

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 unless the association is acting in accordance with the declaration or certain laws and regulations; 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.*



* A B 2 9 0 R 2 *

1 **Sec. 3. 1.** *Except as otherwise provided in the declaration,*
2 *an association may not require a unit's owner to secure or obtain*
3 *any approval from the association in order to rent or lease his*
4 *unit.*

5 **2.** *The provisions of this section do not prohibit an*
6 *association from enforcing any provisions which govern the*
7 *renting or leasing of units and which are contained in this chapter*
8 *or in any other applicable federal, state or local laws or*
9 *regulations.*

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

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

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

17 116.1203 1. Except as otherwise provided in subsection 2, if
18 a planned community contains no more than 12 units and is not
19 subject to any developmental rights, it is subject only to NRS
20 116.1105, 116.1106 and 116.1107 unless the declaration provides
21 that this entire chapter is applicable.

22 2. Except for NRS 116.3104, 116.31043, 116.31046 and
23 116.31138, the provisions of NRS 116.3101 to 116.3119, inclusive,
24 *and sections 2, 3 and 4 of this act*, and the definitions set forth in
25 NRS 116.005 to 116.095, inclusive, to the extent that such
26 definitions are necessary in construing any of those provisions,
27 apply to a residential planned community containing more than six
28 units.

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

30 116.31085 1. Except as otherwise provided in this section, a
31 unit's owner may attend any meeting of the units' owners of the
32 association or of the executive board and speak at any such meeting.
33 The executive board may establish reasonable limitations on the
34 time a unit's owner may speak at such a meeting.

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

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

41 (a) Consult with the attorney for the association on matters
42 relating to proposed or pending litigation if the contents of the
43 discussion would otherwise be governed by the privilege set forth in
44 NRS 49.035 to 49.115, inclusive, or to enter into, renew, modify,



1 terminate or take any other action regarding a contract between the
2 association and the attorney.

3 (b) Discuss the character, alleged misconduct, professional
4 competence, or physical or mental health of a community manager
5 or an employee of the association.

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

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

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

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

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

32 **Sec. 7.** (Deleted by amendment.)

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

34 116.3115 1. Until the association makes an assessment for
35 common expenses, the declarant shall pay all common expenses.
36 After an assessment has been made by the association, assessments
37 must be made at least annually, based on a budget adopted at least
38 annually by the association in accordance with the requirements set
39 forth in NRS 116.31151. Unless the declaration imposes more
40 stringent standards, the budget must include a budget for the daily
41 operation of the association and the money for the reserve required
42 by paragraph (b) of subsection 2.

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



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

4 (b) The association shall establish an adequate reserve, funded
5 on a reasonable basis, for the repair, replacement and restoration of
6 the major components of the common elements ~~of the~~ *of the*
7 *association*. The reserve may be used only for those purposes,
8 including, without limitation, repairing, replacing and restoring
9 roofs, roads and sidewalks ~~of the association~~, and must not be
10 used for daily maintenance.

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

14 4. To the extent required by the declaration:

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

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

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

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

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

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

36 8. If liabilities for common expenses are reallocated,
37 assessments for common expenses and any installment thereof not
38 yet due must be recalculated in accordance with the reallocated
39 liabilities.

40 9. The association shall provide written notice to the owner of
41 each unit of a meeting at which an assessment for a capital
42 improvement or the commencement of a civil action is to be
43 considered or action is to be taken on such an assessment at least 21
44 calendar days before the meeting. Except as otherwise provided in
45 this subsection, the association may commence a civil action only



1 upon a vote or written agreement of the owners of units to which at
2 least a majority of the votes of the members of the association are
3 allocated. The provisions of this subsection do not apply to a civil
4 action that is commenced:

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

6 (b) To enforce the declaration, bylaws or rules of the
7 association;

8 (c) To proceed with a counterclaim; or

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

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

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

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

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

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

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

38 116.31163 The association or other person conducting the sale
39 shall also mail, within 10 days after the notice of default and
40 election to sell is recorded, a copy of the notice by first-class mail
41 to:

42 1. Each person who has requested notice pursuant to NRS
43 107.090 or 116.31168;

44 2. Any holder of a recorded security interest encumbering the
45 unit's owner's interest who has notified the association, 30 days



1 before the recordation of the notice of default, of the existence of the
2 security interest; and

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

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

9 116.4109 1. Except in the case of a sale in which delivery of
10 a public offering statement is required, or unless exempt under
11 subsection 2 of NRS 116.4101, a unit's owner *or his authorized*
12 *agent* shall furnish to a purchaser ~~[before an offer to purchase a unit~~
13 ~~becomes binding on the purchaser:]~~ *a resale package containing all*
14 *the following:*

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

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

21 (c) ~~[The]~~ *A copy of the* current operating budget of the
22 association and ~~[a]~~ *current year-to-date* financial statement for the
23 association, which must include a summary of the ~~[financial~~
24 ~~components of the study of the]~~ reserves of the association required
25 by NRS 116.31152 ~~[;]~~ *and which must include, without limitation,*
26 *a summary of the information described in paragraphs (a) to (e),*
27 *inclusive, of subsection 2 of NRS 116.31152; and*

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

32 2. The ~~[association, within]~~ *purchaser may, by written notice,*
33 *cancel the contract of purchase until midnight of the fifth*
34 *calendar day following the date of receipt of the resale package*
35 *described in subsection 1, and the contract for purchase must*
36 *contain a provision to that effect. If the purchaser elects to cancel*
37 *a contract pursuant to this subsection, he must hand deliver the*
38 *notice of cancellation to the unit's owner or his authorized agent*
39 *or mail the notice of cancellation by prepaid United States mail to*
40 *the unit's owner or his authorized agent. Cancellation is without*
41 *penalty, and all payments made by the purchaser before*
42 *cancellation must be refunded promptly. If the purchaser has*
43 *accepted a conveyance of the unit, the purchaser is not entitled to:*

44 (a) *Cancel the contract pursuant to this subsection; or*



(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner ~~[]~~ or his authorized agent, the association shall furnish ~~[a certificate containing]~~ all of the following to the unit's owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b) and (d) of subsection 1. ~~[A unit's owner providing a]~~

4. If the association furnishes the documents and certificate pursuant to subsection ~~[]~~ 3:

(a) The unit's owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

~~[3-]~~ (b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee an association may charge for preparing the certificate.

(c) The association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

(d) Except for the fees permitted pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. 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 documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by ~~[subsection 2,]~~ this section, the seller is not liable for the delinquent assessment.

~~[4-]~~ 6. Upon the request of a unit's owner ~~[]~~ or his authorized agent or upon the request of a purchaser to whom the unit's owner has provided a ~~[certificate]~~ resale package pursuant to ~~[subsection 1 or an]~~ this section or his 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 GENERALLY HAVE 5 DAYS TO CANCEL THE PURCHASE AGREEMENT?

When you enter into a purchase agreement to buy a home or unit in a common-interest community, in most cases you should receive either a public offering statement, if you are the original purchaser of the home or unit, or a resale package, if you are not the original purchaser. The law generally provides for a 5-day period in which you have the right to cancel the purchase agreement. The 5-day period begins on different starting dates, depending on whether you receive a public offering statement or a resale package. Upon receiving a public offering statement or a resale package, you should make sure you are informed of the deadline for exercising your right to cancel. In order to exercise your right to cancel, the law generally requires that you hand deliver the notice of cancellation to the seller within the 5-day period, or mail the notice of cancellation to the seller by prepaid United States mail within the 5-day period. For more information regarding your right to cancel, see Nevada Revised Statutes 116.4108, if you received a public offering statement, or Nevada Revised Statutes 116.4109, if you received a resale package.

2. 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 be provided for your review before making your purchase. The C, C & R's]~~ (CC&Rs). The CC&Rs 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,]~~ CC&Rs, 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,}~~ **CC&Rs**, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the ~~{C, C&R's}~~ **CC&Rs** and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you.

~~{2-}~~ **3. 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}~~ **homeowners'** 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}~~ **homeowners'** 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 common elements* of the community such as roofs and private roads must be maintained and replaced by the association. If the association is not well managed or fails to ~~{maintain}~~ **provide** adequate **funding for** reserves to repair, replace and restore common elements, you may be required to pay large, special assessments to accomplish these tasks.

~~{3-}~~ **4. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU COULD LOSE YOUR HOME?**

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

~~{4-}~~ **5. YOU MAY BECOME A MEMBER OF A ~~{HOMEOWNER'S}~~ **HOMEOWNERS'** ASSOCIATION THAT HAS THE POWER TO AFFECT HOW YOU USE AND ENJOY YOUR PROPERTY?**

Many common-interest communities have a ~~{homeowner's}~~ **homeowners'** association. In a new development, the association



1 will usually be controlled by the developer until a certain number of
2 units have been sold. After the period of developer control, the
3 association may be controlled by property owners like yourself who
4 are elected by homeowners to sit on an executive board and other
5 boards and committees formed by the association. The association,
6 and its executive board, are responsible for assessing homeowners
7 for the cost of operating the association and the common or shared
8 elements of the community and for the ~~{day-to-day}~~ *day-to-day*
9 operation and management of the community. Because homeowners
10 sitting on the executive board and other boards and committees of
11 the association may not have the experience or professional
12 background required to understand and carry out the responsibilities
13 of the association properly, the association may hire professional
14 *community* managers to carry out these responsibilities.
15 ~~{Homeowner's}~~ *Homeowners'* associations operate on democratic
16 principles. Some decisions require all homeowners to vote, some
17 decisions are made by the executive board or other boards or
18 committees established by the association or governing documents.
19 Although the actions of the association and its executive board are
20 governed by state laws, the ~~{C, C & R's}~~ *CC&Rs* and other
21 documents that govern the common-interest community, decisions
22 made by these persons will affect your use and enjoyment of your
23 property, your lifestyle and freedom of choice, and your cost of
24 living in the community. You may not agree with decisions made by
25 the association or its governing bodies even though the decisions are
26 ones which the association is authorized to make. Decisions may be
27 made by a few persons on the executive board or governing bodies
28 that do not necessarily reflect the view of the majority of
29 homeowners in the community. If you do not agree with decisions
30 made by the association, its executive board or other governing
31 bodies, your remedy is typically to attempt to use the democratic
32 processes of the association to seek the election of members of the
33 executive board or other governing bodies that are more responsive
34 to your needs. If ~~{persons controlling the association or its~~
35 ~~management are not complying with state laws or the governing~~
36 ~~documents, your remedy is typically to seek}~~ *you have a dispute*
37 *with the association, its executive board or other governing bodies,*
38 *you may be able to resolve the dispute through the complaint,*
39 *investigation and intervention process administered by the Office*
40 *of the Ombudsman for Owners in Common-Interest Communities,*
41 *the Nevada Real Estate Division and the Commission for*
42 *Common-Interest Communities. However, to resolve some*
43 *disputes, you may have* to mediate or arbitrate the dispute and, if
44 mediation or arbitration is unsuccessful, *you may have to* file a
45 lawsuit and ask a court to resolve the dispute. In addition to your



1 personal cost in mediation or arbitration, or to prosecute a lawsuit,
2 you may be responsible for paying your share of the association's
3 cost in defending against your claim. ~~[There is no government~~
4 ~~agency in this State that investigates or intervenes to resolve~~
5 ~~disputes in homeowner's associations.~~

6 ~~—5.]~~ 6. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE
7 ~~[BUYERS]~~ **PURCHASERS** OF YOUR PROPERTY WITH
8 INFORMATION ABOUT LIVING IN YOUR COMMON-
9 INTEREST COMMUNITY?

10 The law requires you to provide ~~[to]~~ a prospective purchaser of your
11 property ~~[, before you enter into a purchase agreement.]~~ *with*
12 a copy of the community's governing documents, including the
13 ~~[C, C & R's,]~~ **CC&Rs**, association bylaws, and rules and
14 regulations, as well as a copy of this document. You are also
15 required to provide a copy of the association's current *year-to-date*
16 financial statement, *including, without limitation, the most recent*
17 *audited or reviewed financial statement, a copy of the*
18 *association's* operating budget and information regarding the
19 amount of the monthly assessment for common expenses, including
20 the amount set aside as reserves for the repair, replacement and
21 restoration of common elements. You are also required to inform
22 prospective purchasers of any outstanding judgments or lawsuits
23 pending against the association of which you are aware. ~~[You are~~
24 ~~also required to provide a copy of the minutes from the most recent~~
25 ~~meeting of the homeowner's association or its executive board.]~~ For
26 more information regarding these requirements, see Nevada Revised
27 Statutes ~~[116.4103 and 116.4109.~~

28 ~~—6.]~~ **116.4109.**

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

32 Pursuant to provisions of chapter 116 of Nevada Revised Statutes,
33 you have the right:

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

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

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

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

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



1 ~~7-1~~ 8. QUESTIONS?

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

10

11 Buyer or prospective buyer's initials: _____

12 Date: _____

