

ASSEMBLY BILL NO. 236—ASSEMBLYMEN NEAL; DALY, FRIERSON,
HORNE, LIVERMORE, MUNFORD, OHRENSCHALL, PIERCE
AND SEGERBLOM

MARCH 7, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing financial obligations in
common-interest communities. (BDR 10-658)

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; enacting provisions governing the imposition and collection of assessments for common expenses when a unit is purchased, owned or transferred by a municipality or nonprofit entity engaged in certain activities with respect to the unit; prohibiting the executive board of an association from imposing a fine for a violation of the governing documents if the unit's owner is a municipality or nonprofit entity engaged in certain activities with respect to the unit; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the payment of the common expenses of a homeowner's association through assessments against the units. If the assessment, or any installment thereof, is 60 days or more past due, the assessment or installment bears interest at a rate specified in existing law. (NRS 116.3115) In addition, a homeowner's association may impose charges for the late payment of assessments. (NRS 116.3102) A homeowners' association has a lien on a unit for any assessment against that unit and may foreclose that lien by selling the unit under certain circumstances. (NRS 116.3116-116.31168)

Sections 5, 7 and 8 of this bill enact provisions governing the imposition and collection of assessments for common expenses during the period in which a unit is owned by a municipality or nonprofit entity which is rehabilitating the unit pursuant to a governmental contract to mitigate the effects of foreclosures in the neighborhood. Under **section 5**, the municipality or nonprofit entity is not required to pay any assessments against that unit which become due during its rehabilitation



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of the unit. In addition, under **sections 5 and 7**, the association may not impose interest and charges for the late payment of any assessment which becomes due while the municipality or nonprofit entity is rehabilitating the unit and may not attempt to collect such an assessment. At the time of closing on a sale of the unit by the municipality or nonprofit entity, the purchaser or transferee must pay the assessments against the unit which became due while the unit was owned by the municipality or nonprofit entity. **Section 8** prohibits an association from foreclosing on the unit owned by a municipality or nonprofit entity because of the failure to pay assessments against the unit.

Existing law authorizes the executive board of an association to impose a fine against a unit's owner, tenant or invitee who violates a provision of the governing documents. (NRS 116.31031) **Section 6** of this bill prohibits the executive board of an association from imposing a fine against a municipality or nonprofit entity which is rehabilitating a unit pursuant to a government contract to mitigate the effects of foreclosures in the neighborhood.

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. *"Municipality" has the meaning ascribed to it in NRS 43.080.*

Sec. 3. *"Nonprofit entity" means a nonprofit corporation, association or organization that is exempt from the federal income tax pursuant to the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).*

Sec. 4. NRS 116.003 is hereby amended to read as follows:

116.003 As used in this chapter and in the declaration and bylaws of an association, unless the context otherwise requires, the words and terms defined in NRS 116.005 to 116.095, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 116.3102 is hereby amended to read as follows:

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

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

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

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

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



(e) Make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.

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

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

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

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

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

(i) Grant easements, leases, licenses and concessions through or over the 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, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) Impose charges for late payment of assessments pursuant to NRS 116.3115.

(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.

3. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on the owner of any property in the common-interest community that is exempt from taxation pursuant to NRS 361.125. For the purposes of this subsection, "assessment" does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

4. Notwithstanding any provision of this chapter or the governing documents to the contrary, if the owner of a unit is a municipality or nonprofit entity which has entered into a contract with a governmental entity for the purpose of rehabilitating or stabilizing the neighborhood in which the unit is located to mitigate the effects of foreclosures in that neighborhood:

(a) The municipality or nonprofit entity is not required to pay any assessment against that unit pursuant to this section which becomes due during the period in which the municipality or



1 *nonprofit entity owns the unit, except that, at the time of closing*
2 *on a sale or transfer of the unit by the municipality or nonprofit*
3 *entity, the purchaser or transferee shall pay the assessments*
4 *against that unit pursuant to this section which became due*
5 *during that period.*

6 *(b) Assessments against that unit pursuant to this section*
7 *which become due during the period in which the municipality or*
8 *nonprofit entity owns the unit must not bear interest.*

9 *(c) The association may not impose charges for the late*
10 *payment of an assessment against that unit pursuant to this*
11 *section which become due during the period in which the*
12 *municipality or nonprofit entity owns the unit.*

13 *(d) The association may not attempt to collect from the*
14 *municipality or nonprofit entity any assessment against that unit*
15 *pursuant to this section which becomes due during the period in*
16 *which the municipality or nonprofit entity owns the unit.*

17 **Sec. 6.** NRS 116.31031 is hereby amended to read as follows:

18 116.31031 1. Except as otherwise provided in this section, if
19 a unit's owner or a tenant or an invitee of a unit's owner or a tenant
20 violates any provision of the governing documents of an association,
21 the executive board may, if the governing documents so provide:

22 (a) Prohibit, for a reasonable time, the unit's owner or the tenant
23 or the invitee of the unit's owner or the tenant from:

24 (1) Voting on matters related to the common-interest
25 community.

26 (2) Using the common elements. The provisions of this
27 subparagraph do not prohibit the unit's owner or the tenant or the
28 invitee of the unit's owner or the tenant from using any vehicular or
29 pedestrian ingress or egress to go to or from the unit, including any
30 area used for parking.

31 (b) Impose a fine against the unit's owner or the tenant or the
32 invitee of the unit's owner or the tenant for each violation, except
33 that:

34 (1) A fine may not be imposed for a violation that is the
35 subject of a construction penalty pursuant to NRS 116.310305; and

36 (2) A fine may not be imposed against a unit's owner or a
37 tenant or invitee of a unit's owner or a tenant for a violation of the
38 governing documents which involves a vehicle and which is
39 committed by a person who is delivering goods to, or performing
40 services for, the unit's owner or tenant or invitee of the unit's owner
41 or the tenant.

42 ➤ If the violation poses an imminent threat of causing a substantial
43 adverse effect on the health, safety or welfare of the units' owners or
44 residents of the common-interest community, the amount of the fine
45 must be commensurate with the severity of the violation and must



1 be determined by the executive board in accordance with the
2 governing documents. If the violation does not pose an imminent
3 threat of causing a substantial adverse effect on the health, safety or
4 welfare of the units' owners or residents of the common-interest
5 community, the amount of the fine must be commensurate with the
6 severity of the violation and must be determined by the executive
7 board in accordance with the governing documents, but the amount
8 of the fine must not exceed \$100 for each violation or a total amount
9 of \$1,000, whichever is less. The limitations on the amount of the
10 fine do not apply to any charges or costs that may be collected by
11 the association pursuant to this section if the fine becomes past due.

12 2. The executive board may not impose a fine pursuant to
13 subsection 1 against a unit's owner for a violation of any provision
14 of the governing documents of an association committed by an
15 invitee of the unit's owner or the tenant unless the unit's owner:

- 16 (a) Participated in or authorized the violation;
17 (b) Had prior notice of the violation; or
18 (c) Had an opportunity to stop the violation and failed to do so.

19 3. *If the owner of a unit is a municipality or nonprofit entity
20 which has entered into a contract with a governmental entity for
21 the purpose of rehabilitating or stabilizing the neighborhood in
22 which the unit is located to mitigate the effects of foreclosures in
23 that neighborhood, the executive board may not impose a fine
24 against the unit's owner for a violation of the governing
25 documents of the association.*

26 4. The executive board may not impose a fine pursuant to
27 subsection 1 unless:

- 28 (a) Not less than 30 days before the violation, the unit's owner
29 and, if different, the person against whom the fine will be imposed
30 had been provided with written notice of the applicable provisions
31 of the governing documents that form the basis of the violation; and
32 (b) Within a reasonable time after the discovery of the violation,
33 the unit's owner and, if different, the person against whom the fine
34 will be imposed has been provided with:

35 (1) Written notice specifying the details of the violation, the
36 amount of the fine, and the date, time and location for a hearing on
37 the violation; and

38 (2) A reasonable opportunity to contest the violation at the
39 hearing.

40 ➤ For the purposes of this subsection, a unit's owner shall not be
41 deemed to have received written notice unless written notice is
42 mailed to the address of the unit and, if different, to a mailing
43 address specified by the unit's owner.

44 ~~[4-]~~ 5. The executive board must schedule the date, time and
45 location for the hearing on the violation so that the unit's owner and,



1 if different, the person against whom the fine will be imposed is
2 provided with a reasonable opportunity to prepare for the hearing
3 and to be present at the hearing.

4 ~~[5-]~~ 6. The executive board must hold a hearing before it may
5 impose the fine, unless the fine is paid before the hearing or unless
6 the unit's owner and, if different, the person against whom the fine
7 will be imposed:

8 (a) Executes a written waiver of the right to the hearing; or

9 (b) Fails to appear at the hearing after being provided with
10 proper notice of the hearing.

11 ~~[6-]~~ 7. If a fine is imposed pursuant to subsection 1 and the
12 violation is not cured within 14 days, or within any longer period
13 that may be established by the executive board, the violation shall
14 be deemed a continuing violation. Thereafter, the executive board
15 may impose an additional fine for the violation for each 7-day
16 period or portion thereof that the violation is not cured. Any
17 additional fine may be imposed without notice and an opportunity to
18 be heard.

19 ~~[7-]~~ 8. If the governing documents so provide, the executive
20 board may appoint a committee, with not less than three members,
21 to conduct hearings on violations and to impose fines pursuant to
22 this section. While acting on behalf of the executive board for those
23 limited purposes, the committee and its members are entitled to all
24 privileges and immunities and are subject to all duties and
25 requirements of the executive board and its members.

26 ~~[8-]~~ 9. A member of the executive board shall not participate
27 in any hearing or cast any vote relating to a fine imposed pursuant to
28 subsection 1 if the member has not paid all assessments which are
29 due to the association by the member. If a member of the executive
30 board:

31 (a) Participates in a hearing in violation of this subsection, any
32 action taken at the hearing is void.

33 (b) Casts a vote in violation of this subsection, the vote is void.

34 ~~[9-]~~ 10. The provisions of this section establish the minimum
35 procedural requirements that the executive board must follow before
36 it may impose a fine. The provisions of this section do not preempt
37 any provisions of the governing documents that provide greater
38 procedural protections.

39 ~~[10-]~~ 11. Any past due fine must not bear interest, but may
40 include any costs incurred by the association during a civil action to
41 enforce the payment of the past due fine.

42 ~~[11-]~~ 12. If requested by a person upon whom a fine was
43 imposed, not later than 60 days after receiving any payment of a
44 fine, an association shall provide to the person upon whom the fine
45 was imposed a statement of the remaining balance owed.



1 **Sec. 7.** NRS 116.3115 is hereby amended to read as follows:

2 116.3115 1. Until the association makes an assessment for
3 common expenses, the declarant shall pay all common expenses.
4 After an assessment has been made by the association, assessments
5 must be made at least annually, based on a budget adopted at least
6 annually by the association in accordance with the requirements set
7 forth in NRS 116.31151. Unless the declaration imposes more
8 stringent standards, the budget must include a budget for the daily
9 operation of the association and a budget for the reserves required
10 by paragraph (b) of subsection 2.

11 2. Except for assessments under subsections 4 to 7, inclusive:

12 (a) All common expenses, including the reserves, must be
13 assessed against all the units in accordance with the allocations set
14 forth in the declaration pursuant to subsections 1 and 2 of
15 NRS 116.2107.

16 (b) The association shall establish adequate reserves, funded on
17 a reasonable basis, for the repair, replacement and restoration of the
18 major components of the common elements and any other portion of
19 the common-interest community that the association is obligated to
20 maintain, repair, replace or restore. The reserves may be used only
21 for those purposes, including, without limitation, repairing,
22 replacing and restoring roofs, roads and sidewalks, and must not be
23 used for daily maintenance. The association may comply with the
24 provisions of this paragraph through a funding plan that is designed
25 to allocate the costs for the repair, replacement and restoration of the
26 major components of the common elements and any other portion of
27 the common-interest community that the association is obligated to
28 maintain, repair, replace or restore over a period of years if the
29 funding plan is designed in an actuarially sound manner which will
30 ensure that sufficient money is available when the repair,
31 replacement and restoration of the major components of the
32 common elements or any other portion of the common-interest
33 community that the association is obligated to maintain, repair,
34 replace or restore are necessary. Notwithstanding any provision of
35 the governing documents to the contrary, to establish adequate
36 reserves pursuant to this paragraph, including, without limitation,
37 to establish or carry out a funding plan, the executive board may,
38 without seeking or obtaining the approval of the units' owners,
39 impose any necessary and reasonable assessments against the units
40 in the common-interest community. Any such assessments imposed
41 by the executive board must be based on the study of the reserves of
42 the association conducted pursuant to NRS 116.31152.

43 3. ~~{Any}~~ **Except as otherwise provided in subsection 4 of NRS**
44 **116.3102, any** assessment for common expenses or installment
45 thereof that is 60 days or more past due bears interest at a rate equal



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1 to the prime rate at the largest bank in Nevada as ascertained by the
2 Commissioner of Financial Institutions on January 1 or July 1, as
3 the case may be, immediately preceding the date the assessment
4 becomes past due, plus 2 percent. The rate must be adjusted
5 accordingly on each January 1 and July 1 thereafter until the balance
6 is satisfied.

7 4. Except as otherwise provided in the governing documents:

8 (a) Any common expense associated with the maintenance,
9 repair, restoration or replacement of a limited common element
10 must be assessed against the units to which that limited common
11 element is assigned, equally, or in any other proportion the
12 declaration provides;

13 (b) Any common expense or portion thereof benefiting fewer
14 than all of the units must be assessed exclusively against the units
15 benefited; and

16 (c) The costs of insurance must be assessed in proportion to risk
17 and the costs of utilities must be assessed in proportion to usage.

18 5. Assessments to pay a judgment against the association may
19 be made only against the units in the common-interest community at
20 the time the judgment was entered, in proportion to their liabilities
21 for common expenses.

22 6. If any common expense is caused by the misconduct of any
23 unit's owner, the association may assess that expense exclusively
24 against his or her unit.

25 7. The association of a common-interest community created
26 before January 1, 1992, is not required to make an assessment
27 against a vacant lot located within the community that is owned by
28 the declarant.

29 8. If liabilities for common expenses are reallocated,
30 assessments for common expenses and any installment thereof not
31 yet due must be recalculated in accordance with the reallocated
32 liabilities.

33 9. The association shall provide written notice to each unit's
34 owner of a meeting at which an assessment for a capital
35 improvement is to be considered or action is to be taken on such an
36 assessment at least 21 calendar days before the date of the meeting.

37 **Sec. 8.** NRS 116.31162 is hereby amended to read as follows:

38 116.31162 1. Except as otherwise provided in ~~subsection~~
39 ~~subsections 4~~ ~~H~~ ~~and 5~~, in a condominium, in a planned community,
40 in a cooperative where the owner's interest in a unit is real estate
41 under NRS 116.1105, or in a cooperative where the owner's interest
42 in a unit is personal property under NRS 116.1105 and the
43 declaration provides that a lien may be foreclosed under NRS
44 116.31162 to 116.31168, inclusive, the association may foreclose its
45 lien by sale after all of the following occur:



(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit,
➤ whichever date occurs later.

4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:



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1 (a) The violation poses an imminent threat of causing a
2 substantial adverse effect on the health, safety or welfare of the
3 units' owners or residents of the common-interest community; or

4 (b) The penalty is imposed for failure to adhere to a schedule
5 required pursuant to NRS 116.310305.

6 *5. The association may not foreclose a lien by sale based on*
7 *an assessment against a unit pursuant to NRS 116.3115 if the*
8 *owner of the unit is a municipality or nonprofit entity which has*
9 *entered into a contract with a governmental entity for the purpose*
10 *of rehabilitating or stabilizing the neighborhood in which the unit*
11 *is located to mitigate the effects of foreclosures in that*
12 *neighborhood.*

