

SENATE BILL NO. 192—SENATOR RAWSON

FEBRUARY 15, 1999

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Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning common-interest communities. (BDR 10-70)

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 ~~{omitted material}~~ is material to be omitted.

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AN ACT relating to common-interest communities; limiting the number of terms that an officer of a unit-owners' association or a member of the executive board of an association may serve; providing for rules of procedure at a meeting of an association; providing for the approval of the valuation of units under certain circumstances; providing for voting at a meeting of an association only in person; providing for the passage of budgets of an association and assessments for capital improvements by a two-thirds vote; and providing other matters properly relating thereto.

- 1   WHEREAS, A unit-owners' association is the form of self-government
- 2   closest to the people; and
- 3   WHEREAS, All forms of government should follow the basic principles
- 4   of democracy found in the United States Constitution and the Nevada
- 5   Constitution; and
- 6   WHEREAS, Adequate notice of meetings is necessary to ensure
- 7   participation in government; and
- 8   WHEREAS, Open meetings help to prevent violations of democratic
- 9   principles; and
- 10   WHEREAS, The principle of one vote for each person is central to
- 11   democratic ideology; and
- 12   WHEREAS, Allowing voting by proxy contravenes the principle of one
- 13   vote for each person; now, therefore,

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

3  
4 **Section 1.** Chapter 116 of NRS is hereby amended by adding thereto  
5 the provisions set forth as sections 2 and 3 of this act.

6 **Sec. 2. *Notwithstanding any provision of the declaration or bylaws***  
7 ***to the contrary:***

8 ***1. An officer of the association or member of the executive board***  
9 ***shall serve for a term not to exceed 2 years.***

10 ***2. An officer of the association or member of the executive board***  
11 ***shall serve not more than 2 terms consecutively.***

12 ***3. The time served in filling a partial term created by a vacancy must***  
13 ***not be included in computing the number of terms served consecutively.***

14 **Sec. 3. *Notwithstanding any provision of the declaration or bylaws***  
15 ***to the contrary:***

16 ***1. Each meeting of an association must be conducted in accordance***  
17 ***with the provisions of chapter 241 of NRS.***

18 ***2. The proceedings at any meeting of an association must be***  
19 ***governed by Roberts Rules of Order.***

20 **Sec. 4.** NRS 116.11031 is hereby amended to read as follows:

21 116.11031 1. "Affiliate of a declarant" means any person who  
22 controls, is controlled by or is under common control with a declarant.

23 2. A person "controls" a declarant if the person:

24 (a) Is a general partner, officer, director or employer of the declarant;

25 (b) Directly or indirectly or acting in concert with one or more other  
26 persons, or through one or more subsidiaries, owns, controls ~~or~~ **or** holds  
27 with power to vote ~~or holds proxies representing,~~ more than 20 percent of  
28 the voting interest in the declarant;

29 (c) Controls in any manner the election of a majority of the directors of  
30 the declarant; or

31 (d) Has contributed more than 20 percent of the capital of the declarant.

32 3. A person "is controlled by" a declarant if the declarant:

33 (a) Is a general partner, officer, director or employer of the person;

34 (b) Directly or indirectly or acting in concert with one or more other  
35 persons, or through one or more subsidiaries, owns, controls ~~or~~ **or** holds  
36 with power to vote ~~or holds proxies representing,~~ more than 20 percent of  
37 the voting interest in the person;

38 (c) Controls in any manner the election of a majority of the directors of  
39 the person; or

40 (d) Has contributed more than 20 percent of the capital of the person.

41 4. Control does not exist if the powers described in this section are  
42 held solely as security for an obligation and are not exercised.

1     **Sec. 5.** NRS 116.110385 is hereby amended to read as follows:

2     116.110385 “Special declarant’s rights” means rights reserved for the  
3 benefit of a declarant to:

4     1. Complete improvements indicated on plats and plans or in the  
5 declaration (NRS 116.2109) or, in a cooperative, to complete  
6 improvements described in the public offering statement pursuant to  
7 subsection 2 of NRS 116.4103;

8     2. Exercise any developmental right (NRS 116.211);

9     3. Maintain sales offices, management offices, signs advertising the  
10 common-interest community and models (NRS 116.2115);

11     4. Use easements through the common elements for the purpose of  
12 making improvements within the common-interest community or within  
13 real estate which may be added to the common-interest community (NRS  
14 116.2116);

15     5. Make the common-interest community subject to a master  
16 association (NRS 116.212); **or**

17     6. Merge or consolidate a common-interest community with another  
18 common-interest community of the same form of ownership (NRS  
19 116.2121). ~~†-or~~

20 ~~—7. Appoint or remove any officer of the association or any master~~  
21 ~~association or any member of an executive board during any period of~~  
22 ~~declarant’s control (subsection 4 of NRS 116.3103).]~~

23     **Sec. 6.** NRS 116.21185 is hereby amended to read as follows:

24     116.21185 The respective interests of units’ owners referred to in  
25 subsections 5, 6 and 7 of NRS 116.2118 and in NRS 116.21183 are as  
26 follows:

27     1. Except as otherwise provided in subsection 2, the respective  
28 interests of units’ owners are the fair market values of their units, allocated  
29 interests, and any limited common elements immediately before the  
30 termination, as determined by one or more independent appraisers selected  
31 by the association. The decision of the independent appraisers must be  
32 distributed to the units’ owners and becomes final ~~{unless disapproved}~~ **if**  
33 **approved** within 30 days after distribution by units’ owners to whom ~~{25}~~  
34 **75** percent of the votes in the association are allocated. The proportion of  
35 interest of any unit’s owner to that of all units’ owners is determined by  
36 dividing the fair market value of that unit and its allocated interests by the  
37 total fair market values of all the units and their allocated interests.

38     2. If any unit or any limited common element is destroyed to the extent  
39 that an appraisal of the fair market value ~~{thereto}~~ **of the unit or limited**  
40 **common element** before destruction cannot be made, the interests of all  
41 units’ owners are:

42     (a) In a condominium, their respective interests in the common elements  
43 immediately before the termination;

1 (b) In a cooperative, their respective ownerships immediately before the  
2 termination; and

3 (c) In a planned community, their respective liabilities for common  
4 expenses immediately before the termination.

5 **Sec. 7.** NRS 116.3103 is hereby amended to read as follows:

6 116.3103 1. Except as otherwise provided in the declaration, the  
7 bylaws, this section or other provisions of this chapter, the executive board  
8 may act in all instances on behalf of the association. In the performance of  
9 their duties, the officers and members of the executive board are fiduciaries  
10 and are subject to the insulation from liability provided for directors of  
11 corporations by the laws of this state. The members of the executive board  
12 are required to exercise the ordinary and reasonable care of directors of a  
13 corporation, subject to the business-judgment rule.

14 2. The executive board may not act on behalf of the association to  
15 amend the declaration (NRS 116.2117), to terminate the common-interest  
16 community (NRS 116.2118), ~~for~~ to elect members of the executive board  
17 or determine their qualifications, powers and duties or terms of office  
18 (subsection 1 of NRS 116.31034) ~~or~~ **or to make assessments for common**  
19 **expenses**, but the executive board may fill vacancies in its membership for  
20 the unexpired portion of any term.

21 3. Within 30 days after adoption of any proposed budget for the  
22 common-interest community, the executive board shall provide a summary  
23 of the budget to all the units' owners, and shall set a date for a meeting of  
24 the units' owners to consider ratification of the budget not less than 14 nor  
25 more than 30 days after mailing of the summary. ~~Unless at that meeting a~~  
26 ~~majority of all units' owners or any larger vote specified in the declaration~~  
27 ~~reject the budget, the budget is ratified, whether or not~~ **The units' owners**  
28 **must ratify the budget by at least a two-thirds vote of all persons present**  
29 **and entitled to vote at any meeting of the units' owners at which a**  
30 **quorum is present. If the proposed budget is ~~rejected,~~ not ratified,** the  
31 periodic budget last ratified by the units' owners must be continued until  
32 such time as the units' owners ratify a subsequent budget proposed by the  
33 executive board.

34 **Sec. 8.** NRS 116.3106 is hereby amended to read as follows:

35 116.3106 1. The bylaws of the association must provide:

36 (a) The number of members of the executive board and the titles of the  
37 officers of the association;

38 (b) For election by the executive board of a president, treasurer,  
39 secretary and any other officers of the association the bylaws specify;

40 (c) ~~The~~ **Except as otherwise provided in section 2 of this act, the**  
41 **qualifications, powers and duties, terms of office and manner of electing**  
42 **and removing officers of the association and members of the executive**  
43 **board and filling vacancies;**

1 (d) Which, if any, of its powers the executive board or officers may  
2 delegate to other persons or to a managing agent;

3 (e) Which of its officers may prepare, execute, certify and record  
4 amendments to the declaration on behalf of the association; **and**

5 (f) ~~Procedural rules for conducting meetings of the association; and~~

6 ~~(g)~~ A method for amending the bylaws.

7 2. Except as otherwise provided in the declaration, the bylaws may  
8 provide for any other matters the association deems necessary and  
9 appropriate.

10 3. The bylaws must be written in plain English.

11 **Sec. 9.** NRS 116.3109 is hereby amended to read as follows:

12 116.3109 1. Unless the bylaws provide otherwise, a quorum is  
13 present throughout any meeting of the association if persons entitled to cast  
14 20 percent of the votes that may be cast for election of the executive board  
15 are present in person ~~for by proxy~~ at the beginning of the meeting.

16 2. Unless the bylaws specify a larger percentage, a quorum is deemed  
17 present throughout any meeting of the executive board if persons entitled to  
18 cast 50 percent of the votes on that board are present at the beginning of the  
19 meeting.

20 **Sec. 10.** NRS 116.311 is hereby amended to read as follows:

21 116.311 1. If only one of several owners of a unit is present at a  
22 meeting of the association, that owner is entitled to cast all the votes  
23 allocated to that unit. If more than one of the owners are present, the votes  
24 allocated to that unit may be cast only in accordance with the agreement of  
25 a majority in interest of the owners, unless the declaration expressly  
26 provides otherwise. There is majority agreement if any one of the owners  
27 cast the votes allocated to that unit without protest made promptly to the  
28 person presiding over the meeting by any of the other owners of the unit.

29 2. ~~[Votes allocated to a unit may be cast pursuant to a proxy executed~~  
30 ~~by a unit's owner. If a unit is owned by more than one person, each owner~~  
31 ~~of the unit may vote or register protest to the casting of votes by the other~~  
32 ~~owners of the unit through an executed proxy. A unit's owner may revoke a~~  
33 ~~proxy given pursuant to this section only by actual notice of revocation to~~  
34 ~~the person presiding over a meeting of the association. A proxy is void if it~~  
35 ~~is not dated or purports to be revocable without notice. A proxy terminates~~  
36 ~~one year after its date, unless it specifies a shorter term.~~

37 ~~—3.1~~ If the declaration requires that votes on specified matters affecting  
38 the common-interest community be cast by lessees rather than units'  
39 owners of leased units:

40 (a) The provisions of ~~[subsections 1 and 2]~~ **subsection 1** apply to lessees  
41 as if they were units' owners;

42 (b) Units' owners who have leased their units to other persons may not  
43 cast votes on those specified matters; and

(c) Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were units' owners. Units' owners must also be given notice, in the manner provided in NRS 116.3108, of all meetings at which lessees are entitled to vote.

~~[4.]~~ 3. No votes allocated to a unit owned by the association may be cast.

**Sec. 11.** NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association. Except for an association for a time-share project governed by the provisions of chapter 119A of NRS, and unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and the money for the reserve required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4, 5 and 6:

(a) All common expenses, including a reserve, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish a reserve for the repair and replacement of the major components of the common elements. The reserve may be used only for common expenses that involve major repairs or replacement, including, without limitation, repairing and replacing roofs, roads and sidewalks, and must not be used for daily maintenance.

3. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

4. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgment against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

1 7. If liabilities for common expenses are reallocated, assessments for  
2 common expenses and any installment thereof not yet due must be  
3 recalculated in accordance with the reallocated liabilities.

4 8. The association shall provide written notice to the owner of each  
5 unit of a meeting at which an assessment for a capital improvement ~~for the~~  
6 ~~commencement of a civil action~~ is to be considered or action is to be taken  
7 on such an assessment at least 21 calendar days before the meeting. **The**  
8 **association may take action on such an assessment only if:**

9 (a) **A quorum is present; and**

10 (b) **The units' owners who are present and entitled to vote agree to the**  
11 **assessment by a two-thirds vote.**

12 9. **The association shall provide written notice to each unit's owner**  
13 **of a meeting at which the commencement of a civil action is to be**  
14 **considered or action is to be taken on such a civil action at least 21**  
15 **calendar days before the meeting.** Except as otherwise provided in this  
16 subsection, the association may commence a civil action only ~~upon a vote~~  
17 ~~or agreement of the owners of units to which at least a majority of the votes~~  
18 ~~of the members of the association are allocated.~~ **if a quorum is present**  
19 **and the units' owners who are present and entitled to vote agree to**  
20 **commence the civil action by a majority of the votes.** The provisions of  
21 this subsection do not apply to a civil action that is commenced:

22 (a) By an association for a time-share project governed by the  
23 provisions of chapter 119A of NRS;

24 (b) To enforce the payment of an assessment;

25 (c) To enforce the declaration, bylaws or rules of the association;

26 (d) To proceed with a counterclaim; or

27 (e) To protect the health, safety and welfare of the members of the  
28 association.