

ASSEMBLY BILL NO. 228—COMMITTEE ON JUDICIARY

(ON BEHALF OF ELKO COUNTY)

FEBRUARY 15, 1999

Referred to Committee on Judiciary

SUMMARY—Repeals certain provisions governing common-interest ownership. (BDR 10-678)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to common-interest ownership; providing in skeleton form for the repeal of various provisions governing common-interest ownership; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 115.010 is hereby amended to read as follows:
2 115.010 1. The homestead is not subject to forced sale on execution
3 or any final process from any court, except as otherwise provided by
4 subsections 2, 3 and 5.
5 2. The exemption provided in subsection 1 extends only to that
6 amount of equity in the property held by the claimant which does not
7 exceed \$125,000 in value, unless allodial title has been established and not
8 relinquished, in which case the exemption provided in subsection 1 extends
9 to all equity in the dwelling, its appurtenances and the land on which it is
10 located.
11 3. Except as otherwise provided in subsection 4, the exemption
12 provided in subsection 1 does not extend to process to enforce the payment
13 of obligations contracted for the purchase of the property, or for
14 improvements made thereon, including any mechanic's lien lawfully
15 obtained, or for legal taxes, or for:
16 (a) Any mortgage or deed of trust thereon executed and given; or

(b) Any lien to which prior consent has been given through the acceptance of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, specifically including any lien in favor of an association pursuant to NRS ~~116.3116~~ ~~or~~ 117.070, by both husband and wife, when that relation exists.

4. If allodial title has been established and not relinquished, the exemption provided in subsection 1 extends to process to enforce the payment of obligations contracted for the purchase of the property, and for improvements made thereon, including any mechanic's lien lawfully obtained, and for legal taxes levied by a state or local government, and for:

(a) Any mortgage or deed of trust thereon; and

(b) Any lien even if prior consent has been given through the acceptance of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, specifically including any lien in favor of an association pursuant to NRS ~~116.3116~~ ~~or~~ 117.070, unless a waiver for the specific obligation to which the judgment relates has been executed by all allodial titleholders of the property.

5. Establishment of allodial title does not exempt the property from forfeiture pursuant to NRS 179.1156 to 179.119, inclusive, or 207.350 to 207.520, inclusive.

6. Any declaration of homestead which has been filed before October 1, 1995, shall be deemed to have been amended on that date by extending the homestead exemption commensurate with any increase in the amount of equity held by the claimant in the property selected and claimed for the exemption up to the amount permitted by law on that date, but the increase does not impair the right of any creditor to execute upon the property when that right existed before October 1, 1995.

Sec. 2. NRS 37.0097 is hereby amended to read as follows:

37.0097 1. A unit-owners' association may not exercise the power of eminent domain pursuant to the provisions of this chapter.

2. As used in this section ~~1, "unit-owners' association" has the meaning ascribed to it in NRS 116.110315.1~~:

(a) *"Unit-owners' association" means a unit-owners' association that consists exclusively of all units' owners in a common-interest community or, following termination of the common-interest community, of all owners of former units entitled to distribution of proceeds, or their heirs, successors or assigns.*

(b) *"Common-interest community" has the meaning ascribed to it in section 7 of this act.*

1 **Sec. 3.** Chapter 38 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 4 to 9, inclusive, of this act.

3 **Sec. 4.** *“Assessments” means a charge that an association may*
4 *impose against an owner of residential property pursuant to a*
5 *declaration of covenants, conditions and restrictions, including any late*
6 *charges, interest and costs of collecting the charges.*

7 **Sec. 5.** *“Association” means a unit-owners’ association that consists*
8 *exclusively of all units’ owners in a common-interest community or,*
9 *following termination of the common-interest community, of all owners*
10 *of former units entitled to distribution of proceeds, or their heirs,*
11 *successors or assigns.*

12 **Sec. 6.** *“Civil action” includes an action for money damages or*
13 *equitable relief. The term does not include an action in equity for*
14 *injunctive relief in which there is an immediate threat of irreparable*
15 *harm, or an action relating to the title to residential property.*

16 **Sec. 7.** *“Common-interest community” means real estate with*
17 *respect to which a person, by virtue of his ownership of a unit, is*
18 *obligated to pay for real estate other than that unit. “Ownership of a*
19 *unit” does not include holding a leasehold interest of less than 20 years*
20 *in a unit, including options to renew.*

21 **Sec. 8.** *“Division” means the real estate division of the department*
22 *of business and industry.*

23 **Sec. 9.** *“Residential property” includes, without limitation, real*
24 *estate within a planned community. The term does not include*
25 *commercial property if no portion thereof contains property that is used*
26 *for residential purposes.*

27 **Sec. 10.** NRS 38.300 is hereby amended to read as follows:

28 38.300 As used in NRS 38.300 to 38.360, inclusive, unless the context
29 otherwise requires ~~it~~:

30 ~~1. “Assessments” means:~~

31 ~~—(a) Any charge which an association may impose against an owner of~~
32 ~~residential property pursuant to a declaration of covenants, conditions and~~
33 ~~restrictions, including any late charges, interest and costs of collecting the~~
34 ~~charges; and~~

35 ~~—(b) Any fines, fees and other charges which may be imposed by an~~
36 ~~association pursuant to paragraphs (j), (k) and (l) of subsection 1 of NRS~~
37 ~~116.3102.~~

38 ~~2. “Association” has the meaning ascribed to it in NRS 116.110315.~~

39 ~~3. “Civil action” includes an action for money damages or equitable~~
40 ~~relief. The term does not include an action in equity for injunctive relief in~~
41 ~~which there is an immediate threat of irreparable harm, or an action~~
42 ~~relating to the title to residential property.~~

1 ~~4. “Division” means the real estate division of the department of~~
2 ~~business and industry.~~

3 ~~5. “Residential property” includes, but is not limited to, real estate~~
4 ~~within a planned community subject to the provisions of chapter 116 of~~
5 ~~NRS. The term does not include commercial property if no portion thereof~~
6 ~~contains property which is used for residential purposes.],~~ *the words and*
7 *terms defined in sections 4 to 9, inclusive, of this act have the meanings*
8 *ascribed to them in those sections.*

9 **Sec. 11.** NRS 38.310 is hereby amended to read as follows:

10 38.310 1. No civil action based upon a claim relating to:

11 (a) The interpretation, application or enforcement of any covenants,
12 conditions or restrictions applicable to residential property or any bylaws,
13 rules or regulations adopted by an association; or

14 (b) The procedures used for increasing, decreasing or imposing
15 additional assessments upon residential property,
16 may be commenced in any court in this state unless the action has been
17 submitted to mediation or arbitration pursuant to the provisions of NRS
18 38.300 to 38.360, inclusive, and, if the civil action concerns real estate
19 within a ~~[planned community subject to the provisions of chapter 116 of~~
20 ~~NRS,]~~ *common-interest community*, all administrative procedures
21 specified in any covenants, conditions or restrictions applicable to the
22 property or in any bylaws, rules and regulations of an association have
23 been exhausted.

24 2. A court shall dismiss any civil action which is commenced in
25 violation of the provisions of subsection 1.

26 **Sec. 12.** Chapter 40 of NRS is hereby amended by adding thereto a
27 new section to read as follows:

28 *“Common-interest community” has the meaning ascribed to it in*
29 *section 7 of this act.*

30 **Sec. 13.** NRS 40.433 is hereby amended to read as follows:

31 40.433 As used in NRS 40.430 to 40.459, inclusive, unless the context
32 otherwise requires, a “mortgage or other lien” includes a deed of trust, but
33 does not include a lien which arises pursuant to chapter 108 of NRS,
34 pursuant to an assessment under chapter ~~[116,]~~ 117, 119A or 278A of NRS
35 or pursuant to a judgment or decree of any court of competent jurisdiction.

36 **Sec. 14.** NRS 40.600 is hereby amended to read as follows:

37 40.600 As used in NRS 40.600 to 40.695, inclusive, *and section 12 of*
38 *this act*, unless the context otherwise requires, the words and terms defined
39 in NRS 40.605 to 40.630, inclusive, *and section 12 of this act* have the
40 meanings ascribed to them in those sections.

41 **Sec. 15.** NRS 40.610 is hereby amended to read as follows:

42 40.610 “Claimant” means an owner of a residence or appurtenance or
43 a representative of a homeowner’s association that is responsible for a

1 residence or appurtenance and is acting within the scope of his duties *as a*
2 *representative of a common-interest community or* pursuant to chapter
3 ~~116 or~~ 117 of NRS.

4 **Sec. 16.** NRS 40.613 is hereby amended to read as follows:

5 40.613 “Complex matter” means a claim:

6 1. In which the claimant is a representative of a homeowner’s
7 association that is responsible for a residence or for an appurtenance and is
8 acting within the scope of his duties *as a representative of a*
9 *common-interest community or* pursuant to chapter ~~116 or~~ 117 of NRS;
10 or

11 2. That involves five or more separate residences at the time the action
12 is commenced or at any time during the subsequent action.

13 **Sec. 17.** NRS 78.150 is hereby amended to read as follows:

14 78.150 1. A corporation organized under the laws of this state shall,
15 on or before the first day of the second month after the filing of its articles
16 of incorporation with the secretary of state, file with the secretary of state a
17 list, on a form furnished by him, containing:

18 (a) The name of the corporation;

19 (b) The file number of the corporation, if known;

20 (c) The names and titles of all of its required officers and the names of
21 all of its directors;

22 (d) The mailing or street address, either residence or business, of each
23 officer and director listed, following the name of the officer or director;
24 and

25 (e) The signature of an officer of the corporation certifying that the list
26 is true, complete and accurate.

27 2. The corporation shall annually thereafter, on or before the last day
28 of the month in which the anniversary date of incorporation occurs in each
29 year, file with the secretary of state, on a form furnished by him, an
30 amended list containing all of the information required in subsection 1. If
31 the corporation has had no changes in its required officers and directors
32 since its previous list was filed, no amended list need be filed if an officer
33 of the corporation certifies to the secretary of state as a true and accurate
34 statement that no changes in the required officers or directors has occurred.

35 3. Upon filing a list of officers and directors, or certifying that no
36 changes have occurred, the corporation shall pay to the secretary of state a
37 fee of \$85.

38 4. The secretary of state shall, 60 days before the last day for filing the
39 annual list required by subsection 2, cause to be mailed to each corporation
40 which is required to comply with the provisions of NRS 78.150 to 78.185,
41 inclusive, and which has not become delinquent, a notice of the fee due
42 pursuant to subsection 3 and a reminder to file a list of officers and

1 directors or a certification of no change. Failure of any corporation to
2 receive a notice or form does not excuse it from the penalty imposed by
3 law.

4 5. If the list to be filed pursuant to the provisions of subsection 1 or 2
5 is defective in any respect or the fee required by subsection 3 ~~{or 7}~~ is not
6 paid, the secretary of state may return the list for correction or payment.

7 6. An annual list for a corporation not in default which is received by
8 the secretary of state more than 60 days before its due date shall be deemed
9 an amended list for the previous year.

10 ~~{7.—If the corporation is an association as defined in NRS 116.110315,~~
11 ~~the secretary of state shall not accept the filing required by this section~~
12 ~~unless it is accompanied by the fee required to be paid pursuant to NRS~~
13 ~~116.31155.}~~

14 **Sec. 18.** NRS 278.0135 is hereby amended to read as follows:

15 278.0135 “Common-interest community” has the meaning ascribed to
16 it in ~~{NRS 116.110323.}~~ **section 7 of this act.**

17 **Sec. 19.** NRS 278.373 is hereby amended to read as follows:

18 278.373 The certificates and acknowledgments required by NRS
19 ~~{116.2109 and}~~ 278.374 to 278.378, inclusive, must appear on a final map
20 and may be combined where appropriate.

21 **Sec. 20.** NRS 278.374 is hereby amended to read as follows:

22 278.374 1. ~~{Except as otherwise provided in subsection 2, a}~~ **A** final
23 map presented for filing must include a certificate signed and
24 acknowledged, in the manner provided in NRS 240.1665 or 240.167, by
25 each person who is an owner of the land:

26 (a) Consenting to the preparation and recordation of the final map.

27 (b) Offering for dedication that part of the land which the person wishes
28 to dedicate for public use, subject to any reservation contained therein.

29 (c) Reserving any parcel from dedication.

30 (d) Granting any permanent easement for utility installation or access,
31 as designated on the final map, together with a statement approving ~~{such}~~
32 **the** easement, signed by the public utility or person in whose favor the
33 easement is created or whose services are required.

34 2. ~~{If the map presented for filing is an amended map of a common-~~
35 ~~interest community, the certificate need only be signed and acknowledged~~
36 ~~by a person authorized to record the map under chapter 116 of NRS.~~
37 ~~—3.}~~ A final map of a common-interest community presented for

38 recording and, if required by local ordinance, a final map of any other
39 subdivision presented for recording must include:

40 (a) A report from a title company in which the title company certifies
41 that it has issued a guarantee for the benefit of the local government which
42 lists the names of:

43 (1) Each owner of record of the land to be divided; and

(2) Each holder of record of a security interest in the land to be divided, if the security interest was created by a mortgage or a deed of trust.

The guarantee accompanying a final map of a common-interest community must also show that there are no liens of record against the common-interest community or any part thereof for delinquent state, county, municipal, federal or local taxes or assessments collected as taxes or special assessments.

(b) The written consent of each holder of record of a security interest listed pursuant to subparagraph (2) of paragraph (a), to the preparation and recordation of the final map. A holder of record may consent by signing:

(1) The final map; or

(2) A separate document that is filed with the final map and declares his consent to the division of land.

~~[4.]~~ 3. For the purpose of this section the following shall be deemed not to be an interest in land:

(a) A lien for taxes or special assessments.

(b) A trust interest under a bond indenture.

~~[5.]~~ 4. As used in this section, "guarantee" means a guarantee of the type filed with the commissioner of insurance pursuant to paragraph (e) of subsection 1 of NRS 692A.120.

Sec. 21. Chapter 278A of NRS is hereby amended by adding thereto the provisions set forth as sections 22 to 36, inclusive, of this act.

Sec. 22. *"Association" has the meaning ascribed to it in section 5 of this act.*

Sec. 23. *"Common-interest community" has the meaning ascribed to it in section 7 of this act.*

Sec. 24. *"Condominium" means a common-interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common-interest community is not a condominium unless the undivided interests in the common elements are vested in the units' owners.*

Sec. 25. *"Cooperative" means a common-interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of his ownership in the association to exclusive possession of a unit.*

Sec. 26. *"Declarant" means a person or group of persons acting in concert who:*

1. As part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of; or

2. Reserves or succeeds to a special declarant's right.

1 **Sec. 27.** *“Leasehold common-interest community” means a*
2 *common-interest community in which all or a portion of the real estate is*
3 *subject to a lease the expiration or termination of which will terminate*
4 *the common-interest community or reduce its size.*

5 **Sec. 28.** *“Planned community” means a common-interest*
6 *community that is not a condominium or a cooperative. A condominium*
7 *or cooperative may be part of a planned community.*

8 **Sec. 29.** *“Unit’s owner” means a declarant or other person who*
9 *owns a unit, or a lessee of a unit in a leasehold common-interest*
10 *community whose lease expires simultaneously with a lease the*
11 *expiration or termination of which will remove the unit from the*
12 *common-interest community, but does not include a person having an*
13 *interest in a unit solely as security for an obligation. In a condominium*
14 *or planned community, the declarant is the owner of a unit created by the*
15 *declaration until that unit is conveyed to another person. In a*
16 *cooperative, the declarant is treated as the owner of a unit to which*
17 *allocated interests have been allocated until that unit has been conveyed*
18 *to another person.*

19 **Sec. 30. 1.** *The organization for the ownership and maintenance*
20 *of common open space has a lien on a unit for any assessment levied*
21 *against that unit or fines imposed against the unit’s owner from the time*
22 *the assessment or fine becomes due. Unless the declaration otherwise*
23 *provides, fees, charges, late charges, fines and interest charged for:*

24 (i) *The use, rental or operation of the common elements, other than*
25 *common elements that serve only one unit, even if located outside the*
26 *boundaries of that unit;*

27 (ii) *Services provided to the units’ owners;*

28 (iii) *Violation of the declaration, bylaws, rules and regulations of the*
29 *association after an opportunity to be heard; and*

30 (iv) *The preparation and recordation of amendments to the*
31 *declaration, the information required for resale of a unit or statements of*
32 *unpaid assessments;*

33 *are enforceable as assessments under this section. If an assessment is*
34 *payable in installments, the full amount of the assessment is a lien from*
35 *the time the first installment thereof becomes due.*

36 **2.** *A lien under this section is prior to all other liens and*
37 *encumbrances on a unit except:*

38 (i) *Liens and encumbrances recorded before the recordation of the*
39 *declaration and, in a cooperative, liens and encumbrances that the*
40 *organization for the ownership and maintenance of common open space*
41 *creates, assumes or takes subject to;*

42 (ii) *A first security interest on the unit recorded before the date on*
43 *which the assessment sought to be enforced became delinquent, or, in a*

1 cooperative, the first security interest encumbering only the unit's
2 owner's interest and perfected before the date on which the assessment
3 sought to be enforced became delinquent; and

4 (c) Liens for real estate taxes and other governmental assessments or
5 charges against the unit or cooperative.

6 The lien is also prior to all security interests described in paragraph (b)
7 to the extent of the assessments for common expenses based on the
8 periodic budget adopted by the association that would have become due
9 in the absence of acceleration during the 6 months immediately
10 preceding institution of an action to enforce the lien. This subsection
11 does not affect the priority of mechanics' or materialmen's liens, or the
12 priority of liens for other assessments made by the association.

13 3. Unless the declaration otherwise provides, if two or more
14 organizations for the ownership and maintenance of common open space
15 have liens for assessments created at any time on the same property,
16 those liens have equal priority.

17 4. Recording of the declaration constitutes record notice and
18 perfection of the lien. No further recordation of any claim of lien for
19 assessment under this section is required.

20 5. A lien for unpaid assessments is extinguished unless proceedings
21 to enforce the lien are instituted within 3 years after the full amount of
22 the assessments becomes due.

23 6. This section does not prohibit actions to recover sums for which
24 subsection 1 creates a lien or prohibit an organization for the ownership
25 and maintenance of common open space from taking a deed in lieu of
26 foreclosure.

27 7. A judgment or decree in any action brought under this section
28 must include costs and reasonable attorney's fees for the prevailing
29 party.

30 8. The organization for the ownership and maintenance of common
31 open space upon written request shall furnish to a unit's owner a
32 statement setting forth the amount of unpaid assessments against the
33 unit. If the interest of the unit's owner is real estate, the statement must
34 be in recordable form. The statement must be furnished within 10
35 business days after receipt of the request and is binding on the
36 organization for the ownership and maintenance of common open space,
37 the executive board and every unit's owner.

38 9. In a cooperative, upon nonpayment of an assessment on a unit,
39 the unit's owner may be evicted in the same manner as provided by law
40 in the case of an unlawful holdover by a commercial tenant, and the lien
41 may be foreclosed as provided by this section or by sections 31 to 36,
42 inclusive, of this act.

1 **10. In a cooperative where the owner's interest in a unit is personal**
2 **property, the association's lien may be foreclosed in like manner as a**
3 **security interest pursuant to NRS 104.9101 to 104.9507, inclusive.**

4 **Sec. 31. 1. Except as otherwise provided in subsection 4, in a**
5 **condominium, a cooperative where the declaration provides that the**
6 **interest of a unit's owner in a unit is real estate for all purposes, a**
7 **planned community or an organization for the ownership and**
8 **maintenance of common open space, the organization or association may**
9 **foreclose its lien by sale after:**

10 **(a) The organization or association has mailed by certified or**
11 **registered mail, return receipt requested, to the unit's owner or his**
12 **successor in interest, at his address if known, and at the address of the**
13 **unit, a notice of delinquent assessment that states the amount of the**
14 **assessments and other sums which are due in accordance with subsection**
15 **1 of section 30 of this act, a description of the unit against which the lien**
16 **is imposed, and the name of the record owner of the unit;**

17 **(b) The organization, association or other person conducting the sale**
18 **has executed and caused to be recorded, with the county recorder of the**
19 **county in which the common-interest community or any part of it is**
20 **situated, a notice of default and election to sell the unit to satisfy the lien,**
21 **that contains the same information as the notice of delinquent**
22 **assessment, but must also describe the deficiency in payment and the**
23 **name and address of the person authorized by the organization or**
24 **association to enforce the lien by sale; and**

25 **(c) The unit's owner or his successor in interest has failed to pay the**
26 **amount of the lien, including costs, fees and expenses incident to its**
27 **enforcement, for 60 days after the recording of the notice of default and**
28 **election to sell.**

29 **2. The notice of default and election to sell must be signed by the**
30 **person designated in the declaration or by the association for that**
31 **purpose, or if no one is designated, by the president of the organization**
32 **or association.**

33 **3. The period of 60 days begins on the first day following the later of:**

34 **(a) The day on which the notice of default is recorded; or**

35 **(b) The day on which a copy of the notice of default is mailed by**
36 **certified or registered mail, return receipt requested, to the unit's owner**
37 **or his successor in interest at his address if known, otherwise to the**
38 **address of the unit.**

39 **4. The organization or association may not foreclose a lien by sale**
40 **for the assessment of a fine for a violation of the declaration, bylaws,**
41 **rules or regulations of the organization or association, unless the**
42 **violation is of a type that threatens the health and welfare of the residents**
43 **of the common-interest community.**

1 **Sec. 32.** *The organization for the ownership and maintenance of*
2 *common open space or association or other person conducting the sale*
3 *shall also mail, within 10 days after the notice of default and election to*
4 *sell is recorded, a copy of the notice by first-class mail to:*

5 1. *Each person who has requested notice pursuant to NRS 107.090*
6 *or section 36 of this act;*

7 2. *A holder of a recorded security interest encumbering the interest*
8 *of the unit's owner who has notified the association, 30 days before the*
9 *recordation of the notice of default, of the existence of the security*
10 *interest; and*

11 3. *A purchaser of the unit, if the unit's owner has notified the*
12 *organization or association, 30 days before the recordation of the notice,*
13 *that the unit is the subject of a contract of sale and the organization or*
14 *association has been requested to furnish a certificate setting forth the*
15 *amount of the monthly assessment for common expenses and any unpaid*
16 *assessment of any kind currently due from the selling unit's owner.*

17 **Sec. 33.** *The organization for the ownership and maintenance of*
18 *common open space, association or other person conducting the sale*
19 *shall also, after the expiration of the 60 days and before selling the unit:*

20 1. *Give notice of the time and place of the sale in the manner and for*
21 *a time not less than that required by law for the sale of real property*
22 *upon execution, except that a copy of the notice of sale must be mailed,*
23 *on or before the date of first publication or posting, by certified or*
24 *registered mail, return receipt requested, to the unit's owner or his*
25 *successor in interest at his address if known, and to the address of the*
26 *unit.*

27 2. *Mail, on or before the date of first publication or posting, a copy*
28 *of the notice by first-class mail to:*

29 (a) *Each person entitled to receive a copy of the notice of default and*
30 *election to sell notice pursuant to section 32 of this act; and*

31 (b) *The holder of a recorded security interest or the purchaser of the*
32 *unit, if either of them has notified the organization or association, before*
33 *the mailing of the notice of sale, of the existence of the security interest,*
34 *lease or contract of sale, as applicable.*

35 **Sec. 34.** 1. *The sale must be conducted in the county in which the*
36 *organization for the ownership and maintenance of common open space*
37 *or part of it is situated, and may be conducted by the organization or*
38 *association, its agent or attorney, or a title insurance company or escrow*
39 *agent licensed to do business in this state, except that the sale may be*
40 *made at the office of the organization or association if the notice of the*
41 *sale so provided, whether the unit is located within the same county as*
42 *the office of the organization or association or not. The organization,*
43 *association or other person conducting the sale may from time to time*

1 *postpone the sale by advertisement of the postponement and notice as it*
2 *considers reasonable or, without further advertisement or notice, by*
3 *proclamation made to the persons assembled at the time and place*
4 *previously set and advertised for the sale.*

5 *2. On the day of sale originally advertised or to which the sale is*
6 *postponed, at the time and place specified in the notice or postponement,*
7 *the person conducting the sale may sell the unit at public auction to the*
8 *highest cash bidder. Unless otherwise provided in the declaration or by*
9 *agreement, the organization or association may purchase the unit and*
10 *hold, lease, mortgage or convey it. The organization or association may*
11 *purchase by a credit bid up to the amount of the unpaid assessments and*
12 *any permitted costs, fees and expenses incident to the enforcement of its*
13 *lien.*

14 *3. After the sale, the person conducting the sale shall make, execute*
15 *and, after payment is made, deliver to the purchaser, or his successor or*
16 *assign, a deed without warranty that conveys to the grantee all title of the*
17 *unit's owner to the unit, and shall apply the proceeds of the sale for the*
18 *following purposes in the following order:*

19 *(a) The reasonable expenses of sale;*

20 *(b) The reasonable expenses of securing possession before sale,*
21 *holding, maintaining, and preparing the unit for sale, including payment*
22 *of taxes and other governmental charges, premiums on hazard and*
23 *liability insurance, and, to the extent provided for by the declaration,*
24 *reasonable attorney's fees and other legal expenses incurred by the*
25 *association;*

26 *(c) Satisfaction of the organization or association's lien;*

27 *(d) Satisfaction in the order of priority of any subordinate claim of*
28 *record; and*

29 *(e) Remittance of any excess to the unit's owner.*

30 **Sec. 35. 1. The recitals in a deed made pursuant to section 34 of**
31 **this act of:**

32 *(a) Default, the mailing of the notice of delinquent assessment, and*
33 *the recording of the notice of default and election to sell;*

34 *(b) The elapsing of the 60 days; and*

35 *(c) The giving of notice of sale,*
36 *are conclusive proof of the matters recited.*

37 *2. A deed containing the recitals made pursuant to section 34 of this*
38 *act is conclusive against the unit's former owner, his heirs, successors*
39 *and assigns, and all other persons. The receipt for the purchase money*
40 *contained in such a deed is sufficient to discharge the purchaser from*
41 *obligation to see to the proper application of the purchase money.*

1 **3. The sale of a unit pursuant to sections 31, 32 and 34 of this act**
2 **vests in the purchaser the title of the unit's owner without equity or right**
3 **of redemption.**

4 **Sec. 36. 1. The provisions of NRS 107.090 apply to the foreclosure**
5 **of a lien of an organization or association as if a deed of trust were being**
6 **foreclosed. The request must identify the lien by stating the names of the**
7 **unit's owner and the organization for the ownership and maintenance of**
8 **common open space.**

9 **2. An organization or association may, after recording a notice of**
10 **default and election to sell, waive the default and withdraw the notice or**
11 **any proceeding to foreclose. The organization or association is thereupon**
12 **restored to its former position and has the same rights as though the**
13 **notice had not been recorded.**

14 **Sec. 37.** NRS 278A.030 is hereby amended to read as follows:

15 278A.030 As used in this chapter, unless the context otherwise
16 requires, the words and terms defined in NRS 278A.040 to 278A.070,
17 inclusive, **and sections 22 to 29, inclusive, of this act** have the meanings
18 ascribed to them in ~~{such}~~ **those** sections.

19 **Sec. 38.** NRS 278A.130 is hereby amended to read as follows:

20 278A.130 The ordinance must provide that the city or county may
21 accept the dedication of land or any interest therein for public use and
22 maintenance, but the ordinance must not require, as a condition of the
23 approval of a planned unit development, that land proposed to be set aside
24 for common open space be dedicated or made available to public use. If
25 any land is set aside for common open space, the planned unit
26 development must be organized as a common-interest community ~~{in one~~
27 ~~of the forms permitted by chapter 116 of NRS.}~~ **, a condominium, a**
28 **cooperative, a leasehold common-interest community or a planned**
29 **community.** The ordinance may require that the association for the
30 common-interest community may not be dissolved or dispose of any
31 common open space by sale or otherwise, without first offering to dedicate
32 the common open space to the city or county. That offer must be accepted
33 or rejected within 120 ~~{days.}~~ **days after the offer to dedicate the common**
34 **open space.**

35 **Sec. 39.** NRS 278A.170 is hereby amended to read as follows:

36 278A.170 The procedures for enforcing payment of an assessment for
37 the maintenance of common open space provided in ~~{NRS 116.3116 to~~
38 ~~116.31168,}~~ **sections 30 to 36, inclusive, of this act** are ~~{also}~~ available to
39 any organization for the ownership and maintenance of common open
40 space established other than under this chapter ~~{or chapter 116 of NRS}~~
41 and entitled to receive payments from owners of property for ~~{such}~~ **the**
42 maintenance under a recorded declaration of restrictions, deed restriction,
43 restrictive covenant or equitable servitude which provides that any

1 reasonable and ratable assessment thereon for the organization's costs of
2 maintaining the common open space constitutes a lien or encumbrance
3 upon the property.

4 **Sec. 40.** NRS 278A.570 is hereby amended to read as follows:

5 278A.570 1. A plan which has been given final approval by the city
6 or county, must be certified without delay by the city or county and filed of
7 record in the office of the appropriate county recorder before any
8 development occurs in accordance with that plan. A county recorder shall
9 not file for record any final plan unless it includes:

10 (a) A final map of the entire final plan or an identifiable phase of the
11 final plan if required by the provisions of NRS 278.010 to 278.630,

12 inclusive; **and**

13 (b) The ~~certifications required pursuant to NRS 116.2109; and~~
14 ~~—(c) The same~~ certificates of approval ~~[as are required under]~~ **required**
15 **pursuant to** NRS 278.377 or evidence that:

16 (1) The approvals were requested more than 30 days before the date
17 on which the request for filing is made; and

18 (2) The agency has not refused its approval.

19 2. Except as otherwise provided in this subsection, after the plan is
20 recorded, the zoning and subdivision regulations otherwise applicable to
21 the land included in the plan cease to apply. If the development is
22 completed in identifiable phases, then each phase can be recorded. The
23 zoning and subdivision regulations cease to apply after the recordation of
24 each phase to the extent necessary to allow development of that phase.

25 3. Pending completion of the planned unit development, or of the part
26 that has been finally approved, no modification of the provisions of the
27 plan, or any part finally approved, may be made, nor may it be impaired by
28 any act of the city or county except with the consent of the landowner.

29 4. The county recorder shall collect a fee of \$50, plus 50 cents per lot
30 or unit mapped, for the recording or filing of any final map, plat or plan.
31 The fee must be deposited in the general fund of the county where it is
32 collected.

33 **Sec. 41.** NRS 645.240 is hereby amended to read as follows:

34 645.240 1. The provisions of this chapter do not apply to, and the
35 terms "real estate broker" and "real estate salesman" do not include, any:

36 (a) Person who, as owner or lessor, performs any of the acts
37 ~~mentioned~~ **set forth** in NRS 645.030, 645.040, 645.230 and 645.260,
38 with reference to property owned or leased by them, or to the regular
39 employees thereof with respect to the property so owned or leased, where
40 those acts are performed in the regular course of or as an incident to the
41 management of ~~such~~ **the** property and the investment ~~therein~~ **in the**
42 **property**. For the purposes of this paragraph, "management" means
43 activities which tend to preserve or

1 increase the income from the property by preserving the physical
2 desirability of the property or maintaining high standards of service to
3 tenants. The term does not include sales activities.

4 (b) Employee of a real estate broker while engaged in the collection of
5 rent for or on behalf of the broker.

6 (c) Person while performing the duties of a property manager for a
7 property, if the person maintains an office on the property and does not
8 engage in property management with regard to any other property.

9 (d) Person while performing the duties of a property manager for ~~fa~~
10 ~~common-interest community governed by the provisions of chapter 116 of~~
11 ~~NRS,~~ a condominium project governed by the provisions of chapter 117
12 of NRS, a time share governed by the provisions of chapter 119A of NRS,
13 or a planned unit development governed by the provisions of chapter 278A
14 of NRS, if the person is a member in good standing of, and, if applicable,
15 holds a current certificate, registration or other similar form of recognition
16 from, a nationally recognized organization or association for persons
17 managing ~~[such]~~ **these** properties that has been approved by the real estate
18 division by regulation.

19 2. Except as otherwise provided in NRS 645.606 to 645.609, inclusive,
20 the provisions of this chapter do not apply to:

21 (a) Any bank, thrift company, credit union, trust company, savings and
22 loan association or any mortgage or farm loan association licensed under
23 the laws of this state or of the United States, with reference to property it
24 has acquired for development, for the convenient transaction of its
25 business, or as a result of foreclosure of property encumbered in good faith
26 as security for a loan or other obligation it has originated or holds.

27 (b) A corporation which, through its regular officers who receive no
28 special compensation for it, performs any of those acts with reference to
29 the property of the corporation.

30 (c) The services rendered by an attorney at law in the performance of
31 his duties as an attorney at law.

32 (d) A receiver, trustee in bankruptcy, administrator or executor, or any
33 other person doing any of the acts specified in NRS 645.030 under the
34 jurisdiction of any court.

35 (e) A trustee acting under a trust agreement, deed of trust or will, or the
36 regular salaried employees thereof.

37 (f) The purchase, sale or locating of mining claims or options thereon or
38 interests therein.

39 (g) The State of Nevada or a political subdivision thereof.

1 **Sec. 42.** NRS 645.633 is hereby amended to read as follows:

2 645.633 The commission may take action pursuant to NRS 645.630
3 against any person subject to that section who is guilty of:

4 1. Willfully using any trade name, service mark or insignie of
5 membership in any real estate organization of which the licensee is not a
6 member, without the legal right to do so.

7 2. Violating any order of the commission, any agreement with the
8 division, any of the provisions of this chapter, chapter ~~116,~~ 119, 119A,
9 119B, 645A or 645C of NRS or any regulation adopted thereunder.

10 3. Paying a commission, compensation or a finder's fee to any person
11 for performing the services of a broker, broker-salesman or salesman who
12 has not first secured his license pursuant to this chapter. This subsection
13 does not apply to payments to a broker who is licensed in his state of
14 residence.

15 4. A felony, or has entered a plea of guilty, guilty but mentally ill or
16 nolo contendere to a charge of felony or any crime involving fraud, deceit,
17 misrepresentation or moral turpitude.

18 5. Guaranteeing, or having authorized or permitted any person to
19 guarantee, future profits which may result from the resale of real property.

20 6. Failure to include a fixed date of expiration in any written brokerage
21 agreement or to leave a copy of the brokerage agreement with the client.

22 7. Accepting, giving or charging any undisclosed commission, rebate
23 or direct profit on expenditures made for a client.

24 8. Gross negligence or incompetence in performing any act for which
25 he is required to hold a license pursuant to this chapter, chapter 119, 119A
26 or 119B of NRS.

27 9. Any other conduct which constitutes deceitful, fraudulent or
28 dishonest dealing.

29 10. Any conduct which took place before his being licensed, which
30 was in fact unknown to the division and which would have been grounds
31 for denial of a license had the division been aware of the conduct.

32 11. Knowingly permitting any person whose license has been revoked
33 or suspended to act as a real estate broker, broker-salesman or salesman,
34 with or on behalf of the licensee.

35 Action may also be taken pursuant to NRS 645.630 against a person
36 subject to that section for the suspension or revocation of a real estate
37 broker's, broker-salesman's or salesman's license issued to him by any
38 other jurisdiction.

39 **Sec. 43.** NRS 116.1101, 116.1102, 116.1103, 116.11031,
40 116.110313, 116.110315, 116.110318, 116.11032, 116.110323,
41 116.110325, 116.110328, 116.11033, 116.110333, 116.110335,
42 116.110338, 116.11034, 116.110343, 116.110345, 116.110346,
43 116.110347, 116.110348, 116.11035, 116.110353, 116.110355,

1 116.110358, 116.11036, 116.110363, 116.110368, 116.110373,
2 116.110375, 116.110378, 116.11038, 116.110383, 116.110385,
3 116.110388, 116.11039, 116.110393, 116.1104, 116.1105, 116.1106,
4 116.1107, 116.1108, 116.1109, 116.1112, 116.1113, 116.1114, 116.1115,
5 116.1116, 116.1117, 116.1201, 116.1202, 116.1203, 116.1204, 116.1205,
6 116.1206, 116.1207, 116.1208, 116.2101, 116.2102, 116.2103, 116.2104,
7 116.2105, 116.2106, 116.2107, 116.2108, 116.2109, 116.211, 116.2111,
8 116.2112, 116.2113, 116.2114, 116.2115, 116.2116, 116.2117, 116.2118,
9 116.21183, 116.21185, 116.21188, 116.2119, 116.212, 116.2121,
10 116.2122, 116.3101, 116.3102, 116.3103, 116.31031, 116.31032,
11 116.31034, 116.31036, 116.31038, 116.3104, 116.31043, 116.31046,
12 116.3105, 116.3106, 116.31065, 116.3107, 116.3108, 116.31085,
13 116.3109, 116.311, 116.3111, 116.3112, 116.3113, 116.31133, 116.31135,
14 116.31138, 116.31139, 116.3114, 116.31145, 116.3115, 116.31155,
15 116.3116, 116.31162, 116.31163, 116.311635, 116.31164, 116.31166,
16 116.31168, 116.3117, 116.3118, 116.3119, 116.4101, 116.4102, 116.4103,
17 116.41035, 116.4104, 116.4105, 116.4106, 116.4107, 116.4108, 116.4109,
18 116.41095, 116.411, 116.4111, 116.4112, 116.4113, 116.4114, 116.4115,
19 116.4116, 116.4117, 116.4118, 116.4119, 116.412 and 119A.165 are
20 hereby repealed.
21 **Sec. 44.** This act becomes effective on July 1, 1999.

LEADLINES OF REPEALED SECTIONS

116.1101 Short title.
116.1102 Applicability.
116.1103 Definitions.
116.11031 “Affiliate of a declarant” defined.
116.110313 “Allocated interests” defined.
116.110315 “Association” and “unit-owners’ association” defined.
116.110318 “Common elements” defined.
116.11032 “Common expenses” defined.
116.110323 “Common-interest community” defined.
116.110325 “Condominium” defined.
116.110328 “Converted building” defined.
116.11033 “Cooperative” defined.
116.110333 “Dealer” defined.
116.110335 “Declarant” defined.
116.110338 “Declaration” defined.
116.11034 “Developmental rights” defined.
116.110343 “Dispose” and “disposition” defined.

- 116.110345 “Executive board” defined.
- 116.110346 “Financial statement” defined.
- 116.110347 “Governing documents” defined.
- 116.110348 “Identifying number” defined.
- 116.11035 “Leasehold common-interest community” defined.
- 116.110353 “Liability for common expenses” defined.
- 116.110355 “Limited common element” defined.
- 116.110358 “Master association” defined.
- 116.11036 “Offering” defined.
- 116.110363 “Person” defined.
- 116.110368 “Planned community” defined.
- 116.110373 “Proprietary lease” defined.
- 116.110375 “Purchaser” defined.
- 116.110378 “Real estate” defined.
- 116.11038 “Residential use” defined.
- 116.110383 “Security interest” defined.
- 116.110385 “Special declarant’s rights” defined.
- 116.110388 “Time share” defined.
- 116.11039 “Unit” defined.
- 116.110393 “Unit’s owner” defined.
- 116.1104 Variation by agreement.
- 116.1105 Separate titles and taxation.
- 116.1106 Applicability of local ordinances, regulations and building codes.
- 116.1107 Eminent domain.
- 116.1108 Supplemental general principles of law applicable.
- 116.1109 Construction against implicit repeal; uniformity of application and construction.
- 116.1112 Unconscionable agreement or term of contract.
- 116.1113 Obligation of good faith.
- 116.1114 Remedies to be liberally administered.
- 116.1115 Adjustment of dollar amounts.
- 116.1116 Ombudsman for owners in common-interest communities: Creation of office; appointment; qualifications; duties.
- 116.1117 Fund for the ombudsman for owners in common-interest communities: Creation; administration; sources; uses.
- 116.1201 Applicability to new common-interest communities.
- 116.1202 Exception for small cooperatives.
- 116.1203 Exception for small and limited expense liability planned communities.
- 116.1204 Applicability to certain preexisting common-interest communities.

116.1205 Exception for small preexisting cooperatives and planned communities.

116.1206 Amendments to governing instruments.

116.1207 Applicability to nonresidential planned communities.

116.1208 Applicability to out-of-state common-interest communities.

116.2101 Creation of common-interest communities.

116.2102 Unit boundaries.

116.2103 Construction and validity of declaration and bylaws.

116.2104 Description of units.

116.2105 Contents of declaration.

116.2106 Leasehold common-interest communities.

116.2107 Allocation of allocated interests.

116.2108 Limited common elements.

116.2109 Plats and plans.

116.211 Exercise of developmental rights.

116.2111 Alterations of units.

116.2112 Relocation of boundaries between adjoining units.

116.2113 Subdivision of units.

116.2114 Monuments as boundaries.

116.2115 Use for purposes of sales.

116.2116 Easement rights.

116.2117 Amendment of declaration.

116.2118 Termination of common-interest community.

116.21183 Rights of creditors following termination.

116.21185 Respective interests of units' owners following termination.

116.21188 Effect of foreclosure or enforcement of lien or encumbrance.

116.2119 Rights of secured lenders.

116.212 Master associations.

116.2121 Merger or consolidation of common-interest communities.

116.2122 Addition of unspecified real estate.

116.3101 Organization of unit-owners' association.

116.3102 Powers of unit-owners' association.

116.3103 Officers and members of executive board.

116.31031 Power of executive board to impose sanctions for violations of governing documents.

116.31032 Period of declarant's control of association; representation of units' owners on executive board.

116.31034 Control of executive board by units' owners; authority to serve on executive board; certification by member of executive board of knowledge of contents of governing documents and provisions of chapter.

116.31036 Removal of member of executive board; indemnification and defense of member of executive board.

116.31038 Delivery to association of property held or controlled by declarant.

116.3104 Transfer of special declarant's right.

116.31043 Liabilities and obligations of person who succeeds to special declarant's rights.

116.31046 Successor not subject to certain claims against or other obligations of transferor of special declarant's right.

116.3105 Termination of contracts and leases of declarant.

116.3106 Bylaws.

116.31065 Rules.

116.3107 Upkeep of common-interest community.

116.3108 Frequency of meetings; notice of meetings; contents of agenda for meetings; dissemination of schedule of fines imposed for violation of bylaws or other rules; availability of minutes of meetings.

116.31085 Right of units' owners to speak at meetings; executive sessions.

116.3109 Quorum.

116.311 Voting; proxies.

116.3111 Tort and contract liability.

116.3112 Conveyance or encumbrance of common elements.

116.3113 Insurance: General requirements.

116.31133 Insurance: Policies; use of proceeds; certificates or memoranda of insurance.

116.31135 Insurance: Repair or replacement of damaged or destroyed portion of community.

116.31138 Insurance: Variance or waiver of provisions in community restricted to nonresidential use.

116.31139 Property management for common-interest community: Requirements; regulations; exceptions.

116.3114 Surplus funds.

116.31145 Prohibition against application of assessment, fee or other charge paid by unit's owner toward fine imposed against unit's owner.

116.3115 Assessments for common expenses; notice of meeting required if assessment for capital improvement or commencement of certain civil actions are to be considered; requirements for commencement of certain civil actions by association.

- 116.31155 Fees imposed on certain associations for deposit in fund for the ombudsman for owners in common-interest communities.
- 116.3116 Lien for assessments.
- 116.31162 Foreclosure of lien in condominium, cooperative in which unit is real estate, or planned community.
- 116.31163 Mailing of notice of default and election to sell.
- 116.311635 Notice of time and place of sale.
- 116.31164 Sale upon foreclosure of lien.
- 116.31166 Recitals in deed; title of purchaser.
- 116.31168 Requests for notice of default and sale.
- 116.3117 Other liens.
- 116.3118 Association's records.
- 116.3119 Association as trustee.
- 116.4101 Applicability; exceptions.
- 116.4102 Liability for preparation and delivery of public offering statement.
- 116.4103 Public offering statement: General provisions.
- 116.41035 Public offering statement: Limitations for certain small offerings.
- 116.4104 Public offering statement: Common-interest communities subject to developmental rights.
- 116.4105 Public offering statement: Time shares.
- 116.4106 Public offering statement: Common-interest community containing converted building.
- 116.4107 Public offering statement: Common-interest community registered with Securities and Exchange Commission or State of Nevada.
- 116.4108 Purchaser's right to cancel.
- 116.4109 Resales of units.
- 116.41095 Required form of information statement.
- 116.411 Escrow of deposits; furnishing of bond in lieu of deposit.
- 116.4111 Release of liens.
- 116.4112 Converted buildings.
- 116.4113 Express warranties of quality.
- 116.4114 Implied warranties of quality.
- 116.4115 Exclusion or modification of warranties of quality.
- 116.4116 Statute of limitations for warranties.
- 116.4117 Effect of violations on rights of action; civil action for damages for failure or refusal to comply with provisions of chapter or governing documents; attorney's fees.
- 116.4118 Labeling of promotional material.
- 116.4119 Declarant's obligation to complete and restore.

116.412 Substantial completion of units.

119A.165 Applicability of chapter to matter also governed by chapter 116 of NRS.

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