

ASSEMBLY BILL NO. 431—ASSEMBLYMEN HORNE, PARKS,
ANDERSON, CONKLIN, ALLEN, DENIS, GERHARDT,
GOICOECHEA, HOGAN, KIHUEN, KIRKPATRICK, KOIVISTO,
LESLIE, MUNFORD, OCEGUERA, OHRENSCHALL, PARNELL,
SEGERBLOM, SETTELMAYER, SMITH AND WOMACK

MARCH 19, 2007

Referred to Committee on Judiciary

SUMMARY—Establishes provisions governing condominium
hotels. (BDR 10-1056)

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 condominium hotels; providing in skeleton
form for the establishment of provisions governing
condominium hotels; and providing other matters
properly relating thereto.

Legislative Counsel's Digest:

1 This bill provides in skeleton form for the establishment of provisions
2 governing condominium hotels. These provisions are set forth in a new chapter that
3 is patterned closely after chapter 116 of NRS which governs common-interest
4 communities. This new chapter governing condominium hotels contains provisions
5 regarding: (1) the creation, alteration and termination of condominium hotels; (2)
6 the management of condominium hotels; (3) the protection of purchasers; and (4)
7 the administration and enforcement of the chapter.

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

1 **Section 1.** Title 10 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 17, inclusive, of this act.

4 **Sec. 2.** *This chapter may be cited as the Condominium Hotel*
5 *Act.*



1 **Sec. 3. “Condominium hotel” means a condominium in**
2 **which:**

3 1. *Portions of the real estate are designated for separate*
4 *ownership;*

5 2. *A hotel unit is defined and may contain shared*
6 *components, including, without limitation, hallways, lobbies,*
7 *elevators, recreational facilities and service areas;*

8 3. *A transient rental program may be offered to the*
9 *residential units’ owners; and*

10 4. *The remainder of the real estate, which may be limited to*
11 *airspace and subsurface rights, is designated as common elements*
12 *and is controlled by an association of units’ owners.*

13 **Sec. 4. “Ombudsman” means the Ombudsman for Owners in**
14 **Common-Interest Communities and Condominium Hotels created**
15 **in NRS 116.625.**

16 **Sec. 5. 1. Except as otherwise provided in this section, this**
17 **chapter applies to all condominium hotels created within this**
18 **State.**

19 2. *The provisions of chapters 117 and 278A of NRS do not*
20 *apply to condominium hotels.*

21 **Sec. 6. A condominium hotel may be created pursuant to this**
22 **chapter only by recording a declaration executed in the same**
23 **manner as a deed. The declaration must be recorded in every**
24 **county in which any portion of the condominium hotel is located**
25 **and must be indexed in the grantee’s index in the name of the**
26 **condominium hotel and the association and in the grantor’s index**
27 **in the name of each person executing the declaration.**

28 **Sec. 7. The declaration for a condominium hotel must**
29 **contain:**

30 1. *The names of the condominium hotel and the association.*

31 2. *The name of every county in which any part of the*
32 *condominium hotel is situated.*

33 3. *A sufficient description of the real estate included in the*
34 *condominium hotel.*

35 4. *A statement of the maximum number of units that the*
36 *declarant reserves the right to create.*

37 5. *A description of the boundaries of each residential unit*
38 *created by the declaration, including the unit’s identifying*
39 *number, its size or number of rooms, and its location within a*
40 *building if it is within a building containing more than one unit.*

41 6. *A description of the shared components, hotel unit and*
42 *common elements.*

43 7. *A description of any limited common elements.*

44 8. *A description of any developmental rights and other special*
45 *declarant’s rights reserved by the declarant, together with a legally*



1 sufficient description of the real estate to which each of those
2 rights applies, and a time within which each of those rights must
3 be exercised.

4 9. If any developmental right may be exercised with respect to
5 different parcels of real estate at different times, a statement to
6 that effect together with:

7 (a) Either a statement fixing the boundaries of those portions
8 and regulating the order in which those portions may be subjected
9 to the exercise of each developmental right or a statement that no
10 assurances are made in those regards; and

11 (b) A statement whether, if any developmental right is
12 exercised in any portion of the real estate subject to that
13 developmental right, that developmental right must be exercised in
14 all or in any other portion of the remainder of that real estate.

15 10. Any other conditions or limitations under which the
16 rights described in subsection 8 may be exercised or will lapse.

17 11. A description of any easements benefiting or burdening
18 the units, including, without limitation, easements for the
19 residential units' owners to ingress or egress through the common
20 elements, hotel unit or shared components for the purpose of
21 accessing their respective units.

22 12. An allocation to the residential units and the hotel unit of
23 the allocated interests as described in this chapter, and an
24 allocation to the residential units of the shared expenses and other
25 charges of the declarant and the hotel unit owner.

26 13. Any restrictions:

27 (a) On use, occupancy and alienation of the units; and

28 (b) On the amount for which a unit may be sold or on the
29 amount that may be received by a unit's owner on sale,
30 condemnation or casualty to the unit or to the condominium hotel,
31 or on termination of the condominium hotel.

32 14. The file number and book or other information to show
33 where easements and licenses are recorded appurtenant to or
34 included in the condominium hotel or to which any portion of the
35 condominium hotel is or may become subject by virtue of a
36 reservation in the declaration.

37 15. Any other matters the declarant considers appropriate.

38 **Sec. 8.** Except as otherwise provided in this section and
39 subject to the provisions of the declaration and other provisions of
40 law, a residential unit's owner:

41 1. May make any improvements or alterations to his
42 residential unit that do not impair the structural integrity or
43 mechanical systems or lessen the support of any portion of the
44 condominium hotel.



2. *May not change the appearance of the common elements, the shared components, the hotel unit or the exterior appearance of a unit, building or any other portion of the condominium hotel.*

Sec. 9. *1. Except in the case of a taking of the condominium hotel by eminent domain, termination of the condominium hotel or the declaration shall require approval by:*

(a) The owners representing at least 80 percent of the votes in the association allocated to the units' owners; and

(b) The declarant or hotel unit owner, as applicable.

2. *An agreement to terminate the condominium hotel or the declaration must be evidenced by the execution of an agreement to terminate in the same manner as a deed by the declarant or hotel unit owner, as applicable, and the requisite number of units' owners. The agreement to terminate must specify a date after which the agreement will be void unless it is recorded.*

3. *An agreement to terminate may provide that all of the common elements, the units and the hotel unit must be sold following termination. If, pursuant to the agreement, any real estate in the condominium hotel is to be sold following termination, the agreement must set forth the minimum terms of the sale.*

4. *The association, on behalf of the units' owners, may contract for the sale of real estate owned by the residential units' owners in a condominium hotel, but the contract is not binding on the units' owners and the declarant or hotel unit owner, as applicable, until approved pursuant to subsections 1 and 2. If any real estate owned by the residential units' owners is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the residential units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to units' owners and lienholders as their interests may appear, in accordance with this chapter. Unless otherwise specified in the agreement to terminate, as long as the association holds title to the real estate, each unit's owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit's owner and his successors in interest remain liable for all assessments and other obligations imposed on units' owners by this chapter or the declaration.*

5. *If the real estate is not to be sold following termination, title to the common elements and residential units vests in the*



units' owners upon termination as tenants in common in proportion to their respective interests in the association, and liens on the units shift accordingly. While the tenancy in common exists, each unit's owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

6. Following termination of the condominium hotel, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for the units' owners and holders of liens on the units as their interests may appear.

Sec. 10. Subject to the provisions of the declaration, the association may do any or all of the following:

1. Adopt and amend bylaws, rules and regulations pertaining to the common elements, provided, however, that any bylaws, rules or regulations adopted by the association shall not attempt to exercise any control over the hotel unit or the shared components.

2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.

3. Hire and discharge managing agents and other employees, agents and independent contractors.

4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common elements.

5. Make contracts and incur liabilities with regard to the common elements.

6. Regulate the use, maintenance, repair, replacement and modification of common elements.

7. Cause additional improvements to be made as a part of the common elements.

8. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but common elements may be conveyed or subjected to a security interest only as described in this chapter.

9. Grant easements, leases, licenses and concessions through or over the common elements.

10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, and for services provided to the units' owners.

11. Impose charges for late payment of assessments on common elements.

12. Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in this chapter.



1 13. Provide for the indemnification of its officers and
2 executive board and maintain directors' and officers' liability
3 insurance.

4 14. Assign its right to future income, including the right to
5 receive assessments for common expenses, but only to the extent
6 the declaration expressly so provides.

7 15. Exercise any other powers conferred by the declaration or
8 bylaws.

9 16. Exercise any other powers necessary and proper for the
10 governance and operation of the association.

11 **Sec. 11.** 1. Except as otherwise provided in this section and
12 unless the declaration provides otherwise, if a residential unit's
13 owner violates any provision of the governing documents of an
14 association, the executive board may, if the governing documents
15 so provide:

16 (a) Prohibit, for a reasonable time, the residential unit's owner
17 or the tenant or guest of the unit's owner from:

18 (1) Voting on matters related to the association.

19 (2) Using the common elements. The provisions of this
20 subparagraph do not prohibit the residential unit's owner or the
21 tenant or guest of the residential unit's owner from using any
22 portion of the common elements, if any, as is necessary for
23 vehicular or pedestrian ingress or egress to or from the residential
24 unit.

25 (b) Impose a fine against the residential unit's owner or the
26 tenant or guest of the residential unit's owner for each violation.
27 If the violation poses an imminent threat of causing a substantial
28 adverse effect on the health, safety or welfare of the residential
29 units' owners or residents of the condominium hotel, the amount
30 of the fine must be commensurate with the severity of the violation
31 and must be determined by the executive board in accordance with
32 the governing documents. If the violation does not pose an
33 imminent threat of causing a substantial adverse effect on the
34 health, safety or welfare of the residential units' owners or
35 residents or guests of the condominium hotel, the amount of the
36 fine must be commensurate with the severity of the violation and
37 must be determined by the executive board in accordance with the
38 governing documents, but the amount of the fine must not exceed
39 \$100 for each violation or a total amount of \$1000, whichever is
40 less. The limitations on the amount of the fine do not apply to any
41 interest, charges or costs that may be collected by the association
42 pursuant to this section if the fine becomes past due.

43 2. The executive board may not impose a fine pursuant to
44 subsection 1 unless:



1 (a) Not less than 30 days before the violation, the person
2 against whom the fine will be imposed had been provided with
3 written notice of the applicable provisions of the governing
4 documents that form the basis of the violation; and

5 (b) Within a reasonable time after the discovery of the
6 violation, the person against whom the fine will be imposed has
7 been provided with:

8 (1) Written notice specifying the details of the violation, the
9 amount of the fine, and the date, time and location for a hearing
10 on the violation; and

11 (2) A reasonable opportunity to contest the violation at the
12 hearing.

13 3. The executive board must schedule the date, time and
14 location for the hearing on the violation so that the person against
15 whom the fine will be imposed is provided with a reasonable
16 opportunity to prepare for the hearing and to be present at the
17 hearing.

18 4. The executive board must hold a hearing before it may
19 impose the fine, unless the person against whom the fine will be
20 imposed:

21 (a) Pays the fine;

22 (b) Executes a written waiver of the right to the hearing; or

23 (c) Fails to appear at the hearing after being provided with
24 proper notice of the hearing.

25 5. If a fine is imposed pursuant to subsection 1 and the
26 violation is not cured within 14 days, or within any longer period
27 that may be established by the executive board, the violation shall
28 be deemed a continuing violation. Thereafter, the executive board
29 may impose an additional fine for the violation for each 7-day
30 period or portion thereof that the violation is not cured. Any
31 additional fine may be imposed without notice and an opportunity
32 to be heard.

33 6. If the governing documents so provide, the executive board
34 may appoint a committee, with not less than three members, to
35 conduct hearings on violations and to impose fines pursuant to
36 this section. While acting on behalf of the executive board for
37 those limited purposes, the committee and its members are entitled
38 to all privileges and immunities and are subject to all duties and
39 requirements of the executive board and its members.

40 7. The provisions of this section establish the minimum
41 procedural requirements that the executive board must follow
42 before it may impose a fine. The provisions of this section do not
43 preempt any provisions of the governing documents that provide
44 greater procedural protections.

45 8. Any past due fine:



1 (a) Bears interest at the rate established by the association, not
2 to exceed the legal rate per annum.

3 (b) May include any costs of collecting the past due fine at a
4 rate established by the association. If the past due fine is for a
5 violation that does not threaten the health, safety or welfare of the
6 residents of the condominium hotel, the rate established by the
7 association for the costs of collecting the past due fine:

8 (1) May not exceed \$20, if the outstanding balance is less
9 than \$200.

10 (2) May not exceed \$50, if the outstanding balance is \$200
11 or more, but is less than \$500.

12 (3) May not exceed \$100, if the outstanding balance is \$500
13 or more, but is less than \$1,000.

14 (4) May not exceed \$250, if the outstanding balance is
15 \$1,000 or more, but is less than \$5,000.

16 (5) May not exceed \$500, if the outstanding balance is
17 \$5,000 or more.

18 (c) May include any costs incurred by the association during a
19 civil action to enforce the payment of the past due fine.

20 9. As used in this section:

21 (a) "Costs of collecting" includes, without limitation, any
22 collection fee, filing fee, recording fee, referral fee, fee for postage
23 or delivery, and any other fee or cost that an association may
24 reasonably charge to the unit's owner for the collection of a past
25 due fine. The term does not include any costs incurred by an
26 association during a civil action to enforce the payment of a past
27 due fine.

28 (b) "Outstanding balance" means the amount of a past due
29 fine that remains unpaid before any interest, charges for late
30 payment or costs of collecting the past due fine are added.

31 10. Unless the declaration provides otherwise, nothing in this
32 section shall be construed as giving the association the power to
33 sanction a unit owner for matters related to the hotel unit or the
34 shared components.

35 **Sec. 12. 1. The executive board shall:**

36 (a) At least once every 5 years, cause to be conducted a study
37 of the reserves required to repair, replace and restore the major
38 components of the common elements;

39 (b) At least annually, review the results of that study to
40 determine whether those reserves are sufficient; and

41 (c) At least annually, make any adjustments to the
42 association's funding plan which the executive board deems
43 necessary to provide adequate funding for the required reserves.



2. The study of the reserves required by subsection 1 must be conducted by a person who holds a permit issued pursuant to chapter 116A of NRS.

3. The study of the reserves must include, without limitation:

(a) A summary of an inspection of the major components of the common elements that the association is obligated to repair, replace or restore;

(b) An identification of the major components of the common elements that the association is obligated to repair, replace or restore which have a remaining useful life of less than 30 years;

(c) An estimate of the remaining useful life of each major component of the common elements identified pursuant to paragraph (b);

(d) An estimate of the cost of repair, replacement or restoration of each major component of the common elements identified pursuant to paragraph (b) during and at the end of its useful life; and

(e) An estimate of the total annual assessment that may be necessary to cover the cost of repair, replacement or restoration of the major components of the common elements identified pursuant to paragraph (b), after subtracting the reserves of the association as of the date of the study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves.

4. A summary of the study of the reserves required by subsection 1 must be submitted to the Division not later than 45 days after the date that the executive board adopts the results of the study.

Sec. 13. 1. Except as otherwise provided in subsection 2, an association shall:

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

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

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

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

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



(c) Established on the basis of the actual costs of administering the Office of the Ombudsman and the Commission and not on a basis which includes any subsidy beyond those actual costs. In no event may the fees required to be paid pursuant to this section exceed \$3 per unit.

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

4. Upon the payment of the fees and any administrative penalties and interest required by this section, the Administrator shall provide to the association evidence that it paid the fees and the administrative penalties and interest in compliance with this section.

Sec. 14. 1. Except as otherwise provided in subsection 4, in a condominium hotel, the association declarant or hotel unit owner, as applicable, may foreclose its lien by sale after all of the following occur:

(a) The association, declarant or hotel unit owner, as applicable, has mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest, at his address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment or charge pursuant to paragraph (a), the association, declarant or hotel unit owner, as applicable, has executed and caused to be recorded, with the county recorder of the county in which the condominium hotel or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association, the declarant or hotel unit owner, as applicable, to enforce the lien by sale.



(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association, the declarant or hotel unit owner, as applicable, for that purpose.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest at his address, if known, and at the address of the unit, whichever date occurs later.

4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the condominium hotel; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to this chapter.

Sec. 15. The Commission for Common-Interest Communities and Condominium Hotels created by NRS 116.600, the Division and the Director of the Department of Business and Industry shall have jurisdiction over the enforcement of this chapter as set forth herein.

Sec. 16. 1. To carry out the purposes of this chapter, the Commission, or any member thereof acting on behalf of the Commission or acting on behalf of a hearing panel, may issue subpoenas to compel the attendance of witnesses and the production of books, records and other papers.

2. If any person fails to comply with a subpoena issued by the Commission or any member thereof pursuant to this section within 20 days after the date of service of the subpoena, the Commission may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a



1 *time and place to be fixed by the court in its order, the time to be*
2 *not more than 20 days after the date of service of the order, and to*
3 *show cause why he has not complied with the subpoena. A*
4 *certified copy must be served upon the person subpoenaed.*

5 4. *If it appears to the court that the subpoena was regularly*
6 *issued by the Commission or any member thereof pursuant to this*
7 *section, the court shall enter an order compelling compliance with*
8 *the subpoena, and upon failure to obey the order, the person shall*
9 *be dealt with as for contempt of court.*

10 **Sec. 17.** 1. *In carrying out the provisions of this chapter,*
11 *the Division and the Ombudsman have jurisdiction to investigate*
12 *and the Commission and each hearing panel has jurisdiction to*
13 *take appropriate action against any person who commits a*
14 *violation, including, without limitation:*

15 (a) *Any association and any officer, employee or agent of an*
16 *association.*

17 (b) *Any member of an executive board.*

18 (c) *Any declarant or affiliate of a declarant.*

19 (d) *Any unit's owner.*

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

24 (f) *A declarant or hotel unit owner, as applicable.*

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

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

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

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

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

35 **Sec. 18.** This act becomes effective on January 1, 2008.

