

SENATE BILL NO. 258—COMMITTEE ON COMMERCE AND LABOR

MARCH 22, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions relating to common-interest communities. (BDR 10-129)

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 that in certain meetings, a unit-owners' association provide to the owner of each unit an explanation of the potential benefits and the potential adverse consequences of bringing an action for a constructional defect; requiring that a person attempting to sell a residence in a common-interest community disclose in any advertisement to sell his residence that the residence is or has been the subject of an action for a constructional defect; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the association of a common-interest community to provide written notice to each unit owner at least 21 days before a meeting at which the commencement of a civil action is to be considered. Except in certain narrow circumstances, the association may commence a civil action only upon a vote or written agreement of the owners of units to which at least a majority of the votes of the members of the association are allocated. Under existing law, at least 10 days before an association commences or seeks to ratify the commencement of a civil action, the association must provide certain statements to all unit owners, including an explanation of the potential benefits and adverse consequences that could result from bringing the civil action. (NRS 116.3115)

This bill requires the association of a common-interest community to provide to each unit owner such an explanation at any meeting of the association to consider the commencement or ratification of the commencement of a civil action for a constructional defect.

Existing law provides that if a claimant attempts to sell a residence that is or has been the subject of a claim for a constructional defect, the claimant must disclose certain information relating to the claim to the prospective buyer before the



close of escrow for the sale of the residence. Such information must include certain notices the claimant received from contractors, opinions from experts regarding the defect and a detailed report of any repairs made to the residence by or on behalf of the claimant as a result of the defect. (NRS 40.688)

This bill expands the disclosure required of a unit owner in a common-interest community who has brought a claim for a constructional defect. Such an owner must disclose in any advertisement to sell his residence that the residence is or has been the subject of a claim for a constructional defect.

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

Section 1. NRS 116.3115 is hereby amended to read as follows:

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

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

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

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

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

4. To the extent required by the declaration:

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

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



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

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

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

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

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

9. The association shall ~~provide~~ :

(a) ~~Provide~~ written notice to the owner of each unit of a meeting at which an assessment for a capital improvement or the commencement of a civil action is to be considered or action is to be taken on such an assessment at least 21 calendar days before the meeting. Except as otherwise provided in this ~~subsection,~~ ~~paragraph~~, the association may commence a civil action only upon a vote or written agreement of the owners of units to which at least a majority of the votes of the members of the association are allocated. The provisions of this ~~subsection~~ ~~paragraph~~ do not apply to a civil action that is commenced:

~~(a)~~ (1) To enforce the payment of an assessment;

~~(b)~~ (2) To enforce the declaration, bylaws or rules of the association;

~~(c)~~ (3) To proceed with a counterclaim; or

~~(d)~~ (4) To protect the health, safety and welfare of the members of the association. If a civil action is commenced pursuant to this paragraph without the required vote or agreement, the action must be ratified within 90 days after the commencement of the action by a vote or written agreement of the owners of the units to which at least a majority of votes of the members of the association are allocated. If the association, after making a good faith effort, cannot obtain the required vote or agreement to commence or ratify such a civil action, the association may thereafter seek to dismiss the action without prejudice for that reason only if a vote or written agreement of the owners of the units to which at least a majority of votes of the members of the association are allocated was obtained



1 at the time the approval to commence or ratify the action was
2 sought.

3 *(b) Provide to the owner of each unit, at any meeting where*
4 *the commencement of a civil action or the ratification of the*
5 *commencement of a civil action for a constructional defect*
6 *pursuant to NRS 40.600 to 40.695, inclusive, is to be considered,*
7 *an explanation of the potential benefits of the civil action and the*
8 *potential adverse consequences if the association does not*
9 *commence the action or if the outcome of the action is not*
10 *favorable to the association.*

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

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

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

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

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

26 **Sec. 2.** NRS 40.688 is hereby amended to read as follows:

27 40.688 1. If a claimant attempts to sell a residence that is or
28 has been the subject of a claim governed by NRS 40.600 to 40.695,
29 inclusive, he shall ~~{disclose,}~~:

30 *(a) Disclose, in any advertisement to sell a residence in a*
31 *common-interest community, that the residence is or has been the*
32 *subject of an action for a constructional defect; and*

33 *(b) Disclose, in writing, to any prospective purchaser of the*
34 *residence, not less than 30 days before the close of escrow for the*
35 *sale of the residence or, if escrow is to close less than 30 days after*
36 *the execution of the sales agreement, then immediately upon the*
37 *execution of the sales agreement or, if a claim is initiated less than*
38 *30 days before the close of escrow, within 24 hours after giving*
39 *written notice to the contractor pursuant to NRS 40.645:*

40 ~~{(a)}~~ (1) All notices given by the claimant to the contractor
41 pursuant to NRS 40.600 to 40.695, inclusive, that are related to the
42 residence;

43 ~~{(b)}~~ (2) All opinions the claimant has obtained from experts
44 regarding a constructional defect that is or has been the subject of
45 the claim;



- 1 ~~[(c)]~~ (3) The terms of any settlement, order or judgment relating
2 to the claim; and
3 ~~[(d)]~~ (4) A detailed report of all repairs made to the residence
4 by or on behalf of the claimant as a result of a constructional defect
5 that is or has been the subject of the claim.
6 2. Before taking any action on a claim pursuant to NRS 40.600
7 to 40.695, inclusive, the attorney for a claimant shall notify the
8 claimant in writing of the provisions of this section.



