## HOA Obligations Under NV's SCRA

---

- ▶ Association required to inform each Owner of SCRA protections and give person the opportunity to provide the HOA with the information necessary to verify military status.
  - ▶ Social Security Number and Date of Birth.
  - ▶ Notice of eligibility for SCRA protections needs to be (1) delivered annually to all Owners and (2) included in resale disclosure packets.

## HOA Obligations Under NV's SCRA

---

- ▶ Association must make “good faith effort” to verify if person entitled to SCRA protections as evidenced by:
  - (1) Informing Owner of SCRA protections;
  - (2) Making reasonable efforts to give Owner the opportunity to provide information to enable HOA to verify active duty status (i.e., SSN & DOB);
  - (3) Making reasonable efforts to use all available resources to verify status including Department of Defense website.

[50 USC Appx. § 3901 et seq. as amended] The services provided on this site are FREE


Welcome to the Official  
**Servicemembers Civil  
Relief Act (SCRA) Website**

Home Single Record Request Multiple Record Requests User's Guide FAQs News Contact Us My Account

### Single Record Request

Use this page to request a Certificate verifying Active Duty Status for an individual on a specified date.

\* Indicates a required field

\* SSN   **SSN OR Birth Date Required**


\* Repeat SSN

\* Birth Date  **MM/DD/YYYY (e.g., 09/16/2012)**

\* Last Name

First Name

Middle Name

\* Active Duty Status Date   **MM/DD/YYYY (Default will be today's date e.g., 06/07/2017)**

Clear Submit

Privacy Notice Contact Us SCRA 3.0

#### Tips & Notes

- Without a Social Security Number, DMDC cannot authoritatively assert that this is the same individual that your query refers to. Name and date of birth alone do not uniquely identify an individual.
- Check your data entry before submitting it.
- Response may take up to 15 seconds after clicking "Submit".

#### Resources

[Download Adobe Reader](#)

[Unexpected results?](#)

## NV's SCRA: Other Important Points

- ▶ NRS 116.3116(10) statute of limitations is tolled throughout applicable period.
  - ▶ A lien for unpaid assessments is extinguished unless a notice of default and election to sell is recorded as required by paragraph (b) of subsection 1 of NRS 116.31162, or judicial proceedings to enforce the lien are instituted, within 3 years after the full amount of the assessments becomes due.
- ▶ Any period of time prescribed by state law to submit proof of service is also tolled.

**Practical effect:** Servicemember fails to respond to HOA's notice; HOA commences foreclosure; Servicemember finally provides documentation; HOA must unwind foreclosure actions and clear account of all collection fees and costs.

## SB 195 (1): Filling Board Vacancies

- ▶ Amends NRS 116.3103
- ▶ Prior statute: “unless the governing documents provide that a vacancy on the [Board] must be filled by a vote of the membership . . . [Board] may fill vacancies . . .”
- ▶ New law: “notwithstanding any provisions of governing documents to the contrary the [Board] may fill vacancies in its membership.”

Practical Effect: Uniformity in Filling Vacancy. All vacancies filled by the Board until term expires or next election, whichever occurs first.

## SB 195 (2): Election by Acclamation

- ▶ Amends NRS 116.31034(5)-(7):

“. . . If, at the closing of the prescribed period for nominations for membership on the executive board, the number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected to the executive board at the election:

- (a) The association will not prepare or mail any ballots to units' owners pursuant to this section; *and*
- (b) The nominated candidates shall be deemed to be duly elected to the executive board *at the meeting of the units' owners at which the ballots would have been counted pursuant to paragraph (e) of subsection 15.*

## SB 195 (2): Election by Acclamation

“If . . . the number of candidates nominated for membership on the executive board is less than the number of members to be elected to the [Board] at the election, the [Board] may fill the remaining vacancies on the [Board] by appointment of the [Board] at a meeting of the [Board] held after the candidates are elected.”

## SB 195 (2): Election by Acclamation

- ▶ KEY: Board still must make decision to implement acclamation process before requests for nominations mailed out. NRS 116.31034(5):

“Before the secretary or other officer specified in the bylaws of the association causes notice to be given to each unit’s owner of his or her eligibility to serve as a member of the executive board pursuant to subsection 4, the executive board may determine that [it will implement election by acclamation]”

- ▶ Must disclose decision in the request for nominations mailed

Practical Effect: Revises process for elections by acclamation. Fewer notices means less time and expense to associations. Gives Board the authority to fill vacancies created by apathy.



## SB 195 (3): Passing of Special Declarant's Rights

---

- ▶ Amends NRS 116.3104
- ▶ New law: purchaser of property acquires special declarant's rights unless the purchaser elects otherwise and states such in recorded instrument

## SB 195 (3): Passing of Special Declarant's Rights

---

“ . . . in case of a foreclosure of a security interest, sale by a transfer under an agreement creating a security interest, tax sale, judicial sale or sale under the Bankruptcy Code or a receivership, of any units owned by a declarant or real estate in a common-interest community subject to developmental rights, a person acquiring title to all the property being foreclosed or sold succeeds to all special declarant's rights related to that property held by that declarant and the instrument conveying title need not be executed by the transferee to be effective.”

## SB 195 (3): Passing of Special Declarant's Rights

---

*“. . . If the person acquiring title to the property being foreclosed or sold pursuant to this section desires to succeed to some but not all of the special declarant's rights or none of the special declarant's rights, then the judgment or instrument conveying title may provide for transfer of only the special declarant's rights requested, in which case the transferee shall succeed only to any special declarant's rights requested and such judgment or instrument must be executed by the transferee to be effective.”*

## SB 195 (3): Passing of Special Declarant's Rights

---

Practical Effect: The Special Declarant's Rights pass to successor declarant in an involuntary proceeding unless the successor expressly limits the special declarant's right being acquired in the recorded instrument. Clarifies declarant status of successor developers or real estate holders.

## SB 195 (4): Election Contemporaneous with Annual Meeting

- ▶ Amends NRS 116.3108
- ▶ New law: Ballots for election of directors to be opened and counted at annual meeting

NRS 116.3108(1):

*“At the annual meeting of the units’ owners held pursuant to this subsection, the ballots for the election of members of the executive board must be opened and counted.”*

Practical Effect: This provision consolidates the membership actions/meetings so as to limit the number of notices, mailings and meetings.

## SB 195 (5): Executive Session: Notice to Owners

- ▶ Amends NRS 116.31083

*“Notwithstanding any other provision of law or the governing documents of the association to the contrary, if the executive board holds a meeting limited exclusively to . . . :*

*(a) Pursuant to paragraph (c) or (d) of subsection 3 of NRS 116.31085, . . . the association is required to give notice of the meeting only to a person who may be subject to a hearing scheduled to that meeting.”*

## SB 195 (5): Executive Session: Notice to Owners

---

*“Notwithstanding any other provision of law or the governing documents of the association to the contrary, if the executive board holds a meeting limited exclusively to . . . :*

*. . .*

*(b) Pursuant to any provision of law other than paragraph (c) or (d) of subsection 3 of NRS 116.31085, . . . the association is required to:*

- (1) Post notice of the executive session . . . ; and*
- (2) Provide electronic notice of the executive session to all units’ owners who have provided the association with an electronic mail address.”*

## SB 195 (5): Executive Session: Notice to Owners

---

Practical Effect: Notice of Executive Sessions no longer must be mailed to all Owners. This should result in less expense and allows executive sessions to be conducted when necessary rather than only in conjunction with a regular Board meeting.

## SB 195 (6): Reporting Executive Sessions

---

► Amends NRS 116.31085

*“ . . . If the executive board holds a meeting limited exclusively to an executive session pursuant to paragraph (c) or (d) of subsection 3, at the next regularly scheduled meeting of the executive board, the executive board shall acknowledge that the executive board met in accordance with paragraph (c) or (d) of subsection 3, as applicable, and include such an acknowledgment in the minutes of the meeting at which the acknowledgment was made.*

## SB 195 (6): Reporting Executive Sessions

---

Practical Effect: Reports the executive session to the members without requiring prior notice in some situations.

## SB 195 (7): Directors & Officers Insurance

- ▶ Amends NRS 116.3113
- ▶ New law: mandates that association has D & O insurance
 

“. . . the association shall maintain, to the extent reasonably available and subject to reasonable deductibles, *all of the following*:

. . .

*(d) Directors and officers insurance that is a nonprofit organization errors and omissions policy in a minimum aggregate amount of not less than \$1,000,000 naming the association as the owner and the named insured.”*

## SB 195 (7): Directors & Officers Insurance

*“The coverage must extend to the members of the executive board and the officers, employees, agents, directors and volunteers of the association and to the community manager of the association and any employees thereof while acting as agents as insured persons under the policy terms. Coverage must be subject to the terms listed in the declaration.”*

Practical Effect: The provision codifies the obvious - HOAs must have directors and officers insurance. The coverage should extend to the community managers acting within the scope of their activity.

## SB 195 (8): Enforcing Parking Restriction on Public Streets

---

- ▶ Amends NRS 116.350

*“ . . . The governing documents of an association may authorize the executive board of the association to impose a fine pursuant to NRS 116.31031 for any violation of the rules authorized pursuant to [NRS 116.350(2)]. ”*

## SB 195 (8): Enforcing Parking Restriction on Public Streets

---

“ . . . the provisions of [NRS 116.350(1)] do not preclude an association from adopting, and setting forth, rules that reasonably restrict the parking or storage of recreational vehicles, watercraft, trailers or commercial vehicles in the common-interest community to the extent authorized by law.

Practical Effect: This provision removes any uncertainty about an association’s ability to impose fines on owners for parking or storing RVs, watercraft, trailers or commercial vehicles on public streets located within common-interest communities.

## SB 239: Abatement Charges

► Amends NRS 116.30312

*4. If a unit is in a building that contains units divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units [condominium], and the unit is vacant, the association, including its employees, agents and community manager, may enter the grounds and interior of the unit to:*

## SB 239: Abatement Charges

*(a) Abate a water or sewage leak in the unit and remove any water or sewage from the unit that is causing damage or, if not immediately abated, may cause damage to the common elements or another unit if the unit's owner refuses or fails to abate the water or sewage leak.*

*(b) After providing the units' owner with notice but before a hearing in accordance with the provisions of NRS 116.31031:*



## SB 239: Abatement Charges

---

*(1) Remove any furniture, fixtures, . . . including, without limitation, flooring, baseboards and drywall, that were damaged as a result of water or mold damage resulting from a water or sewage leak to the extent such removal is reasonably necessary because water or mold damage threatens the health or safety of the residents of the common-interest community, results in blighting or deterioration of the unit or the surrounding area and adversely affects the use and enjoyment of nearby units, if the unit's owner refuses or fails to remediate or remove the water or mold damage.*

## SB 239: Abatement Charges

---

*(2) Remediate or remove any water or mold damage in the unit resulting from the water or sewage leak to the extent such remediation or removal is reasonably necessary because the water or mold damage threatens the health or safety of the residents of the common-interest community, results in blighting or deterioration of the unit or the surrounding area and adversely affects the use and enjoyment of nearby units, if the unit's owner refuses or fails to remediate or remove the water or mold damage.*

## SB 239: Abatement Charges

---

*5. After the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association may order that the costs of any maintenance or abatement **or the reasonable costs of remediation or removal** conducted pursuant to subsection 2, **or 4**, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit.*

## SB 239: Abatement Charges

---

**7.** Except as otherwise provided in this subsection, a lien described in subsection **5** is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116.

## SB 239: Abatement Charges

---

- ▶ Remediation does not include restoration

Practical Effect: Associations may enter vacant condominiums to stop a water or sewage leak, remove damaged personal property, remove water or mold damage and recover the actual costs incurred as part of the superpriority portion of the association's lien.

## SB 255: Electronic Delivery of Document Changes and Change to Resale Disclosure Informational Statement

---

- ▶ Pre-2017: NRS 116.12065 required that governing document changes be hand delivered or mailed.
- ▶ SB 255 amends NRS 116.12065 to state that changes must be “delivered.” Consequently, governing document changes can now be “delivered” per NRS 116.31068, which allows for electronic delivery.

## SB 255: Electronic Delivery of Document Changes and Change to Resale Disclosure Informational Statement

- ▶ Also amends NRS 116.41095 which is the informational statement (“Before You Purchase Property in a CIC Did You Know...”) included in sales and resales.
  - ▶ Notifies prospective purchaser of a resale that purchaser may deliver notice of cancellation by email.
  - ▶ Management must update statement in its resale disclosure packet to include this amended wording.
- ▶ See also AB455 allowing insurers to email or post on internet certain notices and documents.

Effective July 1, 2017

## SB 258: Pre-Hearing Violation Notices Must Include a Photo

- ▶ Does NOT mandate courtesy notices or first violation notices
- ▶ But if HOA does send pre-hearing violation notices, these notices must include a photograph of the alleged violation; specify the violation in detail, cite provision of governing documents allegedly violated; include proposed cure and give reasonable time to cure.
- ▶ Photo required under the same conditions as photo required for a hearing notice:
  - Provide a clear and detailed photograph of the alleged violation, if the alleged violation relates to the physical condition of the unit or the grounds of the unit or an act or a failure to act of which it is possible to obtain a photograph
- ▶ Effective October 1, 2017

## SB 281: Excess Proceeds from County Tax Sales

- ▶ HOAs added to list of “persons” entitled to receive excess proceeds from County tax sales.
- ▶ “Persons” are those holding secured interests in the order of priority of their recorded liens.
  - ▶ i.e., an HOA which has recorded a Notice of Default which has not been rescinded.
- ▶ If HOA recovers excess proceeds in any amount, HOA must forego collecting any amount remaining due after receiving the excess proceeds. No right to pursue any deficiency.
- ▶ How does an HOA learn about the existence of excess proceeds?
  - ▶ Must monitor tax sales or hire someone to monitor tax sales
    - County will not be sending any notice.

## SB 281: Assessing the Owner for Taxes and Utilities Paid on Owner's Behalf

- ▶ SB 281 also amends NRS 116.3115(4)(b) as follows:  
 Any common expense benefiting fewer than all of the units or their owners, ***including, without limitation, common expenses consisting of the payment, on behalf of a unit's owner, of delinquent property taxes or utility charges owed by the unit's owner,*** may be assessed exclusively against the units or units' owners benefited.

Effective July 1, 2017

## SB 320: Towing Unregistered Vehicles

- ▶ Applies to condos and townhomes which have a common parking area regardless of whether there is assigned parking.
  - ▶ Does NOT apply to single family home communities or condos/townhouses with garage parking only.
- ▶ Person requesting tow must be owner of real property or his agent;
- ▶ May NOT tow a vehicle if vehicle is owned or operated by a resident and registration has not been expired 60+ days.
- ▶ May tow unregistered vehicle if owned or operated by non-resident upon verification of non-resident status.
  - ▶ If this is a problem, the Association will need to register vehicles and issue resident stickers.

## SB 320: When May an Association Tow?

- ▶ May continue to tow for other “parking violations”.
  - ▶ “Parking Violations” defined as State or local law/ordinance or HOA rules
- ▶ May continue to tow immediately for health, safety or welfare as per NRS 116.3102(s)(1)-(2)
  - ▶ Blocking fire hydrant, fire lane, handicapped parking, or
  - ▶ Imminent threat of substantial adverse effect on residents’ HSW
- ▶ Stickers applied to vehicle not less than 48 hours before tow must include date and time after which vehicle will be towed.
  - ▶ Check that tow stickers have been revised as above.
- ▶ Vehicle owners have the right to sue for unlawful tows.
- ▶ Review and amend towing policies and parking rules.
- ▶ Now must comply with NRS 116, NRS 487 and NRS 706

## SB 476: Homeowner Commission Members Required to Live in Unit

- ▶ Requires the three homeowner members of the Commission for Common-Interest Communities and Condominium Hotels to reside in a unit within this State.
- ▶ Recall that Commission has 7 members: one unit owner who is or was on the Board; two other unit owners who need not have ever served on a Board; a developer, a manager, a CPA and an attorney.
- ▶ Only recommendation from the Sunset Committee which reviewed the utility of the Commission in 2016.

## SB 490: Foreclosure Mediation Program and Electronic Collection Notifications

- ▶ Makes the Foreclosure Mediation Program between lenders and delinquent owners permanent.
  - ▶ Reverses 2015 legislation which “sunset-ed” the program as of June 30, 2017.
- ▶ Moves program from NV Supreme Court to “Home Means Nevada, Inc.”
  - ▶ Non-profit entity established by Dept. of Business and Industry.
- ▶ Gives non-profit new purpose as housing crisis eases.
- ▶ Require it to develop and maintain an internet portal to streamline the foreclosure mediation process.
- ▶ No change for HOAs.
  - ▶ Cannot foreclose on unit while in foreclosure mediation unless owner fails to pay assessments that become due during pendency of mediation.

## SB 490: Electronic Delivery of Some Collection Notices

---

- ▶ Amends NRS 116.31162
- ▶ If authorized by the parties, HOA may deliver the 60 day letter, Notice of Delinquent Assessment (NODA), and Notice of Default and Election to Sell (NOD) to the owner or his/her successor in interest by electronic transmission.
- ▶ Does NOT apply to Notice of Sale (NOS)
- ▶ Does NOT apply to copies which must be sent to other lienholders.
- ▶ Recommend that management review its e-mail authorization to specifically address collection notices.

# Questions?