

Amendment No. 589

Senate Amendment to Senate Bill No. 235

(BDR 10-681)

Proposed by: Senate Committee on Commerce and Labor**Amendment Box:** Replaces Amendment Nos. 395, 568 and 574.**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

RRY



Date: 4/20/2007

S.B. No. 235—Revises certain provisions pertaining to voting by units' owners in a homeowners' association. (BDR 10-681)



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.]~~ **Makes various changes concerning homeowners' associations.** (BDR 10-681)

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; **authorizing the governance of a homeowners' association by an executive board which is elected by units' owners from election districts; ~~[providing that]~~ authorizing** 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;]~~ **to require a supermajority vote of the members of the executive board for an action of the executive board; revising provisions concerning voting rights exercised by delegates or representatives; and providing other matters properly relating thereto.**

Legislative Counsel's Digest:

Section 2 of this bill authorizes a declaration of certain homeowners' associations to provide for the governance of the association by an executive board, the members of which are elected by the units' owners of election districts. Section 2 also provides requirements for such governance, including, without limitation, requirements for the establishment of such election districts and the procedures for conducting such elections.

Section 3 of this bill specifically allows the declaration of a homeowners' association to provide that a supermajority vote of the members of the executive board is required for all actions or any specified action of the executive board.

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

~~Under existing law, a unit's owner may vote in person, by mail or by proxy. (NRS 116.31034, 116.311) This bill prohibits the executive board and the governing documents of~~

~~an association from allowing the vote of a unit's owner who does not cast a vote in person, by mail or by proxy to be cast by any other person.] if: (1) the declaration required a supermajority of the votes allocated to amend the declaration; and (2) the amendment received at least a simple majority of the votes allocated. (NRS 116.21175) Section 6 of this bill amends this provision to allow an association or unit's owner to file such a petition if: (1) the declaration required either a simple majority or supermajority of the votes allocated; and (2) the amendment received at least 35 percent of the votes allocated.~~

Existing law allows certain homeowners' associations to provide that the voting rights of the units' owners in the association may be exercised by delegates or representatives. (NRS 116.31105) Section 7 of this bill provides that this form of voting may occur only during the period that the declarant is in control of the association and during the 2-year period after the declarant's control of the association is terminated. Section 7 also provides that this new limitation does not apply to planned communities containing time shares or condominiums or cooperatives with mixed uses.

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

Delete existing sections 1 through 3 of this bill and replace with the following new sections 1 through 8:

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. Notwithstanding any provision of law to the contrary, the declaration of a common-interest community that consists of at least 1,000 units may provide for the governance of the common-interest community by an executive board, the members of which are elected by the units' owners of election districts as set forth in this section.

2. If the declaration provides for the governance by an executive board as described in subsection 1, the declaration must:

(a) Provide for the establishment of election districts for the members of the executive board, which must:

(1) Be based on the number of units within the district, with the difference in the number of units between the largest district and the smallest district not being greater than 10 percent; and

(2) Be contiguous;

(b) Provide for the election of one member of the executive board from each such district to represent the units' owners of the district; and

(c) Require that each member of the executive board be elected by a majority of the votes cast by the units' owners of his respective district.

Sec. 3. Notwithstanding any provision of law to the contrary, the declaration of a common-interest community may provide that a supermajority vote of the members of the executive board is required for all actions or any specified action of the executive board.

Sec. 4. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

(a) A limited-purpose association, except that a limited-purpose association:

(1) Shall pay the fees required pursuant to NRS 116.31155;

(2) Shall register with the Ombudsman pursuant to NRS 116.31158;

(3) Shall comply with the provisions of:

(I) NRS 116.31038, 116.31083 and 116.31152; and

(II) NRS 116.31075, if the limited-purpose association is created for a rural agricultural residential common-interest community;

(4) Shall comply with the provisions of NRS 116.4101 to 116.412, inclusive, as required by the regulations adopted by the Commission pursuant to paragraph (b) of subsection 5; and

(5) Shall not enforce any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or if the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

(d) A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992; or

(d) ~~Prohibit~~ Except as otherwise provided in subsection 6 of NRS 116.31105, prohibit a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. The Commission shall establish, by regulation:

(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and

(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.

6. As used in this section, "limited-purpose association" means an association that:

(a) Is created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community; and

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

Sec. 5. NRS 116.1203 is hereby amended to read as follows:

116.1203 1. Except as otherwise provided in subsection 2, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, the provisions of NRS 116.3101 to 116.350, inclusive, and sections 2 and 3 of this act and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than six units.

Sec. 6. NRS 116.21175 is hereby amended to read as follows:

116.21175 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:

(1) In a single-class voting structure, a majority or 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, a majority or 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 ~~the majority~~ at least 35 percent 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 ~~the majority~~ at least 35 percent 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~~ applicable voting 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:

(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]~~ at least 35 percent 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]~~ at least 35 percent 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]~~ applicable voting 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 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.

Sec. 7. NRS 116.31105 is hereby amended to read as follows:

116.31105 1. ~~[[[Except as otherwise provided in subsection 6, if~~ the declaration so provides, in a common-interest community that consists of at least 1,000 units, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives.

2. ~~[[1]]~~ Except as otherwise provided in subsection 6, in addition to a common-interest community identified in subsection 1, if the declaration so provides, in a common-interest community created before October 1, 1999, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives.

3. For the purposes of subsection 1, each unit that a declarant has reserved the right to create pursuant to NRS 116.2105 and for which developmental rights exist must be counted in determining the number of units in a common-interest community.

4. Notwithstanding any provision in the declaration, the election of any delegate or representative must be conducted by secret written ballot.

5. When an election of a delegate or representative is conducted by secret written ballot:

(a) The secretary or other officer of the association specified in the bylaws of the association shall cause a secret written 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) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.

(d) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) A candidate for delegate or representative 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 in the manner prescribed on the ballot before those secret written ballots have been opened and counted at a meeting called for that purpose.

6. Except as otherwise provided in subsection 7, the voting rights of the units' owners in the association for a common-interest community may be exercised by delegates or representatives only during the period that the declarant is in control of the association and during the 2-year period after the declarant's control of the association is terminated pursuant to NRS 116.31032.

7. The provisions of subsection 6 do not apply to:

(a) A planned community containing any time shares; or

(b) A condominium or cooperative containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted.

Sec. 8. 1. This section and sections 1, 2, 3, 5 and 6 of this act become effective on October 1, 2007.

2. Sections 4 and 7 of this act become effective on March 31, 2009.