

ASSEMBLY BILL NO. 195—COMMITTEE ON COMMERCE AND LABOR

FEBRUARY 27, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to residential landlords and tenants. (BDR 10-1127)

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; revising the provisions relating to the conversion of a common-interest community; requiring a landlord to provide copies of written rental agreements; revising the provisions relating to the required disclosure of the names and addresses of managers and owners; providing that a dwelling unit is not habitable if it violates building, housing or health codes; revising provisions relating to the enforceability of an adopted rule or regulation governing a rental agreement; making changes to the provisions relating to a tenant's remedies under certain circumstances; making various other changes relating to residential landlords and tenants; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth certain requirements for notification of residential tenants and subtenants relating to the conversion of a common-interest community. (NRS 116.4112) **Section 1** of this bill establishes a rebuttable presumption of an intent by the owner to evade such notice requirements if a declaration of conversion is filed within 6 months after a tenant is evicted. **Section 1** also provides that a tenant retains his right to receive an offer to convey the unit and to recover damages if he was unlawfully evicted before the declaration was filed.

Existing law sets forth certain requirements relating to a written rental agreement. (NRS 118A.200) **Section 2** of this bill requires a landlord to provide to the tenant one free copy of any written agreement entered into by the tenant and landlord. **Section 2** also requires a landlord to provide additional copies of any such



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agreement upon request by the tenant within a reasonable time and for a reasonable fee.

Existing law requires a landlord to disclose the name and address of managers and owners and provides that service of process in any action may be made upon the manager of the property. (118A.260) **Section 3** of this bill requires a landlord to provide an address in Nevada for a person authorized to act for and on behalf of the landlord for service of process. **Section 3** also allows service of process to be made upon certain persons in addition to the manager. **Section 4** of this bill provides that a dwelling unit is not habitable if it violates any building, housing or health codes. (NRS 118A.290)

Existing law provides that rules and regulations adopted after a tenant enters into a rental agreement are enforceable against the tenant under certain circumstances. (NRS 118A.320) **Section 5** of this bill provides that such rules or regulations are enforceable before the end of the duration of the agreement only if the tenant consents in writing or if such rules or regulations must be enforced to comply with a change in law and the tenant is given advance notice of the change.

Existing law sets forth various remedies for a tenant when there is a breach of a rental agreement and requires a tenant to give notice of such breach to the landlord before the tenant may recover damages under certain circumstances. (NRS 118A.350, 118A.380) **Section 6** of this bill allows a tenant to withhold rent when there is a breach if he gives notice of such breach to the landlord. **Sections 6 and 7** of this bill also allow a tenant to withhold rent without giving such notice if the landlord has received a notice of the condition constituting the breach from a governmental agency and the landlord fails to remedy or attempt in good faith to remedy the breach within a specified time. **Sections 6 and 7** further provide that a tenant's failure to give notice of a breach does not affect the tenant's ability to recover damages for a violation of the rental agreement.

Existing law provides that a tenant is guilty of an unlawful detainer if he suffers, permits or maintains on or about the premises any nuisance. (NRS 40.2514) **Section 8** of this bill requires that such a nuisance must consist of persistent conduct or an ongoing condition that obstructs the free use of property and causes injury and damage for the nuisance to evidence guilt of an unlawful detainer.

Section 9 of this bill makes a technical correction to an internal reference to a statute.

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

Section 1. NRS 116.4112 is hereby amended to read as follows:

116.4112 1. A declarant of a common-interest community containing converted buildings, and any dealer who intends to offer units in such a common-interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a converted building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and



1 subtenant at the address of the unit or any other mailing address
2 provided by a tenant. No tenant or subtenant may be required to
3 vacate upon less than 120 days' notice, except by reason of
4 nonpayment of rent, waste or conduct that disturbs other tenants'
5 peaceful enjoyment of the premises, and the terms of the tenancy
6 may not be altered during that period. Failure to give notice as
7 required by this section is a defense to an action for possession.

8 2. For 60 days after delivery or mailing of the notice described
9 in subsection 1, the person required to give the notice shall offer to
10 convey each unit or proposed unit occupied for residential use to the
11 tenant who leases that unit. If a tenant fails to purchase the unit
12 during that 60-day period, the offeror may not offer to dispose of an
13 interest in that unit during the following 180 days at a price or on
14 terms more favorable to the offeree than the price or terms offered
15 to the tenant. This subsection does not apply to any unit in a
16 converted building if that unit will be restricted exclusively to
17 nonresidential use or the boundaries of the converted unit do not
18 substantially conform to the dimensions of the residential unit
19 before conversion.

20 3. If a seller, in violation of subsection 2, conveys a unit to a
21 purchaser for value who has no knowledge of the violation, the
22 recordation of the deed conveying the unit or, in a cooperative, the
23 conveyance of the unit, extinguishes any right a tenant may have
24 under subsection 2 to purchase that unit if the deed states that the
25 seller has complied with subsection 2, but the conveyance does not
26 affect the right of a tenant to recover damages from the seller for a
27 violation of subsection 2.

28 4. If a notice of conversion specifies a date by which a unit or
29 proposed unit must be vacated and otherwise complies with the
30 provisions of NRS 40.251 and 40.280, the notice also constitutes a
31 notice to vacate specified by those sections.

32 5. This section does not permit termination of a lease by a
33 declarant in violation of its terms.

34 6. *A purchaser shall not evade the provisions of this section
35 by evicting a tenant other than for cause, including the
36 nonpayment of rent, and subsequently recording a declaration
37 pursuant to NRS 116.2101. A declaration that is filed within 6
38 months of removing a tenant pursuant to NRS 40.255 creates a
39 rebuttable presumption of an intent to evade the provisions of this
40 section which may only be overcome by clear and convincing
41 evidence that the owner did not intend to convert at the time of the
42 notice. A tenant evicted in violation of this subsection:*

43 *(a) Retains the right to receive an offer to convey the unit*
44 *occupied by the tenant pursuant to subsection 2 for 60 days after*
45 *the declaration; and*



(b) May recover damages pursuant to NRS 116.4117.

Sec. 2. NRS 118A.200 is hereby amended to read as follows:

118A.200 1. Any written agreement for the use and occupancy of a dwelling unit or premises must be signed by the landlord or his agent and the tenant or his agent.

2. *The landlord shall provide one copy of any written agreement described in subsection 1 to the tenant free of cost and, upon request of the tenant, provide additional copies of any such agreement to the tenant within a reasonable time. The landlord may charge a reasonable fee for providing the additional copies.*

3. Any written rental agreement must contain, but is not limited to, provisions relating to the following subjects:

(a) Duration of the agreement.

(b) Amount of rent and the manner and time of its payment.

(c) Occupancy by children or pets.

(d) Services included with the dwelling rental.

(e) Fees which are required and the purposes for which they are required.

(f) Deposits which are required and the conditions for their refund.

(g) Charges which may be required for late or partial payment of rent or for return of any dishonored check.

(h) Inspection rights of the landlord.

(i) A listing of persons or numbers of persons who are to occupy the dwelling.

(j) Respective responsibilities of the landlord and the tenant as to the payment of utility charges.

(k) A signed record of the inventory and condition of the premises under the exclusive custody and control of the tenant.

(l) A summary of the provisions of NRS 202.470.

(m) Information regarding the procedure pursuant to which a tenant may report to the appropriate authorities:

(1) A nuisance.

(2) A violation of a building, safety or health code or regulation.

(n) Information regarding the right of the tenant to engage in the display of the flag of the United States, as set forth in NRS 118A.325.

~~3-1~~ 4. The absence of a written agreement raises a disputable presumption that:

(a) There are no restrictions on occupancy by children or pets.

(b) Maintenance and waste removal services are provided without charge to the tenant.

(c) No charges for partial or late payments of rent or for dishonored checks are paid by the tenant.



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(d) Other than normal wear, the premises will be returned in the same condition as when the tenancy began.

~~[4.]~~ 5. It is unlawful for a landlord or any person authorized to enter into a rental agreement on his behalf to use any written agreement which does not conform to the provisions of this section, and any provision in an agreement which contravenes the provisions of this section is void.

Sec. 3. NRS 118A.260 is hereby amended to read as follows:

118A.260 1. The landlord, or any person authorized to enter into a rental agreement on his behalf, shall disclose to the tenant in writing at or before the commencement of the tenancy:

(a) The name and address of:

(1) The persons authorized to manage the premises;

(2) A person *within this State* authorized to act for and on behalf of the landlord for the purpose of service of process and receiving notices and demands; and

(3) The principal or corporate owner.

(b) A telephone number at which a responsible person who resides in the county or within 60 miles of where the premises are located may be called in case of emergency.

2. The information required to be furnished by this section must be kept current, and this section is enforceable against any successor landlord or manager of the premises.

3. A party who enters into a rental agreement on behalf of the landlord and fails to comply with this section is an agent of the landlord for purposes of:

(a) Service of process and receiving notices and demands; and

(b) Performing the obligations of the landlord under law and under the rental agreement.

4. In any action against a landlord which involves his rental property, service of process upon the manager of the property *or a person described in paragraph (a) of subsection 1* shall be deemed to be service upon the landlord. The obligations of the landlord devolve upon the persons authorized to enter into a rental agreement on his behalf.

5. This section does not limit or remove the liability of an undisclosed landlord.

Sec. 4. NRS 118A.290 is hereby amended to read as follows:

118A.290 1. The landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition. A dwelling unit is not habitable *if it violates building, housing or health codes or* if it substantially lacks:

(a) Effective waterproofing and weather protection of the roof and exterior walls, including windows and doors.



(b) Plumbing facilities which conformed to applicable law when installed and which are maintained in good working order.

(c) A water supply approved under applicable law, which is:

(1) Under the control of the tenant or landlord and is capable of producing hot and cold running water;

(2) Furnished to appropriate fixtures; and

(3) Connected to a sewage disposal system approved under applicable law and maintained in good working order to the extent that the system can be controlled by the landlord.

(d) Adequate heating facilities which conformed to applicable law when installed and are maintained in good working order.

(e) Electrical lighting, outlets, wiring and electrical equipment which conformed to applicable law when installed and are maintained in good working order.

(f) An adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the commencement of the tenancy. The landlord shall arrange for the removal of garbage and rubbish from the premises unless the parties by written agreement provide otherwise.

(g) Building, grounds, appurtenances and all other areas under the landlord's control at the time of the commencement of the tenancy in every part clean, sanitary and reasonably free from all accumulations of debris, filth, rubbish, garbage, rodents, insects and vermin.

(h) Floors, walls, ceilings, stairways and railings maintained in good repair.

(i) Ventilating, air-conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord.

2. The landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:

(a) The agreement of the parties is entered into in good faith; and

(b) The agreement does not diminish the obligations of the landlord to other tenants in the premises.

3. An agreement pursuant to subsection 2 is not entered into in good faith if the landlord has a duty under subsection 1 to perform the specified repairs, maintenance tasks or minor remodeling and the tenant enters into the agreement because the landlord or his agent has refused to perform them.

Sec. 5. NRS 118A.320 is hereby amended to read as follows:

118A.320 1. The landlord, from time to time, may adopt rules or regulations concerning the tenant's use and occupancy of



1 the premises. Such a rule or regulation is enforceable against the
2 tenant only if:

3 (a) Its purpose is to promote the convenience, safety or welfare
4 of the landlord or tenants in the premises, preserve the landlord's
5 property from abusive use or make a fair distribution of services and
6 facilities held out for the tenants generally;

7 (b) It is reasonably related to the purpose for which it is adopted;

8 (c) It applies to all tenants in the premises in a fair manner;

9 (d) It is sufficiently explicit in its prohibition, direction or
10 limitation of the tenant's conduct fairly to inform the tenant of what
11 must or must not be done to comply;

12 (e) It is in good faith and not for the purpose of evading an
13 obligation of the landlord; and

14 (f) The tenant has notice of the rule or regulation at the time he
15 enters into the rental agreement or after the rule or regulation is
16 adopted by the landlord.

17 2. A rule or regulation adopted after the tenant enters into the
18 rental agreement which works a material modification of the bargain
19 is enforceable against a tenant ~~if~~:

20 ~~—(a) Who~~ *before the end of the duration of the rental*
21 *agreement only if:*

22 (a) *The tenant* expressly consents to it in writing; or

23 (b) ~~[Who]~~ *The rule or regulation must be enforced to comply*
24 *with a change in the law that becomes effective during the*
25 *duration of the rental agreement and the tenant* has 30 days'
26 advance written notice of it.

27 **Sec. 6.** NRS 118A.350 is hereby amended to read as follows:

28 118A.350 1. Except as otherwise provided in this chapter, if
29 the landlord fails to comply with the rental agreement or fails to
30 maintain the dwelling unit in a habitable condition as required by
31 this chapter, the tenant shall deliver a written notice to the landlord
32 specifying the acts and omissions constituting the breach and stating
33 that the rental agreement will terminate as provided in this section.
34 If the breach is remediable and the landlord adequately remedies the
35 breach or uses his best efforts to remedy the breach within 14 days
36 after receipt of the notice, the rental agreement does not terminate
37 by reason of the breach. If the landlord fails to remedy the breach or
38 make a reasonable effort to do so within the prescribed time, the
39 tenant may:

40 (a) Terminate the rental agreement immediately.

41 (b) Recover actual damages.

42 (c) Apply to the court for such relief as the court deems proper
43 under the circumstances.

44 (d) *Withhold any rent that becomes due without incurring late*
45 *fees, charges for notice or any other charge or fee authorized by*



this chapter or the rental agreement, until the landlord has attempted in good faith to remedy the breach.

2. The tenant may not terminate *the rental agreement* for a condition caused by his own deliberate or negligent act or omission or that of a member of his household or other person on the premises with his consent.

3. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under this chapter.

4. A tenant may not proceed under this section unless he has given notice as required by subsection 1, except that the tenant may, without giving that notice ~~[, recover]~~ :

(a) *Recover* damages under paragraph (b) of subsection 1 if the landlord:

~~[(a)]~~ (1) Admits to the court that he had knowledge of the condition constituting the breach; or

~~[(b)]~~ (2) Has received written notice of that condition from a governmental agency authorized to inspect for violations of building, housing or health codes.

(b) *Withhold rent under paragraph (d) of subsection 1 if the landlord:*

(1) *Has received written notice of the condition constituting the breach from a governmental agency authorized to inspect for violations of building, housing or health codes; and*

(2) *Fails to remedy or attempt in good faith to remedy the breach within the time prescribed in the written notice of that condition from the governmental agency.*

5. *A tenant's failure to give notice as required by subsection 1 does not affect a tenant's ability to recover damages for a violation of the rental agreement.*

Sec. 7. NRS 118A.380 is hereby amended to read as follows:

118A.380 1. If the landlord is required by the rental agreement or this chapter to supply heat, air-conditioning, running water, hot water, electricity, gas, or another essential service and he willfully or negligently fails to do so, causing the premises to become unfit for habitation, the tenant shall give written notice to the landlord specifying the breach. If the landlord does not adequately remedy the breach, or use his best efforts to remedy the breach within 48 hours, except a Saturday, Sunday or legal holiday, after it is received by the landlord, the tenant may, in addition to any other remedy:

(a) Procure reasonable amounts of such essential services during the landlord's noncompliance and deduct their actual and reasonable cost from the rent;



(b) Recover actual damages, including damages based upon the lack of use of the premises or the diminution of the fair rental value of the dwelling unit;

(c) Withhold any rent that becomes due during the landlord's noncompliance without incurring late fees, charges for notice or any other charge or fee authorized by this chapter or the rental agreement, until the landlord has attempted in good faith to restore the essential services; or

(d) Procure other housing which is comparable during the landlord's noncompliance, and the rent for the original premises fully abates during this period. The tenant may recover the actual and reasonable cost of that other housing which is in excess of the amount of rent which is abated.

2. If the tenant proceeds under this section, he may not proceed under NRS 118A.350 and 118A.360 as to that breach.

3. The rights of the tenant under this section do not arise until he has given written notice as required by subsection 1, except that the tenant may, without having given that notice ~~[-, recover]~~:

(a) Recover damages as authorized under paragraph (b) of subsection 1 if the landlord:

~~[(a)]~~ (1) Admits to the court that he had knowledge of the lack of such essential services; or

~~[(b)]~~ (2) Has received written notice of the uninhabitable condition caused by such a lack from a governmental agency authorized to inspect for violations of building, housing or health codes.

(b) Withhold rent under paragraph (c) of subsection 1 if the landlord:

(1) Has received written notice of the condition constituting the breach from a governmental agency authorized to inspect for violations of building, housing or health codes; and

(2) Fails to remedy or attempt in good faith to remedy the breach within the time prescribed in the written notice of that condition from the governmental agency.

4. The rights of the tenant under paragraph (c) of subsection 1 do not arise unless the tenant is current in the payment of rent at the time of giving written notice pursuant to subsection 1.

5. If such a condition was caused by the deliberate or negligent act or omission of the tenant, a member of his household or other person on the premises with his consent, the tenant has no rights under this section.

6. A tenant's failure to give notice as required by subsection 1 does not affect a tenant's ability to recover damages for a violation of the rental agreement.



1 **Sec. 8.** NRS 40.2514 is hereby amended to read as follows:

2 40.2514 A tenant of real property or a mobile home for a term
3 less than life is guilty of an unlawful detainer when he:

4 1. Assigns or sublets the leased premises contrary to the
5 covenants of the lease;

6 2. Commits or permits waste thereon;

7 3. Sets up or carries on therein or thereon any unlawful
8 business;

9 4. Suffers, permits or maintains on or about the premises any
10 nuisance ~~§~~ *that consists of persistent conduct or an ongoing*
11 *condition which constitutes an unreasonable obstruction to the*
12 *free use of property and causes injury and damage to other*
13 *tenants or occupants of that property or adjacent buildings or*
14 *structures;* or

15 5. Violates any of the provisions of NRS 453.011 to 453.552,
16 inclusive, except NRS 453.336, therein or thereon,

17 ➤ and remains in possession after service upon him of 3 days'
18 notice to quit.

19 **Sec. 9.** NRS 40.280 is hereby amended to read as follows:

20 40.280 1. Except as otherwise provided in NRS 40.253, the
21 notices required by NRS 40.251 to 40.260, inclusive, may be
22 served:

23 (a) By delivering a copy to the tenant personally, in the presence
24 of a witness;

25 (b) If he is absent from his place of residence or from his usual
26 place of business, by leaving a copy with a person of suitable age
27 and discretion at either place and mailing a copy to the tenant at his
28 place of residence or place of business; or

29 (c) If the place of residence or business cannot be ascertained, or
30 a person of suitable age or discretion cannot be found there, by
31 posting a copy in a conspicuous place on the leased property,
32 delivering a copy to a person there residing, if the person can be
33 found, and mailing a copy to the tenant at the place where the leased
34 property is situated.

35 2. Service upon a subtenant may be made in the same manner
36 as provided in subsection 1.

37 3. Before an order to remove a tenant is issued pursuant to
38 subsection ~~6~~ 5 of NRS 40.253, a landlord shall file with the court a
39 proof of service of any notice required by that section. Except as
40 otherwise provided in subsection 4, this proof must consist of:

41 (a) A statement, signed by the tenant and a witness,
42 acknowledging that the tenant received the notice on a specified
43 date;

44 (b) A certificate of mailing issued by the United States Postal
45 Service; or



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1 (c) The endorsement of a sheriff, constable or other process
2 server stating the time and manner of service.

3 4. If service of the notice was not delivered in person to a
4 tenant whose rent is reserved by a period of 1 week or less and the
5 tenancy has not continued for more than 45 days, proof of service
6 must include:

7 (a) A certificate of mailing issued by the United States Postal
8 Service or by a private postal service to the landlord or his agent; or

9 (b) The endorsement of a sheriff or constable stating the:

10 (1) Time and date the request for service was made by the
11 landlord or his agent;

12 (2) Time, date and manner of the service; and

13 (3) Fees paid for the service.

