

ASSEMBLY BILL NO. 207—ASSEMBLYMAN CARPENTER

FEBRUARY 20, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning common-interest communities. (BDR 10-694)

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; revising certain requirements for limited-purpose associations that are created for a rural agricultural residential common-interest communities; providing that such a limited-purpose association is a public body for purposes of the Open Meeting Law; providing that a study of the reserves of an association may be conducted by a person without a permit under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, a limited-purpose association that is created for a rural
2 agricultural residential common-interest community must comply with certain
3 requirements set forth in chapter 116 of NRS. **Section 1** of this bill exempts such a
4 limited-purpose association from the requirement to: (1) pay a fee to the Real Estate
5 Administrator for each unit in the association as required pursuant to NRS
6 116.31155, except that the association must pay the fees if it intends to use the
7 services of the Ombudsman for Owners in Common-Interest Communities and
8 Condominium Hotels; (2) comply with certain rules for meetings of the executive
9 board; and (3) conduct a study every 5 years of the reserves required to repair,
10 replace and restore the major components of the common elements of the
11 community, and take certain actions concerning the study. (NRS 116.1201,
12 116.31083, 116.31152, 116.31155)

13 Existing law requires each limited-purpose association that is created for a rural
14 agricultural residential common-interest community to comply with chapter 241 of
15 NRS, which is commonly referred to as the Open Meeting Law. (NRS 116.31075)
16 **Section 2** of this bill amends the definition of "public body" for purposes of the
17 Open Meeting Law to include a limited-purpose association that is created for a
18 rural agricultural residential common-interest community. (NRS 241.015) Thus,



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such a limited-purpose association will be subject to enforcement action by the Attorney General if the association violates the Open Meeting Law. (NRS 241.037)

Existing law provides that at least once every 5 years, the executive board of an association shall cause a study of the reserves of the association required to repair, replace and restore the major components of the association to be conducted by a person who holds a permit to conduct such a study. (NRS 116.31152) **Sections 1.3 and 1.7** of this bill provide that if the common-interest community contains 20 or fewer units and is located in a county with a population of 50,000 or less (currently counties other than Carson City, Clark and Washoe Counties), the study may be conducted by any person whom the executive board deems qualified to conduct the study.

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

Section 1. 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 ~~§~~, *except that if the limited-purpose association is created for a rural agricultural residential common-interest community, the limited-purpose association is not required to pay the fee unless the association intends to use the services of the Ombudsman;*

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

(3) Shall comply with the provisions of:

(I) NRS 116.31038 ~~§~~;

(II) *NRS 116.31083 and 116.31152 ~~§~~, unless the limited-purpose association is created for a rural agricultural residential common-interest community;* and

~~§(H)~~ (III) 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 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:



- 1 (a) Is created for the limited purpose of maintaining:
- 2 (1) The landscape of the common elements of a common-
- 3 interest community;
- 4 (2) Facilities for flood control; or
- 5 (3) A rural agricultural residential common-interest
- 6 community; and
- 7 (b) Is not authorized by its governing documents to enforce any
- 8 restrictions concerning the use of units by units' owners, unless the
- 9 limited-purpose association is created for a rural agricultural
- 10 residential common-interest community.

11 **Sec. 1.3.** NRS 116.31152 is hereby amended to read as

12 follows:

13 116.31152 1. The executive board shall:

- 14 (a) At least once every 5 years, cause to be conducted a study of
- 15 the reserves required to repair, replace and restore the major
- 16 components of the common elements;
- 17 (b) At least annually, review the results of that study to
- 18 determine whether those reserves are sufficient; and
- 19 (c) At least annually, make any adjustments to the association's
- 20 funding plan which the executive board deems necessary to provide
- 21 adequate funding for the required reserves.

22 2. ~~[The]~~ *Except as otherwise provided in this subsection, the*

23 *study of the reserves required by subsection 1 must be conducted by*

24 *a person who holds a permit issued pursuant to chapter 116A of*

25 *NRS. If the common-interest community contains 20 or fewer*

26 *units and is located in a county whose population is 50,000 or less,*

27 *the study of the reserves required by subsection 1 may be*

28 *conducted by any person whom the executive board deems*

29 *qualified to conduct the study.*

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

- 31 (a) A summary of an inspection of the major components of the
- 32 common elements that the association is obligated to repair, replace
- 33 or restore;
- 34 (b) An identification of the major components of the common
- 35 elements that the association is obligated to repair, replace or restore
- 36 which have a remaining useful life of less than 30 years;
- 37 (c) An estimate of the remaining useful life of each major
- 38 component of the common elements identified pursuant to
- 39 paragraph (b);
- 40 (d) An estimate of the cost of repair, replacement or restoration
- 41 of each major component of the common elements identified
- 42 pursuant to paragraph (b) during and at the end of its useful life; and
- 43 (e) An estimate of the total annual assessment that may be
- 44 necessary to cover the cost of repairing, replacement or restoration
- 45 of the major components of the common elements identified



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1 pursuant to paragraph (b), after subtracting the reserves of the
2 association as of the date of the study, and an estimate of the
3 funding plan that may be necessary to provide adequate funding for
4 the required reserves.

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

9 5. If a common-interest community was developed as part of a
10 planned unit development pursuant to chapter 278A of NRS and is
11 subject to an agreement with a city or county to receive credit
12 against the amount of the residential construction tax that is imposed
13 pursuant to NRS 278.4983 and 278.4985, the association that is
14 organized for the common-interest community may use the money
15 from that credit for the repair, replacement or restoration of park
16 facilities and related improvements if:

17 (a) The park facilities and related improvements are identified as
18 major components of the common elements of the association; and

19 (b) The association is obligated to repair, replace or restore the
20 park facilities and related improvements in accordance with the
21 study of the reserves required by subsection 1.

22 **Sec. 1.7.** NRS 116A.420 is hereby amended to read as
23 follows:

24 116A.420 1. Except as otherwise provided in this section ~~§~~
25 *and subsection 2 of NRS 116.31152*, a person shall not act as a
26 reserve study specialist unless the person holds a permit.

27 2. The Commission shall by regulation provide for the
28 standards of practice for reserve study specialists who hold permits.

29 3. The Division may investigate any reserve study specialist
30 who holds a permit to ensure that the reserve study specialist is
31 complying with the provisions of this chapter and chapters 116 and
32 116B of NRS and the standards of practice adopted by the
33 Commission.

34 4. In addition to any other remedy or penalty, if the
35 Commission or a hearing panel, after notice and hearing, finds that a
36 reserve study specialist who holds a permit has violated any
37 provision of this chapter or chapter 116 or 116B of NRS or any of
38 the standards of practice adopted by the Commission, the
39 Commission or the hearing panel may take appropriate disciplinary
40 action against the reserve study specialist.

41 5. In addition to any other remedy or penalty, the Commission
42 may:

43 (a) Refuse to issue a permit to a person who has failed to pay
44 money which the person owes to the Commission or the Division.



(b) Suspend, revoke or refuse to renew the permit of a person who has failed to pay money which the person owes to the Commission or the Division.

6. The provisions of this section do not apply to a member of an executive board or an officer of an association who is acting solely within the scope of his duties as a member of the executive board or an officer of the association.

Sec. 2. NRS 241.015 is hereby amended to read as follows:

241.015 As used in this chapter, unless the context otherwise requires:

1. "Action" means:

(a) A decision made by a majority of the members present during a meeting of a public body;

(b) A commitment or promise made by a majority of the members present during a meeting of a public body;

(c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body; or

(d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision,



1 control, jurisdiction or advisory power and to deliberate toward a
2 decision on the matter, or both.

3 3. Except as otherwise provided in this subsection, “public
4 body” means ~~any~~ :

5 (a) Any administrative, advisory, executive or legislative body
6 of the State or a local government which expends or disburses or is
7 supported in whole or in part by tax revenue or which advises or
8 makes recommendations to any entity which expends or disburses or
9 is supported in whole or in part by tax revenue, including, but not
10 limited to, any board, commission, committee, subcommittee or
11 other subsidiary thereof and includes an educational foundation as
12 defined in subsection 3 of NRS 388.750 and a university foundation
13 as defined in subsection 3 of NRS 396.405 ~~and~~ ; and

14 (b) *A limited-purpose association that is created for a rural
15 agricultural residential common-interest community as defined in
16 subsection 6 of NRS 116.1201.*

17 ↳ “Public body” does not include the Legislature of the State of
18 Nevada.

19 4. “Quorum” means a simple majority of the constituent
20 membership of a public body or another proportion established by
21 law.

22 **Sec. 3.** This act becomes effective on July 1, 2009.

