

ASSEMBLY BILL NO. 399—ASSEMBLYMEN ALLEN, MABEY, BEERS,
BOBZIEN, CARPENTER, GERHARDT, GOICOECHEA, HORNE,
KIRKPATRICK, MCCLAIN, OHRENSCHALL AND STEWART

MARCH 16, 2007

Referred to Committee on Judiciary

SUMMARY—Revises the provisions relating to the Office of the
Ombudsman for Owners in Common-Interest
Communities. (BDR 10-1026)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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; authorizing the
Office of Ombudsman for Owners in Common-Interest
Communities to issue licenses to private ombudsmen;
revising the provisions relating to the investigation and
resolution of disputes concerning alleged violations;
reducing the amount of fees owed by a common-interest
community for the costs of administering the Office of the
Ombudsman for Owners in Common-Interest
Communities and the Commission for Common-Interest
Communities; and providing other matters properly
relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the duties of the Ombudsman for Owners in Common-Interest Communities, such as: (1) to investigate disputes involving the provisions of chapter 116 of NRS concerning common-interest communities and the governing documents of an association; and (2) to assist in resolving such disputes. (NRS 116.625) **Section 7** of this bill revises the duties of the Ombudsman and authorizes the Ombudsman to adopt regulations that provide for the licensing of private ombudsmen to investigate and resolve such disputes.

Existing law provides for the manner by which an affidavit, filed by a person aggrieved by an alleged violation, must be handled by the Ombudsman. (NRS 116.765) **Section 10** of this bill revises those provisions to require the Ombudsman to select at random a private ombudsman from the list of licensed private ombudsmen to assist in resolving the alleged violation set forth in the affidavit.



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Parties who are referred to a private ombudsman are responsible for the payment of fees for the services of the private ombudsman.

Section 5 of this bill reduces the maximum fee owed by a common-interest community for the costs of administering the Office of the Ombudsman for Owners in Common-Interest Communities and the Commission on Common-Interest Communities from \$3 to 50 cents per unit. (NRS 116.31155)

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 the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *“Private ombudsman” means a person who is licensed by the Office of the Ombudsman for Owners in Common-Interest Communities pursuant to NRS 116.625 to investigate and resolve complaints of alleged violations pursuant to NRS 116.765.*

Sec. 3. 1. *An applicant for a license as a private ombudsman shall submit to the Office of the Ombudsman for Owners in Common-Interest Communities:*

(a) The social security number of the applicant; and
(b) The statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Office of the Ombudsman for Owners in Common-Interest Communities shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance of the license; or
(b) A separate form prescribed by the Office of the Ombudsman for Owners in Common-Interest Communities.

3. A license may not be issued if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or
(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Office of the Ombudsman for Owners in



1 *Common-Interest Communities shall advise the applicant to*
2 *contact the district attorney or other public agency enforcing the*
3 *order to determine the actions that the applicant may take to*
4 *satisfy the arrearage.*

5 **Sec. 4. 1.** *If the Office of the Ombudsman for Owners in*
6 *Common-Interest Communities receives a copy of a court order*
7 *issued pursuant to NRS 425.540 that provides for the suspension*
8 *of all professional, occupational and recreational licenses,*
9 *certificates and permits issued to the holder of a license, the Office*
10 *of the Ombudsman for Owners in Common-Interest Communities*
11 *shall deem the license to be suspended at the end of the 30th day*
12 *after the date the court order was issued unless the Office of the*
13 *Ombudsman for Owners in Common-Interest Communities*
14 *receives a letter issued to the holder of the license by the district*
15 *attorney or other public agency pursuant to NRS 425.550 stating*
16 *that the holder of the license has complied with a subpoena or*
17 *warrant or has satisfied the arrearage pursuant to NRS 425.560.*

18 **2.** *The Office of the Ombudsman for Owners in Common-*
19 *Interest Communities shall reinstate a license that has been*
20 *suspended by a district court pursuant to NRS 425.540 if the*
21 *Office of the Ombudsman for Owners in Common-Interest*
22 *Communities receives a letter issued by the district attorney or*
23 *other public agency pursuant to NRS 425.550 to the holder of the*
24 *license that he has complied with the subpoena or warrant or has*
25 *satisfied the arrearage pursuant to NRS 425.560.*

26 **Sec. 5.** NRS 116.31155 is hereby amended to read as follows:

27 116.31155 1. Except as otherwise provided in subsection 2,
28 an association shall:

29 (a) If the association is required to pay the fee imposed by NRS
30 78.150, 82.193, 86.263, 87.541 or 88.591, pay to the Administrator
31 a fee established by regulation of the Administrator for every unit in
32 the association used for residential use.

33 (b) If the association is organized as a trust or partnership, or as
34 any other authorized business entity, pay to the Administrator a fee
35 established by regulation of the Administrator for each unit in the
36 association.

37 2. If an association is subject to the governing documents of a
38 master association, the master association shall pay the fees required
39 pursuant to this section for each unit in the association that is subject
40 to the governing documents of the master association, unless the
41 governing documents of the master association provide otherwise.
42 The provisions of this subsection do not relieve any association that
43 is subject to the governing documents of a master association from
44 its ultimate responsibility to pay the fees required pursuant to this



1 section to the Administrator if they are not paid by the master
2 association.

3 3. The fees required to be paid pursuant to this section must be:

4 (a) Paid at such times as are established by the Division.

5 (b) Deposited with the State Treasurer for credit to the Account
6 for Common-Interest Communities created by NRS 116.630.

7 (c) Established on the basis of the actual costs of administering
8 the Office of the Ombudsman *for Owners in Common-Interest*
9 *Communities* and the Commission and not on a basis which
10 includes any subsidy beyond those actual costs. In no event may the
11 fees required to be paid pursuant to this section exceed ~~[\$3]~~ *50 cents*
12 per unit.

13 4. The Division shall impose an administrative penalty against
14 an association or master association that violates the provisions of
15 this section by failing to pay the fees owed by the association or
16 master association within the times established by the Division. The
17 administrative penalty that is imposed for each violation must equal
18 10 percent of the amount of the fees owed by the association or
19 master association or \$500, whichever amount is less. The amount
20 of the unpaid fees owed by the association or master association
21 bears interest at the rate set forth in NRS 99.040 from the date the
22 fees are due until the date the fees are paid in full.

23 5. A unit's owner may not be required to pay any portion of the
24 fees or any administrative penalties or interest required to be paid
25 pursuant to this section to both an association and a master
26 association.

27 6. An association that is subject to the governing documents of
28 a master association may not be required to pay any portion of the
29 fees or any administrative penalties or interest required to be paid
30 pursuant to this section to the extent they have already been paid by
31 the master association.

32 7. A master association may not be required to pay any portion
33 of the fees or any administrative penalties or interest required to be
34 paid pursuant to this section to the extent they have already been
35 paid by an association that is subject to the governing documents of
36 the master association.

37 8. Upon the payment of the fees and any administrative
38 penalties and interest required by this section, the Administrator
39 shall provide to the association or master association evidence that it
40 paid the fees and the administrative penalties and interest in
41 compliance with this section.

42 **Sec. 6.** NRS 116.31158 is hereby amended to read as follows:

43 116.31158 1. Each association shall, at the time it pays the
44 fee required by NRS 116.31155, register with the Ombudsman on a
45 form prescribed by the Ombudsman.



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2. The form for registration must include, without limitation, the information required to be maintained pursuant to paragraph ~~(e)~~ (g) of subsection 4 of NRS 116.625.

Sec. 7. NRS 116.625 is hereby amended to read as follows:

116.625 1. The Office of the Ombudsman for Owners in Common-Interest Communities is hereby created within the Division.

2. The Administrator shall appoint the Ombudsman. The Ombudsman is in the unclassified service of the State.

3. The Ombudsman must be qualified by training and experience to perform the duties and functions of his office.

4. In addition to any other duties set forth in this chapter, the Ombudsman shall:

(a) Assist in processing claims submitted to mediation or arbitration pursuant to NRS 38.300 to 38.360, inclusive. ~~(f)~~

(b) Assist owners in common-interest communities to understand their rights and responsibilities as set forth in this chapter and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities. ~~(f)~~

(c) Assist members of executive boards and officers of associations to carry out their duties. ~~(f)~~

(d) *Establish by regulation:*

(1) The qualifications of an applicant for a license as a private ombudsman to be issued by the Office of the Ombudsman for Owners in Common-Interest Communities, including, without limitation, the education and experience required to obtain such a license;

(2) The fees for licensing a private ombudsman;

(3) The grounds for initiating disciplinary action against a person to whom a license has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a license and for the suspension or renewal of a license; and

(4) Rules of practice and procedure for conducting disciplinary hearings.

(e) Establish and maintain a list of private ombudsmen who are licensed and available for the investigation and resolution of complaints of alleged violations pursuant to NRS 116.765.

(f) When appropriate, ~~investigate~~ assist private ombudsmen in resolving disputes involving the provisions of this chapter or the governing documents of an association. ~~(and assist in resolving such disputes; and~~



1 ~~(e)~~ (g) Compile and maintain a registration of each association
2 organized within the State which includes, without limitation, the
3 following information:

4 (1) The name, address and telephone number of the
5 association;

6 (2) The name of each community manager for the common-
7 interest community and the name of any other person who is
8 authorized to manage the property at the site of the common-interest
9 community;

10 (3) The names, mailing addresses and telephone numbers of
11 the members of the executive board of the association;

12 (4) The name of the declarant;

13 (5) The number of units in the common-interest community;

14 (6) The total annual assessment made by the association;

15 (7) The number of foreclosures which were completed on
16 units within the common-interest community and which were based
17 on liens for the failure of the unit's owner to pay any assessments
18 levied against the unit or any fines imposed against the unit's owner;
19 and

20 (8) Whether the study of the reserves of the association has
21 been conducted pursuant to NRS 116.31152 and, if so, the date on
22 which it was completed.

23 **Sec. 8.** NRS 116.635 is hereby amended to read as follows:

24 116.635 The Commission and its members, each hearing panel
25 and its members, the Administrator, the Ombudsman, *private*
26 *ombudsmen*, the Division, and the experts, attorneys, investigators,
27 consultants and other personnel of the Commission and the Division
28 are immune from any civil liability for any decision or action taken
29 in good faith and without malicious intent in carrying out the
30 provisions of this chapter.

31 **Sec. 9.** NRS 116.750 is hereby amended to read as follows:

32 116.750 1. In carrying out the provisions of NRS 116.745 to
33 116.795, inclusive, the Division and ~~the Ombudsman~~ *private*
34 *ombudsmen* have jurisdiction to investigate and the Commission
35 and each hearing panel has jurisdiction to take appropriate action
36 against any person who commits a violation, including, without
37 limitation:

38 (a) Any association and any officer, employee or agent of an
39 association.

40 (b) Any member of an executive board.

41 (c) Any community manager who holds a certificate and any
42 other community manager.

43 (d) Any person who holds a permit to conduct a study of the
44 reserves of an association issued pursuant to chapter 116A of NRS.

45 (e) Any declarant or affiliate of a declarant.



(f) Any unit's owner.

(g) Any tenant of a unit's owner if the tenant has entered into an agreement with the unit's owner to abide by the governing documents of the association and the provisions of this chapter and any regulations adopted pursuant thereto.

2. The jurisdiction set forth in subsection 1 applies to any officer, employee or agent of an association or any member of an executive board who commits a violation and who:

(a) Currently holds his office, employment, agency or position or who held his office, employment, agency or position at the commencement of proceedings against him.

(b) Resigns his office, employment, agency or position:

(1) After the commencement of proceedings against him; or

(2) Within 1 year after the violation is discovered or reasonably should have been discovered.

Sec. 10. NRS 116.765 is hereby amended to read as follows:

116.765 1. Upon receipt of an affidavit that complies with the provisions of NRS 116.760, the Division shall refer the affidavit to the Ombudsman.

2. *The Ombudsman shall select at random a private ombudsman from the list of private ombudsmen maintained by the Ombudsman pursuant to NRS 116.625. Any private ombudsman selected must be available within the geographic area of the parties. Upon selecting a private ombudsman, the Ombudsman shall provide the name and contact information of the private ombudsman to each party.*

3. *The parties are responsible for payment of the fees for the services of the private ombudsman. In advance of any effort by a private ombudsman to resolve a dispute between parties, the private ombudsman shall apportion the estimated fees between the parties as the private ombudsman deems equitable. The aggrieved person may not be required to pay more than 10 percent of the estimated fees of the private ombudsman. The respondent must be required to pay the remainder of the estimated fees of the private ombudsman.*

4. The ~~{Ombudsman}~~ private ombudsman shall give such guidance to the parties as the ~~{Ombudsman}~~ private ombudsman deems necessary to assist the parties to resolve the alleged violation.

~~{3-}~~ *After the resolution of the alleged violation, the prevailing party shall have his share of the fees for the private ombudsman reimbursed by the opposing party. In the event that an association is the prevailing party, the association may recover the award of fees by levying an assessment against the opposing party.*

5. If the parties are unable to resolve the alleged violation with the assistance of the ~~{Ombudsman,}~~ private ombudsman, the



1 ~~{Ombudsman}~~ *private ombudsman* shall provide to the Division a
2 report concerning the alleged violation and any information
3 collected by the ~~{Ombudsman}~~ *private ombudsman* during his
4 efforts to assist the parties to resolve the alleged violation.

5 ~~{4.}~~ 6. Upon receipt of the report from the ~~{Ombudsman,}~~
6 *private ombudsman*, the Division shall conduct an investigation to
7 determine whether good cause exists to proceed with a hearing on
8 the alleged violation.

9 ~~{5.}~~ 7. If, after investigating the alleged violation, the Division
10 determines that the allegations in the affidavit are not frivolous,
11 false or fraudulent and that good cause exists to proceed with a
12 hearing on the alleged violation, the Administrator shall file a
13 formal complaint with the Commission and schedule a hearing on
14 the complaint before the Commission or a hearing panel.

15 **Sec. 11.** 1. This act becomes effective on July 1, 2007.

16 2. Sections 3 and 4 of this act expire by limitation on the date
17 on which the provisions of 42 U.S.C. § 666 requiring each state to
18 establish procedures under which the state has authority to withhold
19 or suspend, or to restrict the use of professional, occupational and
20 recreational licenses of persons who:

21 (a) Have failed to comply with a subpoena or warrant relating to
22 a proceeding to determine the paternity of a child or to establish or
23 enforce an obligation for the support of a child; or

24 (b) Are in arrears in the payment for the support of one or more
25 children,

26 ➤ are repealed by the Congress of the United States, whichever is
27 earlier.

