

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 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:

- 1 **Section 1.** Chapter 116 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.
3 **Sec. 2.** *A member of an executive board who stands to gain*
4 *any personal profit or compensation of any kind from a matter*
5 *before the executive board shall:*
6 1. *Disclose the matter to the executive board; and*
7 2. *Abstain from voting on any such matter.*
8 **Sec. 3.** *Except as otherwise provided in NRS 116.31123, an*
9 *association may not require a unit's owner to secure or obtain any*
10 *approval from the association in order to rent or lease the unit.*



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

4 **2. *As used in this section, “association project” includes,***
5 ***without limitation, a project that involves the maintenance, repair,***
6 ***replacement or restoration of any part of the common elements.***

7 **Sec. 5.** NRS 116.1203 is hereby amended to read as follows:

8 116.1203 1. Except as otherwise provided in subsection 2, if
9 a planned community contains no more than 12 units and is not
10 subject to any developmental rights, it is subject only to NRS
11 116.1105, 116.1106 and 116.1107 unless the declaration provides
12 that this entire chapter is applicable.

13 2. Except for NRS 116.3104, 116.31043, 116.31046 and
14 116.31138, the provisions of NRS 116.3101 to 116.3119, inclusive,
15 ***and sections 2, 3 and 4 of this act,*** and the definitions set forth in
16 NRS 116.005 to 116.095, inclusive, to the extent that such
17 definitions are necessary in construing any of those provisions,
18 apply to a residential planned community containing more than six
19 units.

20 **Sec. 6.** NRS 116.31085 is hereby amended to read as follows:

21 116.31085 1. Except as otherwise provided in this section, a
22 unit’s owner may attend any meeting of the units’ owners of the
23 association or of the executive board and speak at any such meeting.
24 The executive board may establish reasonable limitations on the
25 time a unit’s owner may speak at such a meeting.

26 2. An executive board may not meet in executive session to
27 ***open or consider bids for an association project or to*** enter into,
28 renew, modify, terminate or take any other action regarding a
29 contract, unless it is a contract between the association and an
30 attorney.

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

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

38 (b) Discuss the character, alleged misconduct, professional
39 competence, or physical or mental health of a community manager
40 or an employee of the association.

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



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

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the 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 person who may be sanctioned for the alleged violation 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.

5. 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 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

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

Sec. 7. NRS 116.31123 is hereby amended to read as follows:

116.31123 1. Except as otherwise provided in subsection 2, ~~[in a county whose population is 400,000 or more,]~~ a person who owns, or directly or indirectly has an interest in, one or more units within a planned community that are restricted to residential use by the declaration, may use that unit or one of those units for a transient commercial use only if:

(a) The governing documents of the association and any master association do not prohibit such use;

(b) The executive board of the association and any master association approve the transient commercial use of the unit, except that such approval is not required if the planned community and one or more hotels are subject to the governing documents of a master association and those governing documents do not prohibit such use; and

(c) The unit is properly zoned for the transient commercial use and any license required by the local government for the transient commercial use is obtained.

2. ~~[In a county whose population is 400,000 or more, a]~~ A declarant who owns, or directly or indirectly has an interest in, one or more units within a planned community under the governing documents of the association that are restricted to residential use by



1 the declaration, may use that unit or those units for a transient
2 commercial use during the period that the declarant is offering units
3 for sale within the planned community if such use complies with the
4 requirements set forth in paragraphs (a) and (c) of subsection 1.

5 3. The association and any master association may establish
6 requirements for the transient commercial use of a unit pursuant to
7 the provisions of this section, including, without limitation, the
8 payment of additional fees that are related to any increase in
9 services or other costs associated with the transient commercial use
10 of the unit.

11 4. As used in this section:

12 (a) "Remuneration" means any compensation, money, rent or
13 other valuable consideration given in return for the occupancy,
14 possession or use of a unit.

15 (b) "Transient commercial use" means the use of a unit, for
16 remuneration, as a hostel, hotel, inn, motel, resort, vacation rental or
17 other form of transient lodging if the term of the occupancy,
18 possession or use of the unit is for less than 30 consecutive calendar
19 days.

20 **Sec. 8.** NRS 116.3115 is hereby amended to read as follows:

21 116.3115 1. Until the association makes an assessment for
22 common expenses, the declarant shall pay all common expenses.
23 After an assessment has been made by the association, assessments
24 must be made at least annually, based on a budget adopted at least
25 annually by the association in accordance with the requirements set
26 forth in NRS 116.31151. Unless the declaration imposes more
27 stringent standards, the budget must include a budget for the daily
28 operation of the association and the money for the reserve required
29 by paragraph (b) of subsection 2.

30 2. Except for assessments under subsections 4 to 7, inclusive:

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

34 (b) The association shall establish an adequate reserve, funded
35 on a reasonable basis, for the repair, replacement and restoration of
36 the major components of the common elements ~~of the~~ *of the*
37 *association*. The reserve may be used only for those purposes,
38 including, without limitation, repairing, replacing and restoring
39 roofs, roads and sidewalks ~~of the association~~, and must not be
40 used for daily maintenance.

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

44 4. To the extent required by the declaration:



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

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

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

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

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

18 7. The association of a common-interest community created
19 before January 1, 1992, is not required to make an assessment
20 against a vacant lot located within the community that is owned by
21 the declarant.

22 8. If liabilities for common expenses are reallocated,
23 assessments for common expenses and any installment thereof not
24 yet due must be recalculated in accordance with the reallocated
25 liabilities.

26 9. The association shall provide written notice to the owner of
27 each unit of a meeting at which an assessment for a capital
28 improvement or the commencement of a civil action is to be
29 considered or action is to be taken on such an assessment at least 21
30 calendar days before the meeting. Except as otherwise provided in
31 this subsection, the association may commence a civil action only
32 upon a vote or written agreement of the owners of units to which at
33 least a majority of the votes of the members of the association are
34 allocated. The provisions of this subsection do not apply to a civil
35 action that is commenced:

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

37 (b) To enforce the declaration, bylaws or rules of the
38 association;

39 (c) To proceed with a counterclaim; or

40 (d) To protect the health, safety and welfare of the members of
41 the association. If a civil action is commenced pursuant to this
42 paragraph without the required vote or agreement, the action must
43 be ratified within 90 days after the commencement of the action by
44 a vote or written agreement of the owners of the units to which at
45 least a majority of votes of the members of the association are



1 allocated. If the association, after making a good faith effort, cannot
2 obtain the required vote or agreement to commence or ratify such a
3 civil action, the association may thereafter seek to dismiss the action
4 without prejudice for that reason only if a vote or written agreement
5 of the owners of the units to which at least a majority of votes of the
6 members of the association are allocated was obtained at the time
7 the approval to commence or ratify the action was sought.

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

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

13 (b) An explanation of the potential benefits of the civil action
14 and the potential adverse consequences if the association does not
15 commence the action or if the outcome of the action is not favorable
16 to the association; and

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

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

23 **Sec. 9.** NRS 116.31163 is hereby amended to read as follows:

24 116.31163 The association or other person conducting the sale
25 shall also mail, within 10 days after the notice of default and
26 election to sell is recorded, a copy of the notice by first-class mail
27 to:

28 1. Each person who has requested notice pursuant to NRS
29 107.090 or 116.31168;

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

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

39 **Sec. 10.** NRS 116.4109 is hereby amended to read as follows:

40 116.4109 1. Except in the case of a sale in which delivery of
41 a public offering statement is required, or unless exempt under
42 subsection 2 of NRS 116.4101, a unit's owner shall furnish to a
43 purchaser before an offer to purchase a unit becomes binding on the
44 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 his agent or by mailing notice thereof by registered or certified mail to the unit's owner or his agent. 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. 11. 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.

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

As an owner in a common-interest community, you are responsible for paying your share of expenses relating to the common elements, such as landscaping, shared amenities and the operation of any homeowner's association. The obligation to pay these assessments binds you and every future owner of the property. Owners' fees are usually assessed by the homeowner's association and due monthly. You have to pay dues whether or not you agree with the way the association is managing the property or spending the assessments. The executive board of the association may have the power to change and increase the amount of the assessment and to levy special assessments against your property to meet extraordinary expenses. In some communities, major components of the community such as roofs and private roads must be maintained and



1 replaced by the association. If the association is not well managed or
2 fails to maintain adequate reserves to repair, replace and restore
3 common elements, you may be required to pay large, special
4 assessments to accomplish these tasks.

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

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

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

17 Many common-interest communities have a homeowner's
18 association. In a new development, the association will usually be
19 controlled by the developer until a certain number of units have
20 been sold. After the period of developer control, the association may
21 be controlled by property owners like yourself who are elected by
22 homeowners to sit on an executive board and other boards and
23 committees formed by the association. The association, and its
24 executive board, are responsible for assessing homeowners for the
25 cost of operating the association and the common or shared
26 elements of the community and for the day to day operation and
27 management of the community. Because homeowners sitting on the
28 executive board and other boards and committees of the association
29 may not have the experience or professional background required to
30 understand and carry out the responsibilities of the association
31 properly, the association may hire professional managers to carry
32 out these responsibilities.

33 Homeowner's associations operate on democratic principles. Some
34 decisions require all homeowners to vote, some decisions are made
35 by the executive board or other boards or committees established by
36 the association or governing documents. Although the actions of the
37 association and its executive board are governed by state laws, the
38 C, C & R's and other documents that govern the common-interest
39 community, decisions made by these persons will affect your use
40 and enjoyment of your property, your lifestyle and freedom of
41 choice, and your cost of living in the community. You may not
42 agree with decisions made by the association or its governing bodies
43 even though the decisions are ones which the association is
44 authorized to make. Decisions may be made by a few persons on the
45 executive board or governing bodies that do not necessarily reflect



1 the view of the majority of homeowners in the community. If you do
2 not agree with decisions made by the association, its executive
3 board or other governing bodies, your remedy is typically to attempt
4 to use the democratic processes of the association to seek the
5 election of members of the executive board or other governing
6 bodies that are more responsive to your needs. If persons controlling
7 the association or its management are not complying with state laws
8 or the governing documents, your remedy is typically to seek to
9 mediate or arbitrate the dispute and, if mediation or arbitration is
10 unsuccessful, file a lawsuit and ask a court to resolve the dispute. In
11 addition to your personal cost in mediation or arbitration, or to
12 prosecute a lawsuit, you may be responsible for paying your share
13 of the association's cost in defending against your claim. There is no
14 government agency in this State that investigates or intervenes to
15 resolve disputes in homeowner's associations.

16 5. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE
17 BUYERS OF YOUR PROPERTY WITH INFORMATION
18 ABOUT LIVING IN YOUR COMMON-INTEREST
19 COMMUNITY?

20 The law requires you to provide to a prospective purchaser of your
21 property, before you enter into a purchase agreement, a copy of the
22 community's governing documents, including the C, C & R's,
23 association bylaws, and rules and regulations, as well as a copy of
24 this document. You are also required to provide a copy of the
25 association's current financial statement, operating budget and
26 information regarding the amount of the monthly assessment for
27 common expenses, including the amount set aside as reserves for the
28 repair, replacement and restoration of common elements. You are
29 also required to inform prospective purchasers of any outstanding
30 judgments or lawsuits pending against the association of which you
31 are aware. You are also required to provide a copy of the minutes
32 from the most recent meeting of the homeowner's association or its
33 executive board. For more information regarding these
34 requirements, see Nevada Revised Statutes 116.4103 and 116.4109.

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

38 Pursuant to provisions of chapter 116 of Nevada Revised Statutes,
39 you have the right:

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

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



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

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

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

8 7. QUESTIONS?

9 Although they may be voluminous, you should take the time to read
10 and understand the documents that will control your ownership of a
11 property in a common-interest community. You may wish to ask
12 your real estate professional, lawyer or other person with experience
13 to explain anything you do not understand. You may also request
14 assistance from the Ombudsman for Owners in Common-Interest
15 Communities, Nevada Real Estate Division, at (telephone number).
16

17 Buyer or prospective buyer's initials: _____

18 Date: _____



