

ASSEMBLY BILL NO. 290—ASSEMBLYMEN PARKS
AND PIERCE (BY REQUEST)

MARCH 21, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions relating to common-interest communities. (BDR 10-951)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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; requiring a member of an executive board of an association in a common-interest community who stands to personally profit from a matter before the board to disclose the matter and abstain from voting on such matter; prohibiting an association from requiring a unit's owner to obtain any approval from the association in order to rent or lease the unit; requiring that bids for an association project be opened at a meeting of the executive board; providing that the association shall establish an adequate reserve fund given the nature and extent of the liability and responsibility of the association; requiring a unit's owner to provide certain documents to a purchaser within a certain period; providing that a purchaser may cancel the contract of purchase with a unit's owner in certain circumstances; 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 the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall:*

1. Disclose the matter to the executive board; and

2. Abstain from voting on any such matter.

Sec. 3. *An association may not require a unit's owner to secure or obtain any approval from the association in order to rent or lease the unit.*

Sec. 4. *1. If the association solicits bids for an association project, the bids must be opened at a meeting of the executive board.*

2. As used in this section, "association project" includes, without limitation, a project that involves the maintenance, repair, replacement or restoration of any part of the common elements.

Sec. 5. 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 sections 2, 3 and 4 of this act*, and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than six units.

Sec. 6. 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 not meet in executive session to *open or consider bids for an association project or to* enter into, renew, modify, terminate or take any other action regarding a contract, unless it is a contract between the association and an attorney.

3. An executive board may meet in executive session only to:



1 (a) Consult with the attorney for the association on matters
2 relating to proposed or pending litigation if the contents of the
3 discussion would otherwise be governed by the privilege set forth in
4 NRS 49.035 to 49.115, inclusive, or to enter into, renew, modify,
5 terminate or take any other action regarding a contract between the
6 association and the attorney.

7 (b) Discuss the character, alleged misconduct, professional
8 competence, or physical or mental health of a community manager
9 or an employee of the association.

10 (c) Except as otherwise provided in subsection 4, discuss a
11 violation of the governing documents, including, without limitation,
12 the failure to pay an assessment.

13 (d) Discuss the alleged failure of a unit's owner to adhere to a
14 schedule required pursuant to NRS 116.310305 if the alleged failure
15 may subject the units' owner to a construction penalty.

16 4. An executive board shall meet in executive session to hold a
17 hearing on an alleged violation of the governing documents unless
18 the person who may be sanctioned for the alleged violation requests
19 in writing that the hearing be conducted by the executive board at an
20 open meeting. The person who may be sanctioned for the alleged
21 violation is entitled to attend the hearing and testify concerning the
22 alleged violation, but the person may be excluded by the executive
23 board from any other portion of the hearing, including, without
24 limitation, the deliberations of the executive board.

25 5. Except as otherwise provided in this subsection, any matter
26 discussed by the executive board when it meets in executive session
27 must be generally noted in the minutes of the meeting of the
28 executive board. The executive board shall maintain minutes of any
29 decision made pursuant to subsection 4 concerning an alleged
30 violation and, upon request, provide a copy of the decision to the
31 person who was subject to being sanctioned at the hearing or to his
32 designated representative.

33 6. Except as otherwise provided in subsection 4, a unit's owner
34 is not entitled to attend or speak at a meeting of the executive board
35 held in executive session.

36 **Sec. 7.** NRS 116.3115 is hereby amended to read as follows:

37 116.3115 1. Until the association makes an assessment for
38 common expenses, the declarant shall pay all common expenses.
39 After an assessment has been made by the association, assessments
40 must be made at least annually, based on a budget adopted at least
41 annually by the association in accordance with the requirements set
42 forth in NRS 116.31151. Unless the declaration imposes more
43 stringent standards, the budget must include a budget for the daily
44 operation of the association and the money for the reserve required
45 by paragraph (b) of subsection 2.



- 1 2. Except for assessments under subsections 4 to 7, inclusive:
 - 2 (a) All common expenses, including a reserve, must be assessed
 - 3 against all the units in accordance with the allocations set forth in
 - 4 the declaration pursuant to subsections 1 and 2 of NRS 116.2107.
 - 5 (b) The association shall establish an adequate reserve, *given the*
 - 6 *nature and extent of the liability and responsibility of the*
 - 7 *association*, funded on a reasonable basis, for the repair,
 - 8 replacement and restoration of the major components of the
 - 9 common elements. The reserve may be used only for those
 - 10 purposes, including, without limitation, repairing, replacing and
 - 11 restoring roofs, roads and sidewalks, and must not be used for daily
 - 12 maintenance.
- 13 3. Any past due assessment for common expenses or
- 14 installment thereof bears interest at the rate established by the
- 15 association not exceeding 18 percent per year.
- 16 4. To the extent required by the declaration:
 - 17 (a) Any common expense associated with the maintenance,
 - 18 repair, restoration or replacement of a limited common element
 - 19 must be assessed against the units to which that limited common
 - 20 element is assigned, equally, or in any other proportion the
 - 21 declaration provides;
 - 22 (b) Any common expense or portion thereof benefiting fewer
 - 23 than all of the units must be assessed exclusively against the units
 - 24 benefited; and
 - 25 (c) The costs of insurance must be assessed in proportion to risk
 - 26 and the costs of utilities must be assessed in proportion to usage.
- 27 5. Assessments to pay a judgment against the association may
- 28 be made only against the units in the common-interest community at
- 29 the time the judgment was entered, in proportion to their liabilities
- 30 for common expenses.
- 31 6. If any common expense is caused by the misconduct of any
- 32 unit's owner, the association may assess that expense exclusively
- 33 against his unit.
- 34 7. The association of a common-interest community created
- 35 before January 1, 1992, is not required to make an assessment
- 36 against a vacant lot located within the community that is owned by
- 37 the declarant.
- 38 8. If liabilities for common expenses are reallocated,
- 39 assessments for common expenses and any installment thereof not
- 40 yet due must be recalculated in accordance with the reallocated
- 41 liabilities.
- 42 9. The association shall provide written notice to the owner of
- 43 each unit of a meeting at which an assessment for a capital
- 44 improvement or the commencement of a civil action is to be
- 45 considered or action is to be taken on such an assessment at least 21



1 calendar days before the meeting. Except as otherwise provided in
2 this subsection, the association may commence a civil action only
3 upon a vote or written agreement of the owners of units to which at
4 least a majority of the votes of the members of the association are
5 allocated. The provisions of this subsection do not apply to a civil
6 action that is commenced:

7 (a) To enforce the payment of an assessment;

8 (b) To enforce the declaration, bylaws or rules of the
9 association;

10 (c) To proceed with a counterclaim; or

11 (d) To protect the health, safety and welfare of the members of
12 the association. If a civil action is commenced pursuant to this
13 paragraph without the required vote or agreement, the action must
14 be ratified within 90 days after the commencement of the action by
15 a vote or written agreement of the owners of the units to which at
16 least a majority of votes of the members of the association are
17 allocated. If the association, after making a good faith effort, cannot
18 obtain the required vote or agreement to commence or ratify such a
19 civil action, the association may thereafter seek to dismiss the action
20 without prejudice for that reason only if a vote or written agreement
21 of the owners of the units to which at least a majority of votes of the
22 members of the association are allocated was obtained at the time
23 the approval to commence or ratify the action was sought.

24 10. At least 10 days before an association commences or seeks
25 to ratify the commencement of a civil action, the association shall
26 provide a written statement to all units' owners that includes:

27 (a) A reasonable estimate of the costs of the civil action,
28 including reasonable attorney's fees;

29 (b) An explanation of the potential benefits of the civil action
30 and the potential adverse consequences if the association does not
31 commence the action or if the outcome of the action is not favorable
32 to the association; and

33 (c) All disclosures that are required to be made upon the sale of
34 the property.

35 11. No person other than a unit's owner may request the
36 dismissal of a civil action commenced by the association on the
37 ground that the association failed to comply with any provision of
38 this section.

39 **Sec. 8.** NRS 116.31163 is hereby amended to read as follows:

40 116.31163 The association or other person conducting the sale
41 shall also mail, within 10 days after the notice of default and
42 election to sell is recorded, a copy of the notice by first-class mail
43 to:

44 1. Each person who has requested notice pursuant to NRS
45 107.090 or 116.31168;



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

3. A purchaser of the unit, if the unit's owner has notified the association, 30 days before the recordation of the notice, that the unit is the subject of a contract of sale and the association has been requested to furnish the certificate required by subsection ~~2~~ 3 of NRS 116.4109.

Sec. 9. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner shall furnish to a purchaser *at least 5 calendar days* before an offer to purchase a unit becomes binding on the purchaser:

(a) A copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) The current operating budget of the association and a financial statement for the association, which must include a summary of the financial components of the study of the reserves of the association required by NRS 116.31152; and

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

2. *The purchaser may cancel, by written notice, the contract of purchase until midnight of the fifth calendar day following the date of receipt of the documents set forth in subsection 1. If the purchaser elects to cancel a contract pursuant to this subsection, he may do so by hand delivering notice thereof to the unit's owner or by mailing notice thereof by prepaid United States mail to the unit's owner. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.*

3. The association, within 10 days after a request by a unit's owner, shall furnish a certificate containing the information necessary to enable the unit's owner to comply with subsection 1. A unit's owner providing a certificate pursuant to subsection 1 is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.



~~[3-]~~ 4. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. If the association fails to furnish the certificate within the 10 days allowed by subsection ~~[2-]~~ 3, the seller is not liable for the delinquent assessment.

~~[4-]~~ 5. Upon the request of a unit's owner, a purchaser to whom the unit's owner has provided a certificate pursuant to subsection 1 or an authorized agent of the unit's owner or the purchaser, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

Sec. 10. NRS 116.41095 is hereby amended to read as follows:

116.41095 The information statement required by NRS 116.4103 and 116.4109 must be in substantially the following form:

BEFORE YOU PURCHASE PROPERTY IN A
COMMON-INTEREST COMMUNITY
DID YOU KNOW . . .

1. YOU ARE AGREEING TO RESTRICTIONS ON HOW
YOU CAN USE YOUR PROPERTY?

These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions (C, C & R's) that ~~[should]~~ *must* be provided for your review before making your purchase. *You will have 5 calendar days from the date of receipt of the document to cancel the purchase if the information in the document is not satisfactory.* The C, C & R's become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you. The C, C & R's, together with other "governing documents" (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property. By purchasing a property encumbered by C, C & R's, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the C, C & R's and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you.



1 2. YOU WILL HAVE TO PAY OWNERS' ASSESSMENTS
2 FOR AS LONG AS YOU OWN YOUR PROPERTY?

3 As an owner in a common-interest community, you are responsible
4 for paying your share of expenses relating to the common elements,
5 such as landscaping, shared amenities and the operation of any
6 homeowner's association. The obligation to pay these assessments
7 binds you and every future owner of the property. Owners' fees are
8 usually assessed by the homeowner's association and due monthly.
9 You have to pay dues whether or not you agree with the way the
10 association is managing the property or spending the assessments.
11 The executive board of the association may have the power to
12 change and increase the amount of the assessment and to levy
13 special assessments against your property to meet extraordinary
14 expenses. In some communities, major components of the
15 community such as roofs and private roads must be maintained and
16 replaced by the association. If the association is not well managed or
17 fails to maintain adequate reserves to repair, replace and restore
18 common elements, you may be required to pay large, special
19 assessments to accomplish these tasks.

20 3. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU
21 COULD LOSE YOUR HOME?

22 If you do not pay these assessments when due, the association
23 usually has the power to collect them by selling your property in a
24 nonjudicial foreclosure sale. If fees become delinquent, you may
25 also be required to pay penalties and the association's costs and
26 attorney's fees to become current. If you dispute the obligation or its
27 amount, your only remedy to avoid the loss of your home may be to
28 file a lawsuit and ask a court to intervene in the dispute.

29 4. YOU MAY BECOME A MEMBER OF A
30 HOMEOWNER'S ASSOCIATION THAT HAS THE POWER TO
31 AFFECT HOW YOU USE AND ENJOY YOUR PROPERTY?

32 Many common-interest communities have a homeowner's
33 association. In a new development, the association will usually be
34 controlled by the developer until a certain number of units have
35 been sold. After the period of developer control, the association may
36 be controlled by property owners like yourself who are elected by
37 homeowners to sit on an executive board and other boards and
38 committees formed by the association. The association, and its
39 executive board, are responsible for assessing homeowners for the
40 cost of operating the association and the common or shared
41 elements of the community and for the day to day operation and
42 management of the community. Because homeowners sitting on the
43 executive board and other boards and committees of the association
44 may not have the experience or professional background required to
45 understand and carry out the responsibilities of the association



1 properly, the association may hire professional managers to carry
2 out these responsibilities.
3 Homeowner's associations operate on democratic principles. Some
4 decisions require all homeowners to vote, some decisions are made
5 by the executive board or other boards or committees established by
6 the association or governing documents. Although the actions of the
7 association and its executive board are governed by state laws, the
8 C, C & R's and other documents that govern the common-interest
9 community, decisions made by these persons will affect your use
10 and enjoyment of your property, your lifestyle and freedom of
11 choice, and your cost of living in the community. You may not
12 agree with decisions made by the association or its governing bodies
13 even though the decisions are ones which the association is
14 authorized to make. Decisions may be made by a few persons on the
15 executive board or governing bodies that do not necessarily reflect
16 the view of the majority of homeowners in the community. If you do
17 not agree with decisions made by the association, its executive
18 board or other governing bodies, your remedy is typically to attempt
19 to use the democratic processes of the association to seek the
20 election of members of the executive board or other governing
21 bodies that are more responsive to your needs. If persons controlling
22 the association or its management are not complying with state laws
23 or the governing documents, your remedy is typically to seek to
24 mediate or arbitrate the dispute and, if mediation or arbitration is
25 unsuccessful, file a lawsuit and ask a court to resolve the dispute. In
26 addition to your personal cost in mediation or arbitration, or to
27 prosecute a lawsuit, you may be responsible for paying your share
28 of the association's cost in defending against your claim. There is no
29 government agency in this State that investigates or intervenes to
30 resolve disputes in homeowner's associations.

31 5. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE
32 BUYERS OF YOUR PROPERTY WITH INFORMATION
33 ABOUT LIVING IN YOUR COMMON-INTEREST
34 COMMUNITY?

35 The law requires you to provide to a prospective purchaser of your
36 property, before you enter into a purchase agreement, a copy of the
37 community's governing documents, including the C, C & R's,
38 association bylaws, and rules and regulations, as well as a copy of
39 this document. You are also required to provide a copy of the
40 association's current financial statement, operating budget and
41 information regarding the amount of the monthly assessment for
42 common expenses, including the amount set aside as reserves for the
43 repair, replacement and restoration of common elements. You are
44 also required to inform prospective purchasers of any outstanding
45 judgments or lawsuits pending against the association of which you



1 are aware. You are also required to provide a copy of the minutes
2 from the most recent meeting of the homeowner's association or its
3 executive board. For more information regarding these
4 requirements, see Nevada Revised Statutes 116.4103 and 116.4109.

5 6. YOU HAVE CERTAIN RIGHTS REGARDING
6 OWNERSHIP IN A COMMON-INTEREST COMMUNITY THAT
7 ARE GUARANTEED YOU BY THE STATE?

8 Pursuant to provisions of chapter 116 of Nevada Revised Statutes,
9 you have the right:

10 (a) To be notified of all meetings of the association and its
11 executive board, except in cases of emergency.

12 (b) To attend and speak at all meetings of the association and its
13 executive board, except in some cases where the executive board is
14 authorized to meet in closed, executive session.

15 (c) To request a special meeting of the association upon petition
16 of at least 10 percent of the homeowners.

17 (d) To inspect, examine, photocopy and audit financial and other
18 records of the association.

19 (e) To be notified of all changes in the community's rules and
20 regulations and other actions by the association or board that affect
21 you.

22 7. QUESTIONS?

23 Although they may be voluminous, you should take the time to read
24 and understand the documents that will control your ownership of a
25 property in a common-interest community. You may wish to ask
26 your real estate professional, lawyer or other person with experience
27 to explain anything you do not understand. You may also request
28 assistance from the Ombudsman for Owners in Common-Interest
29 Communities, Nevada Real Estate Division, at (telephone number).

30
31 Buyer or prospective buyer's initials: _____

32 Date: _____



