

Senate Bill No. 136—Senators Hardy, O’Connell, Cegavske, Townsend, Amodei, Care, Coffin, McGinness, Nolan, Schneider, Shaffer, Tiffany and Titus

CHAPTER.....

AN ACT relating to property; making various changes relating to common-interest communities; authorizing a unit-owners’ association to impose construction penalties under certain circumstances and to place and foreclose a lien on a unit for failure to pay such penalties; revising provisions governing the imposition of certain fines by a unit-owners’ association; establishing certain procedural requirements for the imposition of certain fines; providing exceptions; and providing other matters properly relating thereto.

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A unit’s owner shall adhere to a schedule required by the association for:

(a) The completion of the design of a unit or the design of an improvement to a unit;

(b) The commencement of the construction of a unit or the construction of an improvement to a unit;

(c) The completion of the construction of a unit or the construction of an improvement to the unit; or

(d) The issuance of a permit which is necessary for the occupancy of a unit or for the use of an improvement to a unit.

2. The association may impose and enforce a construction penalty against a unit’s owner who fails to adhere to a schedule as required pursuant to subsection 1 if:

(a) The maximum amount of the construction penalty and the schedule are set forth in:

(1) The declaration;

(2) Another document related to the common-interest community that is recorded before the date on which the unit’s owner acquired title to the unit; or

(3) A contract between the unit’s owner and the association; and

(b) The unit’s owner receives notice of the alleged violation which informs him that he has a right to a hearing on the alleged violation.

3. For the purposes of this chapter, a construction penalty is not a fine.

Sec. 2. NRS 116.1203 is hereby amended to read as follows:

116.1203 1. Except as otherwise provided in subsection 2, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1105, 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, *the provisions of* NRS 116.3101 to 116.3119, inclusive, *and section 1 of this act* and *the definitions set forth in NRS* 116.110305 to 116.110393, inclusive, to the extent *that such definitions are* necessary in construing any of those ~~sections,~~ *provisions,* apply to a residential planned community containing more than six units.

Sec. 3. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may:

- (a) Adopt and amend bylaws, rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from units' owners;
- (c) Hire and discharge managing agents and other employees, agents and independent contractors;
- (d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:
 - (1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and
 - (2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112;
- (i) Grant easements, leases, licenses and concessions through or over the common elements;
- (j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to units' owners;

(k) Impose charges for late payment of assessments ~~[and, except as otherwise provided in NRS 116.31031, after notice and an opportunity to be heard, levy]~~ ;

(l) Impose construction penalties when authorized pursuant to section 1 of this act;

(m) Impose reasonable fines for violations of the [declaration, bylaws, rules and regulations] governing documents of the association [;

~~—(l)] only if the association complies with the requirements set forth in NRS 116.31031;~~

(n) Impose reasonable charges for the preparation and recordation of amendments to the declaration, the information required by NRS 116.4109 or statements of unpaid assessments;

~~[(m)]~~ *(o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;*

~~[(n)]~~ *(p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides;*

~~[(o)]~~ *(q) Exercise any other powers conferred by the declaration or bylaws;*

~~[(p)]~~ *(r) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association;*

~~[(q)]~~ *(s) Direct the removal of vehicles improperly parked on property owned or leased by the association, pursuant to NRS 487.038; and*

~~[(r)]~~ *(t) Exercise any other powers necessary and proper for the governance and operation of the association.*

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 4. NRS 116.31031 is hereby amended to read as follows:

116.31031 1. ~~[(1)]~~ *Except as otherwise provided in this section, if* a unit's owner ~~[(1)]~~ or a tenant or guest of a unit's owner ~~[(1)]~~ ~~does not comply with a]~~ *violates any* provision of the governing documents of an association, the executive board of the association may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner ~~[(1)]~~ or the tenant or guest of the unit's owner ~~[(1)]~~ from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner ~~[(1)]~~ or the tenant or guest of the unit's owner ~~[(1)]~~ from using any vehicular or pedestrian

ingress or egress to go to or from the unit, including any area used for parking.

(b) ~~[Require]~~ *Impose a fine against* the unit's owner ~~[,]~~ or the tenant or guest of the unit's owner ~~[, to pay a fine]~~ for each ~~[failure to comply that does not threaten the health and welfare of the common interest community.]~~ *violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to section 1 of this act.* The fine must be commensurate with the severity of the violation, but must not exceed \$100 for each violation or a total amount of \$500, whichever is less.

2. *The executive board may not impose a fine pursuant to subsection 1 unless:*

(a) *Not less than 30 days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and*

(b) *Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:*

(1) *Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and*

(2) *A reasonable opportunity to contest the violation at the hearing.*

3. *The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.*

4. *The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:*

(a) *Pays the fine;*

(b) *Executes a written waiver of the right to the hearing; or*

(c) *Fails to appear at the hearing after being provided with proper notice of the hearing.*

5. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days , or ~~[a]~~ *within any* longer period ~~[as]~~ *that* may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

~~[3. Except as otherwise provided in subsection 2, the imposition of a fine pursuant to this section must comply with the requirements of subsection 6 of NRS 116.31065.]~~

6. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

7. The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

Sec. 5. NRS 116.31065 is hereby amended to read as follows:
116.31065 The rules adopted by an association:

1. Must be reasonably related to the purpose for which they are adopted.

2. Must be sufficiently explicit in their prohibition, direction or limitation to inform a ~~[unit's owner, or a tenant or guest of a unit's owner,]~~ *person* of any action or omission required for compliance.

3. Must not be adopted to evade any obligation of the association.

4. Must be consistent with the governing documents of the association and must not arbitrarily restrict conduct or require the construction of any capital improvement by a unit's owner that is not required by the governing documents of the association.

5. Must be uniformly enforced under the same or similar circumstances against all units' owners. Any rule that is not so uniformly enforced may not be enforced against any unit's owner.

6. May be enforced by the ~~[assessment]~~ *association through the imposition* of a fine only if ~~[-~~

~~—(a) The person alleged to have violated the rule has received notice of the alleged violation that informs him of his opportunity to request a hearing on the alleged violation.~~

~~—(b) At least 30 days before the alleged violation, the person alleged to have violated the rule was given written notice of the rule or any amendment to the rule.]~~ *the association complies with the requirements set forth in NRS 116.31031.*

Sec. 6. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners of an association must be held at least once each year. If the governing documents of a common-interest community do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If

the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1. Special meetings of the units' owners of an association may be called by the president, a majority of the executive board or by units' owners having 10 percent, or any lower percentage specified in the bylaws, of the votes in the association.

2. Not less than 10 nor more than 60 days in advance of any meeting of the units' owners of an association, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting ~~[distributed to him]~~ *provided to the unit's owner* upon request and, if required by the executive board, upon payment to the association of the cost of ~~[making the distribution.]~~ *providing the copy to the unit's owner.*

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

3. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer *of the association* or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

4. If the association adopts a policy imposing ~~[a fine on a unit's owner for the violation of the declaration, bylaws or other rules established by]~~ *finest for any violations of the governing documents* of the association, the secretary or other officer specified in the

bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

5. Not more than 30 days after any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner who pays the association the cost of providing the copy to him.

6. As used in this section, "emergency" means any occurrence or combination of occurrences that:

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners of the association;
- (c) Requires the immediate attention of, and possible action by, the executive board; and
- (d) Makes it impracticable to comply with the provisions of subsection 2 or 3.

Sec. 7. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners of the association or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may meet in executive session to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive;

(b) Discuss matters relating to personnel; ~~for~~

~~—(c) Discuss~~

(c) Except as otherwise provided in subsection 3, discuss a violation of the governing documents, ~~[alleged to have been committed by a unit's owner,]~~ including, without limitation, the failure to pay an assessment ~~[, except as otherwise provided in subsection 3.]~~; or

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to section 1 of this act if the alleged failure may subject the unit's owner to a construction penalty.

3. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the ~~[unit's owner who allegedly committed]~~ *person who may be sanctioned for* the *alleged* violation requests in writing that the hearing be conducted by the executive board at an open meeting. The ~~[unit's owner who is alleged to have committed]~~ *person who*

may be sanctioned for the *alleged* violation ~~may~~ *is entitled to* attend the hearing and testify concerning the alleged violation, but *the person* may be excluded by the executive board from any other portion of the hearing, including, without limitation, the deliberations of the executive board.

4. Except as otherwise provided in this subsection, any matter discussed *by the executive board when it meets* in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 3 *concerning an alleged violation* and, upon request, provide a copy of the decision to the ~~{unit's owner who was the subject of the hearing}~~ *person who was subject to being sanctioned at the hearing* or to his designated representative.

5. Except as otherwise provided in subsection 3, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 8. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any *construction penalty that is imposed against the unit's owner pursuant to section 1 of this act, any* assessment levied against that unit or *any* fines imposed against the unit's owner from the time the *construction penalty*, assessment or fine becomes due. Unless the declaration otherwise provides, *any penalties*, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) ~~[(k)]~~ *and (n), inclusive*, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent ~~[(j)]~~ or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

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

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution

of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

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

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

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section or by NRS 116.31162 to 116.31168, inclusive.

10. In a cooperative where the owner's interest in a unit is personal property ~~{as under~~ NRS 116.1105, ~~{or}~~ the association's lien may be foreclosed ~~{in like manner}~~ as a security interest under NRS 104.9101 to 104.9709, inclusive.

Sec. 9. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection 4, in a condominium, in a cooperative where the owner's interest in a unit is real estate ~~{as determined pursuant to}~~ under NRS 116.1105, or in a planned community, the association may foreclose its lien by sale after:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest, at his address if known ~~{and}~~ and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against

which the lien is imposed ~~{H}~~ and the name of the record owner of the unit;

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

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

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose ~~{H}~~ or , if no one is designated, by the president of the association.

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

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

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

4. The association may not foreclose a lien by sale ~~{for the assessment of}~~ *based on* a fine *or penalty* for a violation of the ~~{declaration, bylaws, rules or regulations}~~ *governing documents* of the association ~~{, unless the violation is of a type that threatens}~~ *unless:*

(a) *The violation threatens* the health, safety or welfare of the residents of the common-interest community ~~{H}~~ ; *or*

(b) *The penalty is imposed for failure to adhere to a schedule required pursuant to section 1 of this act.*

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

38.300 As used in NRS 38.300 to 38.360, inclusive, unless the context otherwise requires:

1. "Assessments" means:

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

(b) Any *penalties*, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) ~~{, (k) and (l)}~~ *to (n), inclusive*, of subsection 1 of NRS 116.3102.

2. "Association" has the meaning ascribed to it in NRS 116.110315.

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

4. "Division" means the Real Estate Division of the Department of Business and Industry.

5. "Residential property" includes, but is not limited to, real estate within a planned community subject to the provisions of chapter 116 of NRS. The term does not include commercial property if no portion thereof contains property which is used for residential purposes.

Sec. 11. 1. The amendatory provisions of this act apply to any violation of the governing documents of an association or master association that occurs on or after October 1, 2003.

2. Notwithstanding any other law to the contrary, if the provisions of the governing documents of an association or master association do not conform to the amendatory provisions of this act:

(a) The nonconforming provisions of the governing documents shall be deemed to have been conformed to the amendatory provisions of this act by operation of law on October 1, 2003; and

(b) If the association or master association is associated with a common-interest community that was created on or after January 1, 1992, the executive board of the association or master association may change the nonconforming provisions of the governing documents to conform to the amendatory provisions of this act. The executive board of the association or master association may make such changes without complying with any procedural requirements that would otherwise apply if the executive board were to amend the governing documents of the association or master association in accordance with law.

3. As used in this section:

(a) "Association" has the meaning ascribed to it in NRS 116.110315.

(b) "Common-interest community" has the meaning ascribed to it in NRS 116.110323.

(c) "Executive board" has the meaning ascribed to it in NRS 116.110345.

(d) "Governing documents" has the meaning ascribed to it in NRS 116.110347.

(e) "Master association" has the meaning ascribed to it in NRS 116.110358.