

SENATE BILL NO. 235—SENATOR BEERS

MARCH 7, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises certain provisions pertaining to voting by units' owners in a homeowners' association. (BDR 10-681)

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 common-interest communities; providing that the declaration of a homeowners' association may be amended by vote or agreement of a majority of all votes cast by units' owners; prohibiting the vote of a unit's owner from being cast by another person under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the declaration of a homeowners' association may be
2 amended by vote or agreement of units' owners of units to which at least a majority
3 of the votes in the association are allocated, or any larger majority the declaration
4 specifies. (NRS 116.2117) Under certain circumstances, an association or any
5 unit's owner may file a petition with the district court asking for an order waiving
6 the supermajority requirements of the declaration and confirming the amendment as
7 validly approved. (NRS 116.21175) This bill allows the declaration of an
8 association to be amended by vote or agreement of a majority of all votes cast by
9 units' owners or any larger majority of all votes cast by units' owners that the
10 declaration specifies. This bill also repeals the provisions concerning petitions to
11 the district court for an amendment to a declaration of an association.

12 Under existing law, a unit's owner may vote in person, by mail or by proxy.
13 (NRS 116.31034, 116.311) This bill prohibits the executive board and the
14 governing documents of an association from allowing the vote of a unit's owner
15 who does not cast a vote in person, by mail or by proxy to be cast by any other
16 person.



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

Section 1. NRS 116.2117 is hereby amended to read as follows:

116.2117 1. Except ~~{as otherwise provided in NRS 116.2117, and except}~~ in cases of amendments that may be executed by a declarant under subsection 6 of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, subsection 4 of NRS 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by subsection 4, the declaration, including any plats and plans, may be amended ~~{only}~~ by vote or agreement of *a majority of all votes cast by* units' owners ~~{of units to which at least a majority of the votes in the association are allocated,}~~ or any larger majority *of all votes cast by units' owners that* the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

3. Every amendment to the declaration must be recorded in every county in which any portion of the common-interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to NRS 116.2112, must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of the parties executing the amendment.

4. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted, in the absence of unanimous consent of the units' owners affected and the consent of a majority of the owners of the remaining units.

5. Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Sec. 2. NRS 116.311 is hereby amended to read as follows:

116.311 1. If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the



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1 votes allocated to that unit. If more than one of the owners are
2 present, the votes allocated to that unit may be cast only in
3 accordance with the agreement of a majority in interest of the
4 owners, unless the declaration expressly provides otherwise. There
5 is majority agreement if any one of the owners cast the votes
6 allocated to that unit without protest made promptly to the person
7 presiding over the meeting by any of the other owners of the unit.

8 2. Except as otherwise provided in this section, votes allocated
9 to a unit may be cast pursuant to a proxy executed by a unit's owner.
10 A unit's owner may give a proxy only to a member of his immediate
11 family, a tenant of the unit's owner who resides in the common-
12 interest community, another unit's owner who resides in the
13 common-interest community, or a delegate or representative when
14 authorized pursuant to NRS 116.31105. If a unit is owned by more
15 than one person, each owner of the unit may vote or register protest
16 to the casting of votes by the other owners of the unit through an
17 executed proxy. A unit's owner may revoke a proxy given pursuant
18 to this section only by actual notice of revocation to the person
19 presiding over a meeting of the association.

20 3. Before a vote may be cast pursuant to a proxy:

21 (a) The proxy must be dated.

22 (b) The proxy must not purport to be revocable without notice.

23 (c) The proxy must designate the meeting for which it is
24 executed.

25 (d) The proxy must designate each specific item on the agenda
26 of the meeting for which the unit's owner has executed the proxy,
27 except that the unit's owner may execute the proxy without
28 designating any specific items on the agenda of the meeting if the
29 proxy is to be used solely for determining whether a quorum is
30 present for the meeting. If the proxy designates one or more specific
31 items on the agenda of the meeting for which the unit's owner has
32 executed the proxy, the proxy must indicate, for each specific item
33 designated in the proxy, whether the holder of the proxy must cast a
34 vote in the affirmative or the negative on behalf of the unit's owner.
35 If the proxy does not indicate whether the holder of the proxy must
36 cast a vote in the affirmative or the negative for a particular item on
37 the agenda of the meeting, the proxy must be treated, with regard to
38 that particular item, as if the unit's owner were present but not
39 voting on that particular item.

40 (e) The holder of the proxy must disclose at the beginning of the
41 meeting for which the proxy is executed the number of proxies
42 pursuant to which the holder will be casting votes.

43 4. A proxy terminates immediately after the conclusion of the
44 meeting for which it is executed.



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1 5. A vote may not be cast pursuant to a proxy for the election
2 or removal of a member of the executive board of an association
3 unless the proxy is exercised through a delegate or representative
4 authorized pursuant to NRS 116.31105.

5 6. The holder of a proxy may not cast a vote on behalf of the
6 unit's owner who executed the proxy in a manner that is contrary to
7 the proxy.

8 7. A proxy is void if the proxy or the holder of the proxy
9 violates any provision of subsections 1 to 6, inclusive.

10 8. If the declaration requires that votes on specified matters
11 affecting the common-interest community must be cast by the
12 lessees of leased units rather than the units' owners who have leased
13 the units:

14 (a) The provisions of subsections 1 to 7, inclusive, apply to the
15 lessees as if they were the units' owners;

16 (b) The units' owners who have leased their units to the lessees
17 may not cast votes on those specified matters;

18 (c) The lessees are entitled to notice of meetings, access to
19 records and other rights respecting those matters as if they were the
20 units' owners; and

21 (d) The units' owners must be given notice, in the manner
22 provided in NRS 116.3108, of all meetings at which the lessees are
23 entitled to vote.

24 9. If any votes are allocated to a unit that is owned by the
25 association, those votes may not be cast, by proxy or otherwise, for
26 any purpose.

27 *10. The executive board shall not and the governing*
28 *documents must not allow the vote of a unit's owner who does not*
29 *cast a vote in person, by mail or pursuant to a proxy executed in*
30 *accordance with this section to be cast by any member of the*
31 *executive board or any other person.*

32 **Sec. 3.** NRS 116.21175 is hereby repealed.

TEXT OF REPEALED SECTION

116.21175 Procedure for seeking confirmation from district court of certain amendments to declaration.

1. Except as otherwise limited by subsection 4 of NRS 116.2117, if:

(a) To approve an amendment to the declaration pursuant to NRS 116.2117, the declaration requires:



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(1) In a single-class voting structure, more than a majority of the total number of votes allocated to the single class to be cast in favor of the amendment; or

(2) In a multiclass voting structure, more than a majority of the total number of votes allocated to one or more of the multiple classes to be cast in favor of the amendment; and

(b) An amendment fails to receive the number of votes required by the declaration to be approved but:

(1) In a single-class voting structure, receives a majority of the total number of votes allocated to the single class; or

(2) In a multiclass voting structure, receives in each of the multiple classes a majority of the total number of votes allocated to that class,

↳ the association or any unit's owner may file a petition with the district court in any county in which any portion of the common-interest community is located asking for an order waiving the supermajority requirements of the declaration and confirming the amendment as validly approved.

2. If the association or any unit's owner files a petition pursuant to subsection 1, the petition:

(a) Must contain sufficient information specifying:

(1) The actions that have been taken to obtain the number of votes required to approve the amendment under the declaration and whether those actions have conformed with the procedures set forth in the declaration;

(2) The amount of time that has been allowed for the units' owners to vote upon the amendment;

(3) The number and percentage of affirmative votes required in each voting class to approve the amendment under the declaration;

(4) The number and percentage of affirmative and negative votes actually received in each voting class with regard to the amendment; and

(5) Any other matters the petitioner considers relevant to the court's determination; and

(b) Must include, as exhibits to the petition, copies of:

(1) The governing documents;

(2) The complete text of the amendment and a statement explaining the need for the amendment and its purposes and objectives;

(3) All notices and materials used in the effort to persuade the units' owners to approve the amendment; and

(4) Any other documents the petitioner considers relevant to the court's determination.

3. Upon receiving the petition, the court shall:



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- (a) Set the matter for hearing; and
- (b) Issue an ex parte order setting forth the manner in which the petitioner must give written notice of the hearing to all the units' owners in the association.

4. The court may grant the petition if it finds that the petitioner has presented evidence establishing that:

(a) The petitioner has given at least 15 days' written notice of the hearing to:

- (1) All the units' owners in the association;
- (2) Each city, if any, and each county in which any portion of the common-interest community is located; and

(3) All other persons or entities that are entitled to notice under the declaration;

(b) The voting process regarding the amendment was conducted in accordance with all applicable provisions of the governing documents and state law;

(c) A reasonably diligent effort was made to allow all eligible units' owners and, if required by the governing documents, all lenders to vote on the amendment;

(d) The amendment:

(1) In a single-class voting structure, received a majority of the total number of votes allocated to the single class; or

(2) In a multiclass voting structure, received in each of the multiple classes a majority of the total number of votes allocated to that class; and

(e) The amendment is reasonable.

5. If the court grants the petition, the court shall enter an order waiving the supermajority requirements of the declaration and confirming the amendment as validly approved.

6. An amendment confirmed by a final court order pursuant to this section is not effective until a certified copy of the amendment and the final court order have been recorded in each county in which any portion of the common-interest community is located. The amendment must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association, and the final court order must be recorded along with the amendment.

7. After the amendment and the final court order have been recorded pursuant to this section, the declaration, as amended, has the same force and effect as if the amendment had been approved in compliance with every requirement imposed by the governing documents.

8. Not later than 30 days after the date on which the amendment and the final court order are recorded pursuant to this



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section, the association shall mail to all the units' owners in the association:

- (a) A copy of the amendment and the final court order; and
- (b) A statement explaining that the amendment and the final court order have been recorded and that the declaration has been amended pursuant to this section.

