

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; establishing provisions relating to a tenant's remedies under certain circumstances; 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 certain provisions of 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 provides that if a majority of residential tenants or subtenants are required to vacate under certain circumstances, a rebuttable presumption is created that the owner intended to offer the vacated premises as units in a common-interest community.

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



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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 provisions of housing or health codes concerning the health, safety, sanitation or fitness for habitation of the dwelling unit. (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 the adoption of such rules or regulations does not affect the tenant's obligation to pay rent and other charges or the tenant's right under a rental agreement to keep a pet.

Existing law sets forth various remedies for a tenant when there is a breach of a rental agreement or a failure by the landlord to maintain the dwelling unit in a habitable condition and requires a tenant to give notice of such breach or failure to the landlord before the tenant may recover damages under certain circumstances. (NRS 118A.350, 118A.380) **Sections 1.5 and 6** of this bill separate the provisions concerning a breach of a rental agreement from the provisions concerning a landlord's failure to maintain a dwelling unit in a habitable condition and allow a tenant to withhold rent when there is a breach if he gives notice of such breach to the landlord. **Sections 1.5 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 or failure from a governmental agency and the landlord fails to remedy or attempt in good faith to remedy the breach or failure within a specified time. In addition, **section 1.5** requires justice courts to establish a mechanism by which tenants may deposit withheld rent into an escrow account. **Section 1.5** further provides that a tenant has no defense to an eviction proceeding for withholding rent while awaiting a landlord's remedy or attempted remedy of a failure to maintain the dwelling unit in a habitable condition unless the tenant has deposited the withheld rent into the escrow account.

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 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



1 days before the tenants and any subtenant in possession are required
2 to vacate. The notice must set forth generally the rights of tenants
3 and subtenants under this section and must be hand-delivered to the
4 unit or mailed by prepaid United States mail to the tenant and
5 subtenant at the address of the unit or any other mailing address
6 provided by a tenant. No tenant or subtenant may be required to
7 vacate upon less than 120 days' notice, except by reason of
8 nonpayment of rent, waste or conduct that disturbs other tenants'
9 peaceful enjoyment of the premises, and the terms of the tenancy
10 may not be altered during that period. Failure to give notice as
11 required by this section is a defense to an action for possession. *If,
12 during the 6-month period before the recording of a declaration, a
13 majority of the tenants or any subtenants in possession of any
14 portion of the property described in such declaration has been
15 required to vacate for reasons other than nonpayment of rent,
16 waste or conduct that disturbs other tenants' peaceful enjoyment
17 of the premises, a rebuttable presumption is created that the owner
18 of such property intended to offer the vacated premises as units in
19 a common-interest community at all times during that 6-month
20 period.*

21 2. For 60 days after delivery or mailing of the notice described
22 in subsection 1, the person required to give the notice shall offer to
23 convey each unit or proposed unit occupied for residential use to the
24 tenant who leases that unit. If a tenant fails to purchase the unit
25 during that 60-day period, the offeror may not offer to dispose of an
26 interest in that unit during the following 180 days at a price or on
27 terms more favorable to the offeree than the price or terms offered
28 to the tenant. This subsection does not apply to any unit in a
29 converted building if that unit will be restricted exclusively to
30 nonresidential use or the boundaries of the converted unit do not
31 substantially conform to the dimensions of the residential unit
32 before conversion.

33 3. If a seller, in violation of subsection 2, conveys a unit to a
34 purchaser for value who has no knowledge of the violation, the
35 recordation of the deed conveying the unit or, in a cooperative, the
36 conveyance of the unit, extinguishes any right a tenant may have
37 under subsection 2 to purchase that unit if the deed states that the
38 seller has complied with subsection 2, but the conveyance does not
39 affect the right of a tenant to recover damages from the seller for a
40 violation of subsection 2.

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



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

3 **Sec. 1.5.** Chapter 118A of NRS is hereby amended by adding
4 thereto a new section to read as follows:

5 *1. Except as otherwise provided in this chapter, if a landlord*
6 *fails to maintain a dwelling unit in a habitable condition as*
7 *required by this chapter, the tenant shall deliver a written notice to*
8 *the landlord specifying each failure by the landlord to maintain*
9 *the dwelling unit in a habitable condition and requesting that the*
10 *landlord remedy the failures. If a failure is remediable and the*
11 *landlord adequately remedies the failure or uses his best efforts to*
12 *remedy the failure within 14 days after receipt of the notice, the*
13 *tenant may not proceed under this section. If the landlord fails to*
14 *remedy a material failure to maintain the dwelling unit in a*
15 *habitable condition or to make a reasonable effort to do so within*
16 *the prescribed time, the tenant may:*

17 (a) *Terminate the rental agreement immediately.*

18 (b) *Recover actual damages.*

19 (c) *Apply to the court for such relief as the court deems proper*
20 *under the circumstances.*

21 (d) *Withhold any rent that becomes due without incurring late*
22 *fees, charges for notice or any other charge or fee authorized by*
23 *this chapter or the rental agreement until the landlord has*
24 *remedied, or has attempted in good faith to remedy, the failure.*

25 *2. The tenant may not proceed under this section:*

26 (a) *For a condition caused by his own deliberate or negligent*
27 *act or omission or that of a member of his household or other*
28 *person on the premises with his consent; or*

29 (b) *If the landlord's inability to adequately remedy the failure*
30 *or use his best efforts to remedy the failure within 14 days is due to*
31 *the tenant's refusal to allow lawful access to the dwelling unit as*
32 *required by the rental agreement or this chapter.*

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

36 *4. A tenant may not proceed under this section unless he has*
37 *given notice as required by subsection 1, except that the tenant*
38 *may, without giving that notice:*

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

41 (1) *Admits to the court that he had knowledge of the*
42 *condition constituting the failure to maintain the dwelling in a*
43 *habitable condition; or*



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1 (2) *Has received written notice of that condition from a*
2 *governmental agency authorized to inspect for violations of*
3 *building, housing or health codes.*

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

6 (1) *Has received written notice of the condition constituting*
7 *the failure to maintain the dwelling in a habitable condition from*
8 *a governmental agency authorized to inspect for violations of*
9 *building, housing or health codes; and*

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

13 5. *Justice courts shall establish by local rule a mechanism by*
14 *which tenants may deposit rent withheld under paragraph (d) of*
15 *subsection 1 into an escrow account maintained or approved by*
16 *the court. A tenant does not have a defense to an eviction under*
17 *paragraph (d) of subsection 1 unless the tenant has deposited the*
18 *withheld rent into an escrow account pursuant to this subsection.*

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

20 118A.200 1. Any written agreement for the use and
21 occupancy of a dwelling unit or premises must be signed by the
22 landlord or his agent and the tenant or his agent.

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

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

31 (a) Duration of the agreement.

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

33 (c) Occupancy by children or pets.

34 (d) Services included with the dwelling rental.

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

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

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

41 (h) Inspection rights of the landlord.

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

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



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(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-]~~ 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.

(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 provisions of housing or health codes concerning the health, safety, sanitation or fitness for habitation of the dwelling unit 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 the premises. Such a rule or regulation is enforceable against the tenant only if:

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

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

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

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

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

(f) *It does not affect the tenant's obligation to pay rent, utilities or other charges;*

(g) *It does not affect, before the end of the duration of the rental agreement, any right the tenant may have under the rental agreement to keep a pet; and*

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

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

(a) Who expressly consents to ~~it~~ *the rule or regulation* in writing; or



(b) Who has 30 days' advance written notice of ~~the~~ *the rule or regulation.*

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

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

(a) Terminate the rental agreement immediately.

(b) Recover actual damages.

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

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

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

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

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,



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1 after it is received by the landlord, the tenant may, in addition to any
2 other remedy:

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

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

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

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

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

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

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

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

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

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

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

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

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

43 5. If such a condition was caused by the deliberate or negligent
44 act or omission of the tenant, a member of his household or other



1 person on the premises with his consent, the tenant has no rights
2 under this section.

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

4 40.2514 A tenant of real property or a mobile home for a term
5 less than life is guilty of an unlawful detainer when he:

6 1. Assigns or sublets the leased premises contrary to the
7 covenants of the lease;

8 2. Commits or permits waste thereon;

9 3. Sets up or carries on therein or thereon any unlawful
10 business;

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(3) Fees paid for the service.

