

SENATE BILL NO. 359—COMMITTEE ON COMMERCE AND LABOR

MARCH 25, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits use of delegates or representatives to exercise voting rights of units' owners in certain common-interest communities. (BDR 10-1115)

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; prohibiting the use of delegates or representatives to exercise the voting rights of units' owners in certain common-interest communities; 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. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

(a) Associations created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) Except as otherwise provided in NRS 116.31075, a rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are



1 not so restricted only if the declaration so provides or if the real
2 estate comprising the units that may be used for residential purposes
3 would be a planned community in the absence of the units that may
4 not be used for residential purposes.

5 (c) Common-interest communities or units located outside of
6 this State, but the provisions of NRS 116.4102 to 116.4108,
7 inclusive, apply to all contracts for the disposition thereof signed in
8 this State by any party unless exempt under subsection 2 of
9 NRS 116.4101.

10 (d) A common-interest community that was created before
11 January 1, 1992, is located in a county whose population is less than
12 50,000, and has less than 50 percent of the units within the
13 community put to residential use, unless a majority of the units'
14 owners otherwise elect in writing.

15 (e) Except as otherwise provided in this chapter, time shares
16 governed by the provisions of chapter 119A of NRS.

17 3. The provisions of this chapter do not:

18 (a) Prohibit a common-interest community created before
19 January 1, 1992, from providing for separate classes of voting for
20 the units' owners of the association;

21 (b) Require a common-interest community created before
22 January 1, 1992, to comply with the provisions of NRS 116.2101 to
23 116.2122, inclusive;

24 (c) Invalidate any assessments that were imposed on or before
25 October 1, 1999, by a common-interest community created before
26 January 1, 1992; or

27 (d) Prohibit a common-interest community created before
28 January 1, 1992, ~~for a common interest community described in~~
29 ~~NRS 116.31105}~~ from providing for a representative form of
30 government.

31 4. The provisions of chapters 117 and 278A of NRS do not
32 apply to common-interest communities.

33 5. The Commission shall establish, by regulation, the criteria
34 for determining whether an association or a common-interest
35 community satisfies the requirements for an exemption from any
36 provision of this chapter.

37 *6. The executive board of an association created on or after*
38 *January 1, 1992, shall not, and the governing documents of that*
39 *association must not, authorize a delegate or representative of*
40 *the association to exercise the voting rights of the units' owners of*
41 *the association.*

42 **Sec. 2.** NRS 116.212 is hereby amended to read as follows:

43 116.212 1. If the declaration provides that any of the powers
44 described in NRS 116.3102 are to be exercised by or may be
45 delegated to a profit or nonprofit corporation that exercises those or



1 other powers on behalf of one or more common-interest
2 communities or for the benefit of the units' owners of one or more
3 common-interest communities, or on behalf of a common-interest
4 community and a time-share plan created pursuant to chapter 119A
5 of NRS, all provisions of this chapter applicable to unit-owners'
6 associations apply to any such corporation, except as modified by
7 this section.

8 2. Unless it is acting in the capacity of an association described
9 in NRS 116.3101, a master association may exercise the powers set
10 forth in paragraph (b) of subsection 1 of NRS 116.3102 only to the
11 extent expressly permitted in:

12 (a) The declarations of common-interest communities which are
13 part of the master association or expressly described in the
14 delegations of power from those common-interest communities to
15 the master association; or

16 (b) The declaration of the common-interest community which is
17 a part of the master association and the time-share instrument
18 creating the time-share plan governed by the master association.

19 3. If the declaration of any common-interest community
20 provides that the executive board may delegate certain powers to a
21 master association, the members of the executive board have no
22 liability for the acts or omissions of the master association with
23 respect to those powers following delegation.

24 4. The rights and responsibilities of units' owners with respect
25 to the unit-owners' association set forth in NRS 116.3103,
26 116.31032, 116.31034, 116.31036, 116.3108, 116.31085, 116.3109,
27 116.311 ~~[, 116.31105]~~ and 116.3112 apply in the conduct of the
28 affairs of a master association only to persons who elect the board of
29 a master association, whether or not those persons are otherwise
30 units' owners within the meaning of this chapter.

31 5. Even if a master association is also an association described
32 in NRS 116.3101, the certificate of incorporation or other
33 instrument creating the master association and the declaration of
34 each common-interest community, the powers of which are assigned
35 by the declaration or delegated to the master association, may
36 provide that the executive board of the master association must be
37 elected after the period of the declarant's control in any of the
38 following ways:

39 (a) All units' owners of all common-interest communities
40 subject to the master association may elect all members of the
41 master association's executive board.

42 (b) All members of the executive boards of all common-interest
43 communities subject to the master association may elect all
44 members of the master association's executive board.



1 (c) All units' owners of each common-interest community
2 subject to the master association may elect specified members of the
3 master association's executive board.

4 (d) All members of the executive board of each common-interest
5 community subject to the master association may elect specified
6 members of the master association's executive board.

7 **Sec. 3.** NRS 116.31034 is hereby amended to read as follows:

8 116.31034 1. Except as otherwise provided in subsection 5 of
9 NRS 116.212, not later than the termination of any period of
10 declarant's control, the units' owners shall elect an executive board
11 of at least three members, at least a majority of whom must be units'
12 owners. The executive board shall elect the officers of the
13 association. The members of the executive board and the officers of
14 the association shall take office upon election.

15 2. The term of office of a member of the executive board may
16 not exceed 2 years, except for members who are appointed by the
17 declarant. Unless the governing documents provide otherwise, there
18 is no limitation on the number of terms that a person may serve as a
19 member of the executive board.

20 3. The governing documents of the association must provide
21 for terms of office that are staggered in such a manner that, to the
22 extent possible, an equal number of members of the executive board
23 are elected at each election. The provisions of this subsection do not
24 apply to:

25 (a) Members of the executive board who are appointed by the
26 declarant; and

27 (b) Members of the executive board who serve a term of 1 year
28 or less.

29 4. Not less than 30 days before the preparation of a ballot for
30 the election of members of the executive board, the secretary or
31 other officer specified in the bylaws of the association shall cause
32 notice to be given to each unit's owner of his eligibility to serve as a
33 member of the executive board. Each unit's owner who is qualified
34 to serve as a member of the executive board may have his name
35 placed on the ballot along with the names of the nominees selected
36 by the members of the executive board or a nominating committee
37 established by the association.

38 5. Each person whose name is placed on the ballot as a
39 candidate for a member of the executive board must make a good
40 faith effort to disclose any financial, business, professional or
41 personal relationship or interest that would result or would appear to
42 a reasonable person to result in a potential conflict of interest for the
43 candidate if the candidate were to be elected to serve as a member of
44 the executive board. The candidate must make the disclosure, in



1 writing, to each member of the association in the manner established
2 in the bylaws of the association.

3 6. Unless a person is appointed by the declarant:

4 (a) A person may not be a member of the executive board of an
5 association or an officer of that association if the person, his spouse
6 or his parent or child, by blood, marriage or adoption, performs the
7 duties of a community manager for that association.

8 (b) A person may not be a member of the executive board of a
9 master association or an officer of that master association if the
10 person, his spouse or his parent or child, by blood, marriage or
11 adoption, performs the duties of a community manager for:

12 (1) That master association; or

13 (2) Any association that is subject to the governing
14 documents of that master association.

15 7. An officer, employee, agent or director of a corporate owner
16 of a unit, a trustee or designated beneficiary of a trust that owns a
17 unit, a partner of a partnership that owns a unit, a member or
18 manager of a limited-liability company that owns a unit, and a
19 fiduciary of an estate that owns a unit may be an officer of the
20 association or a member of the executive board. In all events where
21 the person serving or offering to serve as an officer of the
22 association or a member of the executive board is not the record
23 owner, he shall file proof in the records of the association that:

24 (a) He is associated with the corporate owner, trust, partnership,
25 limited-liability company or estate as required by this subsection;
26 and

27 (b) Identifies the unit or units owned by the corporate owner,
28 trust, partnership, limited-liability company or estate.

29 8. The election of any member of the executive board must be
30 conducted by secret written ballot ~~unless the declaration of the~~
31 ~~association provides that voting rights may be exercised by~~
32 ~~delegates or representatives as set forth in NRS 116.31105. If the~~
33 ~~election of any member of the executive board is conducted by~~
34 ~~secret written ballot:] in the following manner:~~

35 (a) The secretary or other officer specified in the bylaws of the
36 association shall cause a secret ballot and a return envelope to be
37 sent, prepaid by United States mail, to the mailing address of each
38 unit within the common-interest community or to any other mailing
39 address designated in writing by the unit's owner.

40 (b) Each unit's owner must be provided with at least 15 days
41 after the date the secret written ballot is mailed to the unit's owner
42 to return the secret written ballot to the association.

43 (c) A quorum is not required for the election of any member of
44 the executive board.



(d) Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.

(e) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for a member of the executive board may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

9. Each member of the executive board shall, within 90 days after his appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.

Sec. 4. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, the units' owners, by a two-thirds vote of all persons entitled to vote at any meeting of the units' owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

2. The removal of any member of the executive board must be conducted by secret written ballot ~~[unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the removal of a member of the executive board is conducted by secret written ballot:]~~ *in the following manner:*

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.



(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

3. If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against the association, but may be recovered from persons whose activity gave rise to the damages.

4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

Sec. 5. NRS 116.311 is hereby amended to read as follows:

116.311 1. If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners cast the votes allocated to that unit without protest made promptly to the person presiding over the meeting by any of the other owners of the unit.

2. Except as otherwise provided in this section, votes allocated to a unit may be cast pursuant to a proxy executed by a unit's owner. A unit's owner may give a proxy only to a member of his immediate family, a tenant of the unit's owner who resides in the common-interest community ~~or~~ **or** another unit's owner who resides in the common-interest community ~~. [or a delegate or representative when authorized pursuant to NRS 116.31105.]~~ If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit



1 through an executed proxy. A unit's owner may revoke a proxy
2 given pursuant to this section only by actual notice of revocation to
3 the person presiding over a meeting of the association.

4 3. Before a vote may be cast pursuant to a proxy:

5 (a) The proxy must be dated.

6 (b) The proxy must not purport to be revocable without notice.

7 (c) The proxy must designate the meeting for which it is
8 executed.

9 (d) The proxy must designate each specific item on the agenda
10 of the meeting for which the unit's owner has executed the proxy,
11 except that the unit's owner may execute the proxy without
12 designating any specific items on the agenda of the meeting if the
13 proxy is to be used solely for determining whether a quorum is
14 present for the meeting. If the proxy designates one or more specific
15 items on the agenda of the meeting for which the unit's owner has
16 executed the proxy, the proxy must indicate, for each specific item
17 designated in the proxy, whether the holder of the proxy must cast a
18 vote in the affirmative or the negative on behalf of the unit's owner.
19 If the proxy does not indicate whether the holder of the proxy must
20 cast a vote in the affirmative or the negative for a particular item on
21 the agenda of the meeting, the proxy must be treated, with regard to
22 that particular item, as if the unit's owner were present but not
23 voting on that particular item.

24 (e) The holder of the proxy must disclose at the beginning of the
25 meeting for which the proxy is executed the number of proxies
26 pursuant to which the holder will be casting votes.

27 4. A proxy terminates immediately after the conclusion of the
28 meeting for which it is executed.

29 5. A vote may not be cast pursuant to a proxy for the election
30 or removal of a member of the executive board of an association .
31 ~~{unless the proxy is exercised through a delegate or representative~~
32 ~~authorized pursuant to NRS 116.31105.}~~

33 6. The holder of a proxy may not cast a vote on behalf of the
34 unit's owner who executed the proxy in a manner that is contrary to
35 the proxy.

36 7. A proxy is void if the proxy or the holder of the proxy
37 violates any provision of subsections 1 to 6, inclusive.

38 8. If the declaration requires that votes on specified matters
39 affecting the common-interest community must be cast by the
40 lessees of leased units rather than the units' owners who have leased
41 the units:

42 (a) The provisions of subsections 1 to 7, inclusive, apply to the
43 lessees as if they were the units' owners;

44 (b) The units' owners who have leased their units to the lessees
45 may not cast votes on those specified matters;



1 (c) The lessees are entitled to notice of meetings, access to
2 records and other rights respecting those matters as if they were the
3 units' owners; and

4 (d) The units' owners must be given notice, in the manner
5 provided in NRS 116.3108, of all meetings at which the lessees are
6 entitled to vote.

7 9. If any votes are allocated to a unit that is owned by the
8 association, those votes may not be cast, by proxy or otherwise, for
9 any purpose.

10 **Sec. 6.** NRS 116.31105 is hereby repealed.

TEXT OF REPEALED SECTION

116.31105 Voting by delegates or representatives; procedure for electing delegates or representatives.

1. If the declaration so provides, in a common-interest community that consists of at least 1,000 units, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives.

2. In addition to a common-interest community identified in subsection 1, if the declaration so provides, in a common-interest community created before October 1, 1999, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives.

3. For the purposes of subsection 1, each unit that a declarant has reserved the right to create pursuant to NRS 116.2105 and for which developmental rights exist must be counted in determining the number of units in a common-interest community.

4. Notwithstanding any provision in the declaration, the election of any delegate or representative must be conducted by secret written ballot.

5. When an election of a delegate or representative is conducted by secret written ballot:

(a) The secretary or other officer of the association specified in the bylaws of the association shall cause a secret written ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.



(c) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.

(d) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) A candidate for delegate or representative may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association in the manner prescribed on the ballot before those secret written ballots have been opened and counted at a meeting called for that purpose.



