

SENATE BILL NO. 253—SENATOR PARKS

MARCH 16, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions relating to common-interest communities. (BDR 10-18)

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; requiring a member of an executive board of a unit-owners' association who stands to profit personally from a matter before the board to disclose and abstain from voting on the matter; requiring that bids for an association project be considered and opened at a meeting of the executive board; revising provisions relating to the renting or leasing of units; making provisions authorizing the transient commercial use of units in a planned community in certain circumstances applicable in all counties; revising the provisions relating to the resale package furnished to the purchaser of a unit; increasing the amount of the administrative fine for engaging in certain activity without holding the required certificate or permit; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill provides additional ethical requirements for members of an executive board of a unit-owners' association by requiring a member who stands to gain any personal profit or compensation from a matter before the executive board to disclose the matter to the executive board and to abstain from voting on the matter. (NRS 116.31185, 116.31187)

With some exceptions, existing law requires an executive board to hold open meetings, including meetings to consider a contract. (NRS 116.31085) **Sections 3 and 5** of this bill require an association that solicits bids for association projects, including, without limitation, projects that involve maintenance, repair, replacement or restoration of any part of the common elements, to consider and open the bids during a meeting of the executive board of the association.



Existing law provides for remedial and disciplinary action for any violation of the provisions of chapter 116 of NRS governing common-interest communities which will apply to a violation of **section 2 or 3** of this bill. (NRS 116.745-116.795)

Existing law provides that except as otherwise provided in the declaration, an association may not require a unit's owner to secure or obtain any approval from the association in order to rent or lease his unit. (NRS 116.335) **Section 6** of this bill provides that unless, at the time a unit's owner purchased his unit, the declaration prohibited the unit's owner from renting or leasing his unit or required the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit, the association may not: (1) prohibit the unit's owner from renting or leasing his unit; or (2) require the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit. **Section 6** also provides that if, before October 1, 2009, a declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, that provision of the declaration may not be amended on or after October 1, 2009, to decrease that maximum number or percentage of units which may be rented or leased.

Section 7 of this bill makes the provisions allowing the transient commercial use of units within a planned community that is restricted to residential use in certain circumstances applicable in all counties rather than just in larger counties. (NRS 116.340)

Existing law requires a unit's owner or his authorized agent to furnish to a purchaser a resale package which includes certain documents relating to the association. (NRS 116.4109) **Section 8** of this bill: (1) requires the unit's owner to furnish the resale package at his own expense; and (2) requires the disclosure of any transfer fees, transaction fees or other fees associated with the resale of the unit.

Section 9 of this bill increases the amount of the administrative fine that may be imposed against a person who engages in certain activity without holding the required certificate or permit from \$5,000 to \$10,000. (NRS 116A.900)

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 the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall:*

- 1. Disclose the matter to the executive board; and*
- 2. Abstain from voting on any such matter.*

Sec. 3. *1. If an association solicits bids for an association project, the bids must be opened during a meeting of the executive board.*

2. As used in this section, "association project" includes, without limitation, a project that involves the maintenance, repair, replacement or restoration of any part of the common elements.



Sec. 4. 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. 5. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to *open or consider bids for an association project as defined in section 3 of this act, or to* enter into, renew, modify, terminate or take any other action regarding a contract, unless it is a contract between the association and an attorney.

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive, or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:



(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses; and

(b) Is not entitled to attend the deliberations of the executive board.

5. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

6. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 6. NRS 116.335 is hereby amended to read as follows:

116.335 1. ~~[Except as otherwise provided in]~~ *Unless, at the time a unit's owner purchased his unit, the declaration [] prohibited the unit's owner from renting or leasing his unit, the association may not prohibit the unit's owner from renting or leasing his unit.*

2. *Unless, at the time a unit's owner purchased his unit, the declaration required the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit, an association may not require [] the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit.*

~~[2.]~~ 3. *If, before October 1, 2009, the declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, that provision of the declaration may not be amended on or after October 1, 2009, to decrease that maximum number or percentage of units in the common-interest community which may be rented or leased.*

4. The provisions of this section do not prohibit an association from enforcing any provisions which govern the renting or leasing of units and which are contained in this chapter or in any other applicable federal, state or local laws or regulations.

Sec. 7. NRS 116.340 is hereby amended to read as follows:

116.340 1. Except as otherwise provided in subsection 2, ~~[in a county whose population is 400,000 or more,]~~ a person who owns, or directly or indirectly has an interest in, one or more units within a planned community that are restricted to residential use by the declaration [] may use that unit or one of those units for a transient commercial use only if:



(a) The governing documents of the association and any master association do not prohibit such use;

(b) The executive board of the association and any master association approve the transient commercial use of the unit, except that such approval is not required if the planned community and one or more hotels are subject to the governing documents of a master association and those governing documents do not prohibit such use; and

(c) The unit is properly zoned for the transient commercial use and any license required by the local government for the transient commercial use is obtained.

2. ~~In a county whose population is 400,000 or more, a~~ A declarant who owns, or directly or indirectly has an interest in, one or more units within a planned community under the governing documents of the association that are restricted to residential use by the declaration ~~§~~ may use that unit or those units for a transient commercial use during the period that the declarant is offering units for sale within the planned community if such use complies with the requirements set forth in paragraphs (a) and (c) of subsection 1.

3. The association and any master association may establish requirements for the transient commercial use of a unit pursuant to the provisions of this section, including, without limitation, the payment of additional fees that are related to any increase in services or other costs associated with the transient commercial use of the unit.

4. As used in this section:

(a) "Remuneration" means any compensation, money, rent or other valuable consideration given in return for the occupancy, possession or use of a unit.

(b) "Transient commercial use" means the use of a unit, for remuneration, as a hostel, hotel, inn, motel, resort, vacation rental or other form of transient lodging if the term of the occupancy, possession or use of the unit is for less than 30 consecutive calendar days.

Sec. 8. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his authorized agent shall *, at the expense of the unit's owner,* furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;



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(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152; ~~and~~

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge ~~and~~; and

(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the unit's owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his authorized agent, the association shall furnish all of the following to the unit's owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b), ~~and~~ (d) *and (e)* of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his authorized agent shall include the documents and certificate in the resale package provided to the



1 purchaser, and neither the unit's owner nor his authorized agent is
2 liable to the purchaser for any erroneous information provided by
3 the association and included in the documents and certificate.

4 (b) The association may charge the unit's owner a reasonable
5 fee to cover the cost of preparing the certificate furnished pursuant
6 to subsection 3. Such a fee must be based on the actual cost the
7 association incurs to fulfill the requirements of this section in
8 preparing the certificate. The Commission shall adopt regulations
9 establishing the maximum amount of the fee that an association may
10 charge for preparing the certificate.

11 (c) The association may charge the unit's owner a reasonable
12 fee, not to exceed 25 cents per page, to cover the cost of copying the
13 other documents furnished pursuant to subsection 3.

14 (d) Except for the fees allowed pursuant to paragraphs (b) and
15 (c), the association may not charge the unit's owner any other fees
16 for preparing or furnishing the documents and certificate pursuant to
17 subsection 3.

18 5. Neither a purchaser nor the purchaser's interest in a unit is
19 liable for any unpaid assessment or fee greater than the amount set
20 forth in the documents and certificate prepared by the association. If
21 the association fails to furnish the documents and certificate within
22 the 10 days allowed by this section, the seller is not liable for the
23 delinquent assessment.

24 6. Upon the request of a unit's owner or his authorized agent,
25 or upon the request of a purchaser to whom the unit's owner has
26 provided a resale package pursuant to this section or his authorized
27 agent, the association shall make the entire study of the reserves of
28 the association which is required by NRS 116.31152 reasonably
29 available for the unit's owner, purchaser or authorized agent to
30 inspect, examine, photocopy and audit. The study must be made
31 available at the business office of the association or some other
32 suitable location within the county where the common-interest
33 community is situated or, if it is situated in more than one county,
34 within one of those counties.

35 **Sec. 9.** NRS 116A.900 is hereby amended to read as follows:

36 116A.900 1. In addition to any other remedy or penalty, the
37 Commission may impose an administrative fine against any person
38 who knowingly:

39 (a) Engages or offers to engage in any activity for which a
40 certificate or permit is required pursuant to this chapter or chapter
41 116 or 116B of NRS, or any regulation adopted pursuant thereto, if
42 the person does not hold the required certificate or permit or has not
43 been given the required authorization; or

44 (b) Assists or offers to assist another person to commit a
45 violation described in paragraph (a).



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2. If the Commission imposes an administrative fine against a person pursuant to this section, the amount of the administrative fine may not exceed the amount of any gain or economic benefit that the person derived from the violation or ~~[\$5,000.]~~ **\$10,000**, whichever amount is greater.

3. In determining the appropriate amount of the administrative fine, the Commission shall consider:

(a) The severity of the violation and the degree of any harm that the violation caused to other persons;

(b) The nature and amount of any gain or economic benefit that the person derived from the violation;

(c) The person's history or record of other violations; and

(d) Any other facts or circumstances that the Commission deems to be relevant.

4. Before the Commission may impose the administrative fine, the Commission must provide the person with notice and an opportunity to be heard.

5. The person is entitled to judicial review of the decision of the Commission in the manner provided by chapter 233B of NRS.

6. The provisions of this section do not apply to a person who engages or offers to engage in activities within the purview of this chapter or chapter 116 or 116B of NRS if:

(a) A specific statute exempts the person from complying with the provisions of this chapter or chapter 116 or 116B of NRS with regard to those activities; and

(b) The person is acting in accordance with the exemption while engaging or offering to engage in those activities.

