

Amendment No. 353

Assembly Amendment to Assembly Bill No. 361

(BDR 10-940)

Proposed by: Assembly Committee on Judiciary**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 dashed underlining* is newly added transitory language.

NMB/RRY



Date: 4/18/2009

A.B. No. 361—Makes changes relating to the destruction or deterioration of foreclosed or vacant units in common-interest communities.
(BDR 10-940)



ASSEMBLY BILL NO. 361—ASSEMBLYMAN MCARTHUR

MARCH 16, 2009

Referred to Committee on Judiciary

SUMMARY—Makes changes relating to ~~the destruction or deterioration of foreclosed or vacant units in~~ common-interest communities. (BDR 10-940)

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, under certain circumstances, a unit-owners' association may, without liability for trespass, enter the grounds of a vacant unit or a unit in foreclosure to abate a public nuisance or maintain the exterior of the unit; providing that a unit-owners' association may request a copy of certain deeds of trust under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law assigns the responsibility for maintenance of a unit in a common-interest community to the owner of the unit, and maintenance of a common element in the community to the unit-owners' association. (NRS 116.3107) Existing law provides procedures for the executive board of the association to fine a unit's owner who fails to maintain his residence according to the governing documents. (NRS 116.31031)

Section 1 of this bill provides that the association may, without liability for trespass, enter on the grounds of a unit that is vacant or that is in the foreclosure process, whether vacant or not, to maintain the exterior of the unit or abate a public nuisance on the exterior of the unit if after notice and a hearing, the unit's owner refuses or fails to do so. **Section 1** also provides that: (1) any amount of the costs for such maintenance or abatement which are not paid by the unit's owner will be a lien against the unit; and (2) the lien has priority over ~~all~~ certain other liens, claims, encumbrances and titles depending on whether the unit is a single-family detached dwelling, except certain liens recorded before the declaration for the association was recorded and certain liens of assessments and ~~general~~ taxes.

Section 2 of this bill specifically authorizes a unit-owners' association to charge a unit's owner for the maintenance and abatement services provided pursuant to **section 1** of the bill. (NRS 116.3102) **Section 3** of this bill further provides that a lien for such maintenance and abatement services has priority over a first security interest on the unit under certain circumstances if the unit is a single-family detached dwelling. (NRS 116.3116)

Section 4 of this bill provides that a unit-owners' association may record in the office of the county recorder a request for a trustee or other authorized person to provide the association with a copy of the deed after the sale of a unit upon a deed of trust for any unit within the association. (NRS 107.090)

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~A [lending institution which] person who holds a security interest in a unit must provide the association with [the] his contact information [of the lending institution, including any department of the lending institution which handles residential mortgages,] as soon as reasonably practicable, but not later than 30 days after the [lending institution is aware that.] person:~~

(a) ~~[A person has filed.]~~ Files an action for recovery of a debt secured by the unit pursuant to NRS 40.430; or

(b) ~~[A person has recorded.]~~ Records or has recorded on his behalf a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to NRS 107.080. ~~[+ or~~

~~(c) The association or another authorized person has executed and caused to be recorded a notice of default and election to sell the unit pursuant to NRS 116.31162.]~~

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to [do so:] take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the governing documents, including, without limitation, any provisions governing landscaping, standing water or snow removal.

(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community [++ or public streets;

(2) Threatens the health or safety of the residents of the common-interest community;

(3) Results in blighting or deterioration of the unit or surrounding area; and

(4) Adversely affects the use and enjoyment of nearby units.

3. If a unit is vacant and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance as described in subsection 2 if the unit's owner refuses or fails to do so.

4. The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, any inspection fees, notification and collection costs and interests, be charged against the unit. The association has a lien on the unit for any unpaid amount of the charges.

5. A lien described in subsection 4 ~~++~~

~~1 (a) Bears~~ on any unit bears interest from the date that the charges become
2 due at a rate determined pursuant to NRS 17.130 until the charges and all
3 interest due is paid. ~~f~~

~~4 (b) Is coequal with the most recent lien on the unit which secures the~~
5 ~~payment of any assessments and which has priority over all security interests~~
6 ~~described in paragraph (b) of subsection 2 of NRS 116.3116;~~

~~7 (c) Is not subject to extinguishment by the sale of the unit because of the~~
8 ~~nonpayment by the first lien holder; and~~

~~9 (d) Is;~~

10 6. A lien described in subsection 4 on a unit which is a single-family
11 detached dwelling is prior and superior to all liens, claims, encumbrances and
12 titles other than the liens ~~of assessments described in paragraph (b) and general~~
13 ~~taxes described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116.~~

14 ~~f~~ 7. A person who purchases or acquires the unit at a foreclosure sale
15 pursuant to NRS 40.430 ~~f~~ or a trustee's sale pursuant to NRS 107.080 ~~or a~~
16 ~~foreclosure sale pursuant to NRS 116.31162 to 116.31168, inclusive,~~ shall
17 maintain the exterior of the unit in accordance with the governing documents of
18 the association. Units may only be removed from an association in accordance
19 with the governing documents of the association pursuant to this chapter.

20 ~~f~~ 8. Notwithstanding any other provision of law, an association, its
21 directors or members of the executive board, ~~or~~ employees, agents or
22 community manager who enter the grounds of a unit pursuant to this section are
23 not liable for trespass.

24 9. As used in this section, "vacant" means a unit:

25 (a) Which appears unoccupied;

26 (b) On which the owner has failed to maintain the exterior to the standards
27 set forth in the governing documents the association; and

28 (c) On which the owner has failed to pay assessments for more than 30 days.

29 **Sec. 2.** NRS 116.3102 is hereby amended to read as follows:

30 116.3102 1. Except as otherwise provided in subsection 2, and subject to the
31 provisions of the declaration, the association may do any or all of the following:

32 (a) Adopt and amend bylaws, rules and regulations.

33 (b) Adopt and amend budgets for revenues, expenditures and reserves and
34 collect assessments for common expenses from the units' owners.

35 (c) Hire and discharge managing agents and other employees, agents and
36 independent contractors.

37 (d) Institute, defend or intervene in litigation or administrative proceedings in
38 its own name on behalf of itself or two or more units' owners on matters affecting
39 the common-interest community.

40 (e) Make contracts and incur liabilities.

41 (f) Regulate the use, maintenance, repair, replacement and modification of
42 common elements.

43 (g) Cause additional improvements to be made as a part of the common
44 elements.

45 (h) Acquire, hold, encumber and convey in its own name any right, title or
46 interest to real estate or personal property, but:

47 (1) Common elements in a condominium or planned community may be
48 conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

49 (2) Part of a cooperative may be conveyed, or all or part of a cooperative
50 may be subjected to a security interest, only pursuant to NRS 116.3112.

51 (i) Grant easements, leases, licenses and concessions through or over the
52 common elements.

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners ~~to~~, *including, without limitation, any services provided pursuant to section 1 of this act.*

(k) Impose charges for late payment of assessments.

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) Exercise any other powers conferred by the declaration or bylaws.

(r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 3. 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 any charges incurred by the association on a unit which is a single-family detached dwelling pursuant to section 1 of this act and 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 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.

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

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

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

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

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

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

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

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

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

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

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

Sec. 4. NRS 107.090 is hereby amended to read as follows:

107.090 1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time after recordation of the deed of trust record in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default or of sale. The request must state the name and address of the person requesting copies of the notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation, and the book and page where it is recorded.

3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:

(a) Each person who has recorded a request for a copy of the notice; and

(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person described in subsection 3.

5. An association may record in the office of the county recorder of the county in which a unit governed by the association is situated an acknowledged request for a copy of the deed upon sale of the unit pursuant to a deed of trust. A request recorded by an association must include, without limitation:

(a) A legal description of the unit or the assessor's parcel number of the unit;

(b) The name and address of the association; and

(c) A statement that the request is made by an association.

6. A request recorded by an association pursuant to subsection 5 regarding a unit supersedes all previous requests recorded by the association pursuant to subsection 5 regarding the unit.

7. If a trustee or person authorized to record a notice of default records the notice default for a unit regarding which an association has recorded a request pursuant to subsection 5, the trustee or authorized person shall mail to the association a copy of the deed upon the sale of the unit pursuant to a deed of trust within 15 days after the trustee records the deed upon the sale of the unit.

8. No request recorded pursuant to the provisions of subsection 2 or 5 affects the title to real property ~~if~~, and failure to mail a copy of the deed upon the sale of the unit after a request is made by an association pursuant to subsection 5 does not affect the title to real property.

9. As used in this section:

(a) "Association" has the meaning ascribed to it in NRS 116.011.

(b) "Unit" has the meaning ascribed to it in NRS 116.093.