

ASSEMBLY BILL NO. 383—ASSEMBLYMAN
MANENDO (BY REQUEST)

MARCH 24, 2005

Referred to Committee on Judiciary

SUMMARY—Creates right of redemption for owner of property in common-interest community in certain instances of nonjudicial foreclosure. (BDR 10-1242)

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 property; creating a right of redemption for an owner of property in a common-interest community in certain instances of nonjudicial foreclosure; 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. If an association forecloses a lien against and sells a unit pursuant to NRS 116.31162 to 116.31168, inclusive, the person who was the unit's owner at the time of foreclosure may redeem the unit in accordance with the provisions of this section.

2. Except as otherwise provided in subsection 6, to redeem a unit sold pursuant to NRS 116.31162 to 116.31168, inclusive, the person who was the unit's owner at the time of foreclosure must, within 180 days after the date on which the sale of the unit was executed:

(a) Pay to the purchaser:

(1) The price that the purchaser paid for the unit; and

(2) Interest on the purchase price at the rate of 5 percent per annum for the period beginning on the date on which the sale



1 was executed and ending on the date on which the redemption is
2 completed pursuant to subsection 5;

3 (b) Pay to any applicable governmental entities, lienholders
4 and creditors:

5 (1) The amount of any outstanding assessments, taxes and
6 liens which were placed on the unit before the date on which the
7 unit was sold; and

8 (2) Interest on those assessments, taxes and liens at the rate
9 of 5 percent per annum for the period beginning on the date on
10 which the sale was executed and ending on the date on which the
11 redemption is completed pursuant to subsection 5; and

12 (c) Serve upon the association and the purchaser, if the
13 purchaser is not the association, a notice of redemption
14 accompanied by proof of payment of the amounts required to be
15 paid pursuant to paragraphs (a) and (b).

16 3. Within 7 days after receiving:

17 (a) Any amount owed to him pursuant to paragraph (a) of
18 subsection 2;

19 (b) Proof of the payment of any amounts owed pursuant to
20 paragraph (b) of subsection 2; and

21 (c) The notice of redemption pursuant to paragraph (c) of
22 subsection 2,

23 ↳ the purchaser shall execute and deliver to the person who was
24 the unit's owner at the time of foreclosure and who is redeeming
25 the unit a certificate of redemption and the deed to the unit, both
26 acknowledged or approved before a person authorized to take
27 acknowledgments of conveyances of real property.

28 4. If the purchaser fails to execute and deliver the certificate
29 of redemption and deed as required by subsection 3, the person
30 who was the unit's owner at the time of foreclosure and who
31 attempted to redeem the unit by complying with the provisions of
32 subsection 2 may file a cause of action against the purchaser and
33 may recover reasonable attorney's fees and costs if the owner is
34 the prevailing party in the action.

35 5. To complete the redemption of the unit, the person who
36 was the unit's owner at the time of foreclosure must, upon
37 receiving from the purchaser the certificate of redemption and
38 deed to the unit, record the certificate and deed in the office of the
39 recorder of the county in which the unit is situated, accompanied
40 by an affidavit attesting to and describing the completion of all
41 payments and duties described in subsection 2.

42 6. If the person who was the unit's owner at the time of
43 foreclosure begins but does not complete all of the actions
44 necessary to redeem the unit within the 180-day period described
45 in subsection 2, an additional 30 days must be allowed for the



1 *person to complete the redemption. The laws and regulations in*
2 *effect during the 180-day period have the same force and effect*
3 *during any additional period of 30 days allowed pursuant to this*
4 *subsection.*

5 *7. If a person who redeems a unit pursuant to this section is*
6 *subsequently evicted from the unit because of irregularities in the*
7 *proceedings concerning the redemption, the person may recover*
8 *from the purchaser or other appropriate parties all money paid*
9 *pursuant to paragraph (a) or (b) of subsection 2, including interest*
10 *on the money so paid at the rate of 5 percent per annum from the*
11 *time of payment.*

12 *8. For the purposes of this section, any action available to the*
13 *person who was the unit's owner at the time of foreclosure may*
14 *also be taken by the successor in interest of that person.*

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

16 116.1203 1. Except as otherwise provided in subsection 2, if
17 a planned community contains no more than 12 units and is not
18 subject to any developmental rights, it is subject only to NRS
19 116.1105, 116.1106 and 116.1107 unless the declaration provides
20 that this entire chapter is applicable.

21 2. Except for NRS 116.3104, 116.31043, 116.31046 and
22 116.31138, the provisions of NRS 116.3101 to 116.3119, inclusive,
23 *and section 1 of this act*, and the definitions set forth in NRS
24 116.005 to 116.095, inclusive, to the extent that such definitions are
25 necessary in construing any of those provisions, apply to a
26 residential planned community containing more than six units.

27 **Sec. 3.** NRS 116.31164 is hereby amended to read as follows:

28 116.31164 1. The sale must be conducted in the county in
29 which the common-interest community or part of it is situated, and
30 may be conducted by the association, its agent or attorney, or a title
31 insurance company or escrow agent licensed to do business in this
32 State, except that the sale may be made at the office of the
33 association if the notice of the sale so provided, whether the unit is
34 located within the same county as the office of the association or
35 not. The association or other person conducting the sale may from
36 time to time postpone the sale by such advertisement and notice as it
37 considers reasonable or, without further advertisement or notice, by
38 proclamation made to the persons assembled at the time and place
39 previously set and advertised for the sale.

40 2. On the day of sale originally advertised or to which the sale
41 is postponed, at the time and place specified in the notice or
42 postponement, the person conducting the sale may sell the unit at
43 public auction to the highest cash bidder. Unless otherwise provided
44 in the declaration or by agreement, the association may purchase the
45 unit and hold, lease, mortgage or convey it. The association may



1 purchase by a credit bid up to the amount of the unpaid assessments
2 and any permitted costs, fees and expenses incident to the
3 enforcement of its lien.

4 3. After the sale, the person conducting the sale shall make,
5 execute and, after payment is made, deliver to the purchaser, or his
6 successor or assign, a deed without warranty which conveys to the
7 grantee all title of the unit's owner to the unit, *subject to the*
8 *exercise of the right of redemption pursuant to section 1 of this*
9 *act*, and shall apply the proceeds of the sale for the following
10 purposes in the following order:

11 (a) The reasonable expenses of sale;

12 (b) The reasonable expenses of securing possession before sale,
13 holding, maintaining, and preparing the unit for sale, including
14 payment of taxes and other governmental charges, premiums on
15 hazard and liability insurance, and, to the extent provided for by the
16 declaration, reasonable attorney's fees and other legal expenses
17 incurred by the association;

18 (c) Satisfaction of the association's lien;

19 (d) Satisfaction in the order of priority of any subordinate claim
20 of record; and

21 (e) Remittance of any excess to the unit's owner.

22 **Sec. 4.** NRS 116.31166 is hereby amended to read as follows:

23 116.31166 1. The recitals in a deed made pursuant to NRS
24 116.31164 of:

25 (a) Default, the mailing of the notice of delinquent assessment,
26 and the recording of the notice of default and election to sell;

27 (b) The elapsing of the 90 days; and

28 (c) The giving of notice of sale,

29 ➔ are conclusive proof of the matters recited.

30 2. Such a deed containing those recitals is conclusive against
31 the unit's former owner, his heirs and assigns, and all other persons.
32 The receipt for the purchase money contained in such a deed is
33 sufficient to discharge the purchaser from obligation to see to the
34 proper application of the purchase money.

35 3. The sale of a unit pursuant to NRS 116.31162, 116.31163
36 and 116.31164 vests in the purchaser the title of the unit's owner
37 without equity. ~~{or right of redemption.}~~

38 **Sec. 5.** NRS 116.41095 is hereby amended to read as follows:

39 116.41095 The information statement required by NRS
40 116.4103 and 116.4109 must be in substantially the following form:

41
42 BEFORE YOU PURCHASE PROPERTY IN A
43 COMMON-INTEREST COMMUNITY
44 DID YOU KNOW . . .



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

3 These restrictions are contained in a document known as the
4 Declaration of Covenants, Conditions and Restrictions (C, C & R's)
5 that should be provided for your review before making your
6 purchase. The C, C & R's become a part of the title to your
7 property. They bind you and every future owner of the property
8 whether or not you have read them or had them explained to you.
9 The C, C & R's, together with other "governing documents" (such
10 as association bylaws and rules and regulations), are intended to
11 preserve the character and value of properties in the community, but
12 may also restrict what you can do to improve or change your
13 property and limit how you use and enjoy your property. By
14 purchasing a property encumbered by C, C & R's, you are agreeing
15 to limitations that could affect your lifestyle and freedom of choice.
16 You should review the C, C & R's and other governing documents
17 before purchasing to make sure that these limitations and controls
18 are acceptable to you.

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

21 As an owner in a common-interest community, you are responsible
22 for paying your share of expenses relating to the common elements,
23 such as landscaping, shared amenities and the operation of any
24 homeowner's association. The obligation to pay these assessments
25 binds you and every future owner of the property. Owners' fees are
26 usually assessed by the homeowner's association and due monthly.
27 You have to pay dues whether or not you agree with the way the
28 association is managing the property or spending the assessments.
29 The executive board of the association may have the power to
30 change and increase the amount of the assessment and to levy
31 special assessments against your property to meet extraordinary
32 expenses. In some communities, major components of the
33 community such as roofs and private roads must be maintained and
34 replaced by the association. If the association is not well managed or
35 fails to maintain adequate reserves to repair, replace and restore
36 common elements, you may be required to pay large, special
37 assessments to accomplish these tasks.

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

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



1 file a lawsuit and ask a court to intervene in the dispute **H or to**
2 ***exercise the right of redemption set forth in section 1 of this act.***

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

6 Many common-interest communities have a homeowner's
7 association. In a new development, the association will usually be
8 controlled by the developer until a certain number of units have
9 been sold. After the period of developer control, the association may
10 be controlled by property owners like yourself who are elected by
11 homeowners to sit on an executive board and other boards and
12 committees formed by the association. The association, and its
13 executive board, are responsible for assessing homeowners for the
14 cost of operating the association and the common or shared
15 elements of the community and for the day to day operation and
16 management of the community. Because homeowners sitting on the
17 executive board and other boards and committees of the association
18 may not have the experience or professional background required to
19 understand and carry out the responsibilities of the association
20 properly, the association may hire professional managers to carry
21 out these responsibilities.

22 Homeowner's associations operate on democratic principles. Some
23 decisions require all homeowners to vote, some decisions are made
24 by the executive board or other boards or committees established by
25 the association or governing documents. Although the actions of the
26 association and its executive board are governed by state laws, the
27 C, C & R's and other documents that govern the common-interest
28 community, decisions made by these persons will affect your use
29 and enjoyment of your property, your lifestyle and freedom of
30 choice, and your cost of living in the community. You may not
31 agree with decisions made by the association or its governing bodies
32 even though the decisions are ones which the association is
33 authorized to make. Decisions may be made by a few persons on the
34 executive board or governing bodies that do not necessarily reflect
35 the view of the majority of homeowners in the community. If you do
36 not agree with decisions made by the association, its executive
37 board or other governing bodies, your remedy is typically to attempt
38 to use the democratic processes of the association to seek the
39 election of members of the executive board or other governing
40 bodies that are more responsive to your needs. If persons controlling
41 the association or its management are not complying with state laws
42 or the governing documents, your remedy is typically to seek to
43 mediate or arbitrate the dispute and, if mediation or arbitration is
44 unsuccessful, file a lawsuit and ask a court to resolve the dispute. In
45 addition to your personal cost in mediation or arbitration, or to



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

5 5. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE
6 BUYERS OF YOUR PROPERTY WITH INFORMATION
7 ABOUT LIVING IN YOUR COMMON-INTEREST
8 COMMUNITY?

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

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

27 Pursuant to provisions of chapter 116 of Nevada Revised Statutes,
28 you have the right:

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

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

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

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

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

41 7. QUESTIONS?

42 Although they may be voluminous, you should take the time to read
43 and understand the documents that will control your ownership of a
44 property in a common-interest community. You may wish to ask
45 your real estate professional, lawyer or other person with experience



- 1 to explain anything you do not understand. You may also request
- 2 assistance from the Ombudsman for Owners in Common-Interest
- 3 Communities, Nevada Real Estate Division, at (telephone number).
- 4
- 5 Buyer or prospective buyer's initials:_____
- 6 Date:_____

