

Amendment No. 643

Senate Amendment to Assembly Bill No. 204 First Reprint (BDR 10-920)

Proposed by: Senate Committee on Judiciary**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date	
Adopted	☐	Lost	☐	Adopted	☐	Lost	☐
Concurred In	☐	Not	☐	Concurred In	☐	Not	☐
Receded	☐	Not	☐	Receded	☐	Not	☐

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 dashed underlining*** is newly added transitory language.

BFG/BAW



Date: 5/11/2009

A.B. No. 204—Revises provisions relating to common-interest communities.
(BDR 10-920)



ASSEMBLY BILL NO. 204—ASSEMBLYMEN SPIEGEL, McCLAIN; AIZLEY, ANDERSON, ARBERRY, BOBZIEN, BUCKLEY, CHRISTENSEN, CLABORN, CONKLIN, DENIS, HARDY, KIRKPATRICK, KOIVISTO, LESLIE, MANENDO, MASTROLUCA, MUNFORD, PARNELL, PIERCE, SEGERBLOM, SMITH, STEWART AND WOODBURY

FEBRUARY 19, 2009

JOINT SPONSORS: SENATORS PARKS; WOODHOUSE

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-920)

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; requiring the executive board of a unit owners' association of a common-interest community to make available to each unit's owner certain information concerning the association's collection policy; extending the period of time certain liens have priority over ~~other~~ certain ***other*** security interests; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, not less than 30 days or more than 60 days before the beginning of the fiscal year of a unit owners' association of a common-interest community, the executive board of the association must provide each unit's owner with certain information pertaining to the budget of the association. (NRS 116.31151) **Section 1** of this bill requires the executive board to also make available to each unit's owner information pertaining to a policy established by the association for the collection of any fees, fines, assessments or costs imposed against a unit's owner, including the unit's owner's responsibility to pay such fees, fines, assessments or costs and the rights of the association to recover the fees, fines, assessments or costs if the unit's owner does not pay them.

Under existing law, a unit-owners' association of a common-interest community has priority over certain other creditors with respect to a lien on a unit for any construction penalty imposed against the unit's owner, any assessment levied against the unit or certain fines imposed against the unit's owner. Such a lien is also prior to a first security interest on the unit recorded before the assessments became delinquent to the extent of the assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration during the 6 months preceding an action to enforce the lien. (NRS 116.3116) **Section 2** of this bill changes the 6-month threshold for super priority of a lien for an association to ~~12 years, if the unit is a single family detached dwelling. (NRS 116.3116)~~ ***9 months, unless federal regulations adopted by the Federal Home***

Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If such federal regulations require a shorter period, the period must be determined in accordance with the federal regulations, except that the period must not be less than the 6 months preceding an action to enforce the lien, as currently provided in existing law.

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

Section 1. NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the

proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

Sec. 2. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the ~~2 years immediately preceding institution of an action to enforce the lien if the unit is a single family detached dwelling or during the 6~~ 9 months immediately preceding institution of an action to enforce the lien ~~if the unit is any other type of dwelling.~~ unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

1 3. Unless the declaration otherwise provides, if two or more associations have
2 liens for assessments created at any time on the same property, those liens have
3 equal priority.

4 4. Recording of the declaration constitutes record notice and perfection of the
5 lien. No further recordation of any claim of lien for assessment under this section is
6 required.

7 5. A lien for unpaid assessments is extinguished unless proceedings to enforce
8 the lien are instituted within 3 years after the full amount of the assessments
9 becomes due.

10 6. This section does not prohibit actions to recover sums for which subsection
11 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

12 7. A judgment or decree in any action brought under this section must include
13 costs and reasonable attorney's fees for the prevailing party.

14 8. The association, upon written request, shall furnish to a unit's owner a
15 statement setting forth the amount of unpaid assessments against the unit. If the
16 interest of the unit's owner is real estate or if a lien for the unpaid assessments may
17 be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be
18 in recordable form. The statement must be furnished within 10 business days after
19 receipt of the request and is binding on the association, the executive board and
20 every unit's owner.

21 9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's
22 owner may be evicted in the same manner as provided by law in the case of an
23 unlawful holdover by a commercial tenant, and:

24 (a) In a cooperative where the owner's interest in a unit is real estate under
25 NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to
26 116.31168, inclusive.

27 (b) In a cooperative where the owner's interest in a unit is personal property
28 under NRS 116.1105, the association's lien:

29 (1) May be foreclosed as a security interest under NRS 104.9101 to
30 104.9709, inclusive; or

31 (2) If the declaration so provides, may be foreclosed under NRS 116.31162
32 to 116.31168, inclusive.