

SENATE BILL NO. 192—SENATOR RAWSON

FEBRUARY 15, 1999

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.

AN ACT relating to common-interest communities; enacting various provisions governing certain rights of an association with respect to certain property located within common-interest communities; enacting provisions governing the election, terms of office and qualifications of members of the executive board and officers of an association; providing for rules of procedure at a meeting of an association; making various other changes concerning common-interest communities; 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.** Chapter 116 of NRS is hereby amended by adding thereto  
2 the provisions set forth as sections 2, 3 and 4 of this act.  
3   **Sec. 2.** *Notwithstanding any provision of the governing documents*  
4 *to the contrary, in a planned community, an association may not:*  
5    1. *With respect to property located within the planned community*  
6 *that is not a unit:*  
7    (a) *Prohibit or otherwise object to any residential use of the property*  
8 *unless such use violates any applicable zoning regulations or restrictions.*  
9    (b) *Adopt any restrictions on the residential use of the property that*  
10 *are inconsistent with any applicable zoning regulations or restrictions.*  
11    (c) *Prohibit pedestrian or vehicular ingress or egress to the property.*  
12 *This paragraph does not prohibit an association from charging the*  
13 *owner of the property a reasonable and nondiscriminatory fee for the*  
14 *purpose of operating and maintaining a gate or other similar device*  
15 *designed to control access to the community that would otherwise impede*  
16 *ingress or egress to the property.*

1     **2. Construct a maintenance facility at a location that is not**  
2 **consistent with the master plan for the community unless the association**  
3 **obtains the written consent of all units' owners whose property is located**  
4 **within 500 feet of the proposed facility. Notwithstanding any provision of**  
5 **law, a governmental entity shall not issue any permit for the construction**  
6 **of a maintenance facility described in this subsection unless the**  
7 **governmental entity first receives written evidence of compliance with**  
8 **this subsection.**

9     **Sec. 3. Notwithstanding any provision of the governing documents**  
10 **to the contrary:**

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

13     **2. An officer of the association or a member of the executive board**  
14 **may be elected to succeed himself.**

15     **Sec. 4. Notwithstanding any provision of the governing documents**  
16 **to the contrary:**

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

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

21     **Sec. 5.** NRS 116.11038 is hereby amended to read as follows:

22     116.11038 "Residential use" means use as a dwelling or for personal,  
23 family or household purposes by ordinary customers, whether rented to  
24 particular persons or not. Such uses include marina boat slips, **piers**, stable  
25 or agricultural stalls or pens, campground spaces or plots, parking spaces or  
26 garage spaces, storage spaces or lockers and garden plots for individual  
27 use, but do not include spaces or units primarily used to derive commercial  
28 income from, or provide service to, the public.

29     **Sec. 6.** NRS 116.2116 is hereby amended to read as follows:

30     116.2116 1. Subject to the provisions of the declaration, a declarant  
31 has an easement through the common elements as may be reasonably  
32 necessary to discharge the declarant's obligations or exercise special  
33 declarant's rights, whether arising under this chapter or reserved in the  
34 declaration.

35     2. In a planned community, subject to the provisions of paragraph (f)  
36 of subsection 1 of NRS 116.3102 and NRS 116.3112, the units' owners  
37 have an easement:

38     (a) In the common elements for purposes of access to their units; and

39     (b) To use the common elements and all real estate that must become  
40 common elements (paragraph (f) of subsection 1 of NRS 116.2105) for all  
41 other purposes.

42     **3. Within the Lake Tahoe Watershed, unless the terms of an**  
43 **easement in favor of an association specifically prohibit the construction**

1 *of a pier, dock or other similar recreational facility, if the owner of the*  
2 *servient estate has obtained a permit pursuant to NRS 445A.170 for the*  
3 *construction of a pier, dock or other similar recreational facility, the*  
4 *owner may construct a pier, dock or other similar recreational facility*  
5 *without obtaining any other approval. As used in this subsection, "Lake*  
6 *Tahoe Watershed" means all of that area draining in the Lake Tahoe*  
7 *Basin and Lake Tahoe in Nevada.*

8 **Sec. 7.** NRS 116.21185 is hereby amended to read as follows:

9 116.21185 The respective interests of units' owners referred to in  
10 subsections 5, 6 and 7 of NRS 116.2118 and in NRS 116.21183 are as  
11 follows:

12 1. Except as otherwise provided in subsection 2, the respective  
13 interests of units' owners are the fair market values of their units, allocated  
14 interests, and any limited common elements immediately before the  
15 termination, as determined by one or more independent appraisers selected  
16 by the association. The decision of the independent appraisers must be  
17 distributed to the units' owners and becomes final ~~unless disapproved~~ *if*  
18 *approved* within 30 days after distribution by units' owners to whom ~~{25}~~  
19 *75* percent of the votes in the association are allocated. The proportion of  
20 interest of any unit's owner to that of all units' owners is determined by  
21 dividing the fair market value of that unit and its allocated interests by the  
22 total fair market values of all the units and their allocated interests.

23 2. If any unit or any limited common element is destroyed to the extent  
24 that an appraisal of the fair market value ~~thereto~~ *of the unit or limited*  
25 *common element* before destruction cannot be made, the interests of all  
26 units' owners are:

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

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

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

33 **Sec. 8.** NRS 116.3103 is hereby amended to read as follows:

34 116.3103 1. Except as otherwise provided in the declaration, the  
35 bylaws, this section or other provisions of this chapter, the executive board  
36 may act in all instances on behalf of the association. In the performance of  
37 their duties, the officers and members of the executive board are fiduciaries  
38 and are subject to the insulation from liability provided for directors of  
39 corporations by the laws of this state. The members of the executive board  
40 are required to exercise the ordinary and reasonable care of directors of a  
41 corporation, subject to the business-judgment rule.

42 2. The executive board may not act on behalf of the association to  
43 amend the declaration (NRS 116.2117), to terminate the common-interest

1 community (NRS 116.2118), ~~for~~ to elect members of the executive board  
2 or determine their qualifications, powers and duties or terms of office  
3 (subsection 1 of NRS 116.31034) ~~or~~ **or to make assessments for common**  
4 **expenses**, but the executive board may fill vacancies in its membership for  
5 the unexpired portion of any term.

6 3. Within 30 days after adoption of any proposed budget for the  
7 common-interest community, the executive board shall provide a summary  
8 of the budget to all the units' owners, and shall set a date for a meeting of  
9 the units' owners to consider ratification of the budget not less than 14 nor  
10 more than 30 days after mailing of the summary. ~~Unless at that meeting a~~  
11 ~~majority of all units' owners or any larger vote specified in the declaration~~  
12 ~~reject the budget, the budget is ratified, whether or not~~ **The units' owners**  
13 **must ratify the budget by at least a two-thirds vote of all persons present**  
14 **and entitled to vote at any meeting of the units' owners at which a**  
15 quorum is present. If the proposed budget is ~~rejected,~~ **not ratified**, the  
16 periodic budget last ratified by the units' owners must be continued until  
17 such time as the units' owners ratify a subsequent budget proposed by the  
18 executive board.

19 **Sec. 9.** NRS 116.31034 is hereby amended to read as follows:

20 116.31034 1. Except as otherwise provided in subsection 5 of NRS  
21 116.212, not later than the termination of any period of declarant's control,  
22 the units' owners shall elect an executive board of at least three members,  
23 at least a majority of whom must be units' owners. The executive board  
24 shall elect the officers. The members and officers of the executive board  
25 shall take office upon election. **Notwithstanding any provision of the**  
26 **governing documents to the contrary, for the election of members and**  
27 **officers of the executive board:**

28 **(a) Votes may not be cast by proxy; and**

29 **(b) Units' owners must be allowed to cast votes by absent ballot.**

30 2. An officer, employee, agent or director of a corporate owner of a  
31 unit, a trustee or designated beneficiary of a trust that owns a unit, a partner  
32 of a partnership that owns a unit, and a fiduciary of an estate that owns a  
33 unit may be an officer or member of the executive board. In all events  
34 where the person serving or offering to serve as an officer or member of the  
35 executive board is not the record owner, he shall file proof of authority in  
36 the records of the association.

37 3. Each member of the executive board shall, at the time of his  
38 appointment or election, certify in writing that he has ~~read~~ :

39 **(a) Resided within the common-interest community or this state for a**  
40 **period of not less than 270 days during the previous year.**

41 **(b) Read** and understands the governing documents of the association  
42 and the provisions of this chapter.

1     **4. On the anniversary date of the certification made pursuant to**  
2 **paragraph (a) of subsection 3, a member of the executive board shall**  
3 **certify in writing that he has resided within the common-interest**  
4 **community or this state for a period of not less than 270 days during the**  
5 **previous year.**

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

7     116.311 1. If only one of several owners of a unit is present at a  
8 meeting of the association, that owner is entitled to cast all the votes  
9 allocated to that unit. If more than one of the owners are present, the votes  
10 allocated to that unit may be cast only in accordance with the agreement of  
11 a majority in interest of the owners, unless the declaration expressly  
12 provides otherwise. There is majority agreement if any one of the owners  
13 cast the votes allocated to that unit without protest made promptly to the  
14 person presiding over the meeting by any of the other owners of the unit.

15 2. ~~{Votes}~~ **Except as otherwise provided in paragraph (a) of**  
16 **subsection 1 of NRS 116.31034, votes** allocated to a unit may be cast  
17 pursuant to a proxy executed by a unit's owner. If a unit is owned by more  
18 than one person, each owner of the unit may vote or register protest to the  
19 casting of votes by the other owners of the unit through an executed proxy.  
20 A unit's owner may revoke a proxy given pursuant to this section only by  
21 actual notice of revocation to the person presiding over a meeting of the  
22 association. A proxy is void if it is not dated or purports to be revocable  
23 without notice. A proxy terminates one year after its date, unless it specifies  
24 a shorter term.

25 3. If the declaration requires that votes on specified matters affecting  
26 the common-interest community be cast by lessees rather than units'  
27 owners of leased units:

28 (a) The provisions of subsections 1 and 2 apply to lessees as if they were  
29 units' owners;

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

32 (c) Lessees are entitled to notice of meetings, access to records, and  
33 other rights respecting those matters as if they were units' owners.  
34 Units' owners must also be given notice, in the manner provided in NRS  
35 116.3108, of all meetings at which lessees are entitled to vote.

36 4. No votes allocated to a unit owned by the association may be cast.

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

38 116.3115 1. Until the association makes an assessment for common  
39 expenses, the declarant shall pay all common expenses. After an assessment  
40 has been made by the association, assessments must be made at least  
41 annually, based on a budget adopted at least annually by the association.  
42 Except for an association for a time-share project governed by the  
43 provisions of chapter 119A of NRS, and unless the declaration imposes

1 more stringent standards, the budget must include a budget for the daily  
2 operation of the association and the money for the reserve required by  
3 paragraph (b) of subsection 2.

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

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

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

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

16 4. To the extent required by the declaration:

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

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

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

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

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

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

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

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

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

1     **9. The association shall provide written notice to each unit's owner**  
2 **of a meeting at which the commencement of a civil action is to be**  
3 **considered or action is to be taken on such a civil action at least 21**  
4 **calendar days before the meeting.** Except as otherwise provided in this  
5 subsection, the association may commence a civil action only ~~upon a vote~~  
6 ~~or agreement of the owners of units to which at least a majority of the votes~~  
7 ~~of the members of the association are allocated.~~ **if a quorum is present**  
8 **and the units' owners who are present and entitled to vote agree to**  
9 **commence the civil action by a majority of the votes.** The provisions of  
10 this subsection do not apply to a civil action that is commenced:  
11     (a) By an association for a time-share project governed by the  
12 provisions of chapter 119A of NRS;  
13     (b) To enforce the payment of an assessment;  
14     (c) To enforce the declaration, bylaws or rules of the association;  
15     (d) To proceed with a counterclaim; or  
16     (e) To protect the health, safety and welfare of the members of the  
17 association.

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