

ASSEMBLY BILL NO. 499—COMMITTEE ON JUDICIARY

MARCH 22, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to the provisions governing common-interest communities. (BDR 10-1342)

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

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to common-interest communities; revising the provisions governing the election of members of the executive board; revising the provisions governing the imposition of certain assessments; revising the provisions governing the regulation of certain streets in common-interest communities; making various other changes related to common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill authorizes candidates for the executive board to be elected without balloting when the number of candidates is less than or equal to the number of members to be elected. (NRS 116.31034) **Section 1** also adds items which candidates must disclose to the units' owners in advance of the election, whether or not an election is to be held with balloting. (NRS 116.31034)

Section 2 of this bill lengthens the period between which meetings of the executive board must be held from 90 to 100 days. (NRS 116.31083) **Section 2** also provides that if the sole purpose of a meeting is for the executive board to meet in executive session, notice must be provided in the same manner as in an emergency. (NRS 116.31083)

Section 3 of this bill permits the executive board to impose certain assessments for the purpose of funding a reserve without a vote of the units' owners. (NRS 116.3115)

Existing law provides that certain common-interest communities are prohibited from regulating motor vehicles on thoroughfares accepted by state or local governments for public use. (NRS 116.350) **Section 4** of this bill permits an association to restrict parking on such thoroughfares if the parking prohibition was a condition for approval of the subdivision's final map or included in the terms of a zoning ordinance permit or approval. (NRS 116.350) **Section 4** also adds



* A B 4 9 9 *

inoperable vehicles to the types of vehicles for which an association may restrict the parking or storage. (NRS 116.350)

Section 5 of this bill excludes certain unit owners' associations from the definition of "business" for the purposes of requiring business licenses. (NRS 360.765)

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

Section 1. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, at least a majority of whom must be units' owners. Unless the governing documents provide otherwise, the remaining members of the executive board do not have to be units' owners. The executive board shall elect the officers of the association. The members of the executive board and the officers of the association shall take office upon election.

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

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

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

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

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



* A B 4 9 9 *

1 *executive board pursuant to this subsection, the executive board*
2 *may determine that if, at the closing of the prescribed period for*
3 *nominations for membership on the executive board, the number*
4 *of candidates nominated for membership on the executive board is*
5 *equal to or less than the number of members to be elected to the*
6 *executive board at the election, then the:*

7 (a) *Association will not prepare or mail any ballots to the*
8 *units' owners pursuant to this section;*

9 (b) *Candidates so nominated shall be deemed to be duly elected*
10 *to the executive board not later than 30 days after the date of*
11 *closing of the prescribed period for nominations; and*

12 (c) *Units' owners will receive notification that the candidates*
13 *so nominated have been elected to the executive board.*

14 5. Each person ~~[whose name is placed on the ballot]~~ *who is*
15 *nominated* as a candidate for a member of the executive board
16 *pursuant to subsection 4* must:

17 (a) Make a good faith effort to disclose any financial, business,
18 professional or personal relationship or interest that would result or
19 would appear to a reasonable person to result in a potential conflict
20 of interest for the candidate if the candidate were to be elected to
21 serve as a member of the executive board; and

22 (b) Disclose whether the candidate is a member in good
23 standing. For the purposes of this paragraph, a candidate shall not be
24 deemed to be in "good standing" if the candidate ~~[has]~~ :

25 (1) *Has* any unpaid and past due assessments or construction
26 penalties that are required to be paid to the association ~~[]~~ ;

27 (2) *Has any unpaid fine imposed by the executive board*
28 *that is 30 days or more past due; or*

29 (3) *After being provided notice and the opportunity for a*
30 *hearing in accordance with the provisions of NRS 116.31031, has*
31 *been found to have committed a violation of the governing*
32 *documents that has not been cured.*

33 ➡ The candidate must make all disclosures required pursuant to this
34 subsection in writing to the association with his candidacy
35 information. The association shall distribute the disclosures to each
36 member of the association with the ballot *or, in the event ballots*
37 *are not prepared and mailed pursuant to subsection 4*, in the
38 manner established *for the distribution of ballots* in the bylaws of
39 the association.

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

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



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

(1) That master association; or

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

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

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

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

8. ~~[The]~~ *Except as otherwise provided in subsection 4, the* election of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the election of any member of the executive board is conducted by secret written ballot:

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

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

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

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

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



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

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

Sec. 2. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every ~~90~~ 100 days.

2. Except ~~{in an emergency}~~ *as otherwise provided in subsection 3* or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;

(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or

(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency ~~{}~~ *or if the sole purpose of the meeting is for the executive board to meet in executive session*, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of



1 the agenda may be conveniently obtained by the units' owners. The
2 notice must include notification of the right of a unit's owner to:

3 (a) Have a copy of the minutes or a summary of the minutes of
4 the meeting provided to the unit's owner upon request and, if
5 required by the executive board, upon payment to the association of
6 the cost of providing the copy to the unit's owner.

7 (b) Speak to the association or executive board, unless the
8 executive board is meeting in executive session.

9 5. The agenda of the meeting of the executive board must
10 comply with the provisions of subsection 4 of NRS 116.3108. The
11 period required to be devoted to comments by the units' owners and
12 discussion of those comments must be scheduled for the beginning
13 of each meeting. In an emergency, the executive board may take
14 action on an item which is not listed on the agenda as an item on
15 which action may be taken.

16 6. At least once every ~~90~~ 100 days, unless the declaration or
17 bylaws of the association impose more stringent standards, the
18 executive board shall review, at a minimum, the following financial
19 information at one of its meetings:

20 (a) A current year-to-date financial statement of the association;

21 (b) A current year-to-date schedule of revenues and expenses for
22 the operating account and the reserve account, compared to the
23 budget for those accounts;

24 (c) A current reconciliation of the operating account of the
25 association;

26 (d) A current reconciliation of the reserve account of the
27 association;

28 (e) The latest account statements prepared by the financial
29 institutions in which the accounts of the association are maintained;
30 and

31 (f) The current status of any civil action or claim submitted to
32 arbitration or mediation in which the association is a party.

33 7. The secretary or other officer specified in the bylaws shall
34 cause minutes to be recorded or otherwise taken at each meeting of
35 the executive board. Not more than 30 days after each such meeting,
36 the secretary or other officer specified in the bylaws shall cause the
37 minutes or a summary of the minutes of the meetings to be made
38 available to the units' owners. A copy of the minutes or a summary
39 of the minutes must be provided to any unit's owner upon request
40 and, if required by the executive board, upon payment to the
41 association of the cost of providing the copy to the unit's owner.

42 8. Except as otherwise provided in subsection 9 and NRS
43 116.31085, the minutes of each meeting of the executive board must
44 include:

45 (a) The date, time and place of the meeting;



* A B 4 9 9 *

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 3. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set



1 forth in the declaration pursuant to subsections 1 and 2 of
2 NRS 116.2107.

3 (b) The association shall establish adequate reserves, funded on
4 a reasonable basis, for the repair, replacement and restoration of the
5 major components of the common elements. The reserves may be
6 used only for those purposes, including, without limitation,
7 repairing, replacing and restoring roofs, roads and sidewalks, and
8 must not be used for daily maintenance. The association may
9 comply with the provisions of this paragraph through a funding plan
10 that is designed to allocate the costs for the repair, replacement and
11 restoration of the major components of the common elements over a
12 period of years if the funding plan is designed in an actuarially
13 sound manner which will ensure that sufficient money is available
14 when the repair, replacement and restoration of the major
15 components of the common elements are necessary.
16 *Notwithstanding any provision of the governing documents to the*
17 *contrary, to establish adequate reserves pursuant to this*
18 *paragraph, including, without limitation, to establish or carry out*
19 *a funding plan, the executive board may, without seeking or*
20 *obtaining the approval of the units' owners, impose any necessary*
21 *and reasonable assessments against the units in the common-*
22 *interest community.*

23 3. Any past due assessment for common expenses or
24 installment thereof bears interest at the rate established by the
25 association not exceeding 18 percent per year.

26 4. To the extent required by the declaration:

27 (a) Any common expense associated with the maintenance,
28 repair, restoration or replacement of a limited common element
29 must be assessed against the units to which that limited common
30 element is assigned, equally, or in any other proportion the
31 declaration provides;

32 (b) Any common expense or portion thereof benefiting fewer
33 than all of the units must be assessed exclusively against the units
34 benefited; and

35 (c) The costs of insurance must be assessed in proportion to risk
36 and the costs of utilities must be assessed in proportion to usage.

37 5. Assessments to pay a judgment against the association may
38 be made only against the units in the common-interest community at
39 the time the judgment was entered, in proportion to their liabilities
40 for common expenses.

41 6. If any common expense is caused by the misconduct of any
42 unit's owner, the association may assess that expense exclusively
43 against his unit.

44 7. The association of a common-interest community created
45 before January 1, 1992, is not required to make an assessment



* A B 4 9 9 *

1 against a vacant lot located within the community that is owned by
2 the declarant.

3 8. If liabilities for common expenses are reallocated,
4 assessments for common expenses and any installment thereof not
5 yet due must be recalculated in accordance with the reallocated
6 liabilities.

7 9. The association shall provide written notice to each unit's
8 owner of a meeting at which an assessment for a capital
9 improvement is to be considered or action is to be taken on such an
10 assessment at least 21 calendar days before the date of the meeting.

11 **Sec. 4.** NRS 116.350 is hereby amended to read as follows:

12 116.350 1. In a common-interest community which is not
13 gated or enclosed and the access to which is not restricted or
14 controlled by a person or device, the executive board shall not and
15 the governing documents must not provide for the regulation of
16 *motor vehicles on* any road, street, alley or other thoroughfare the
17 right-of-way of which is accepted by the State or a local government
18 for dedication as a road, street, alley or other thoroughfare for public
19 use.

20 2. The provisions of subsection 1 do not preclude an
21 association from adopting, and do not preclude the governing
22 documents of an association from setting forth, rules that reasonably
23 restrict ~~[the]~~ :

24 (a) *Parking on any road, street, alley or other thoroughfare the*
25 *right-of-way of which is accepted by the State or a local*
26 *government for dedication as a road, street, alley or other*
27 *thoroughfare for public use if the requirement that no parking be*
28 *allowed is included in the terms of any applicable zoning*
29 *ordinance, permit or approval or as a condition for approval of*
30 *any final subdivision map; or*

31 (b) *The* parking or storage of *inoperable vehicles*, recreational
32 vehicles, watercraft, trailers or commercial vehicles in the common-
33 interest community to the extent authorized by law.

34 **Sec. 5.** NRS 360.765 is hereby amended to read as follows:

35 360.765 1. Except as otherwise provided in subsection 2,
36 "business" means:

37 (a) Any person, except a natural person, that performs a service
38 or engages in a trade for profit; or

39 (b) Any natural person who performs a service or engages in a
40 trade for profit if the person is required to file with the Internal
41 Revenue Service a Schedule C (Form 1040), Profit or Loss From
42 Business Form, or its equivalent or successor form, a Schedule E
43 (Form 1040), Supplemental Income and Loss Form, or its
44 equivalent or successor form, or a Schedule F (Form 1040), Profit or



1 Loss From Farming Form, or its equivalent or successor form, for
2 that activity.

3 2. The term does not include:

4 (a) A governmental entity.

5 (b) A nonprofit religious, charitable, fraternal or other
6 organization that qualifies as a tax-exempt organization pursuant to
7 26 U.S.C. § 501(c).

8 (c) A person who operates a business from his home and whose
9 net earnings from that business are not more than $66 \frac{2}{3}$ percent of
10 the average annual wage, as computed for the preceding calendar
11 year pursuant to chapter 612 of NRS and rounded to the nearest
12 hundred dollars.

13 (d) A natural person whose sole business is the rental of four or
14 fewer dwelling units to others.

15 (e) A business whose primary purpose is to create or produce
16 motion pictures. As used in this paragraph, “motion pictures” has
17 the meaning ascribed to it in NRS 231.020.

18 (f) *A unit-owners’ association organized pursuant to NRS*
19 *116.3101 as a nonprofit corporation, trust or partnership.*

