

Amendment No. 354

Assembly Amendment to Assembly Bill No. 317

(BDR 3-540)

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 underlining* is newly added transitory language.

AMI/RRY



Date: 4/18/2011

A.B. No. 317—Revises provisions governing mediation and arbitration of certain claims relating to residential property. (BDR 3-540)



ASSEMBLY BILL NO. 317—ASSEMBLYMAN SEGERBLOM

MARCH 18, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing ~~mediation and~~ arbitration of certain claims relating to residential property. (BDR 3-540)

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 civil actions; revising provisions relating to the ~~submission~~ **commencement of civil actions concerning** certain claims relating to residential property ~~for mediation or arbitration; revising procedures relating to mediation or~~ **after the completion of nonbinding** ~~arbitration of such claims; revising the qualifications required for inclusion by the Real Estate Division of the Department of Business and Industry on a list of mediators and arbitrators available for mediation and~~ arbitration of such claims; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain claims relating to residential property to be submitted for mediation or arbitration with the Real Estate Division of the Department of Business and Industry by filing a written claim with the Division as a prerequisite to filing a civil action based on those claims. **(NRS 38.310, 38.320)** Existing law further ~~requires a person who is served with such a claim to file a written answer with the Division within 30 days after the person was served. (NRS 38.310, 38.320) Section 1 of this bill requires the Division to: (1) find a person to be in default if the person is served with such a claim and fails to file a written answer with the Division within 30 days; and (2) appoint an arbitrator for the claim. Section 1 further requires the arbitrator appointed by the Division to set and give notice of a hearing to allow an opportunity for the person who failed to file a written answer to prove that the failure to file was a result of excusable neglect. Section 1 also sets forth the procedures governing the arbitration if: (1) the arbitrator determines the failure to file was not a result of excusable neglect; (2) the person who failed to file the answer does not appear at the hearing; or (3) the arbitrator determines the failure to file was a result of excusable neglect.~~

~~Section 1 of this bill requires: (1) the Division to send to the parties the written claim filed with the Division a list of mediators and arbitrators; and (2) the parties to notify the Division of, among other things, their selection of a mediator or arbitrator within a specific period. Existing law~~ authorizes, under certain circumstances, any party to nonbinding arbitration to commence a civil action concerning the claim which was submitted for arbitration within 30 days after a decision and award have been served upon the parties. (NRS 38.330) **Section 4 of this bill** requires such a decision and award to be both final and dispositive of any and all issues of the claim which were submitted to nonbinding arbitration before such a party may commence a civil action.

~~[Existing law requires the Division to establish and maintain a list of mediators and arbitrators who the Division determines have received training and experience in the resolution of disputes concerning residential property within a common interest community and who are available for mediation and arbitration of claims arising from such disputes. (NRS 38.340) Section 5 of this bill mandates rather than authorizes the Division to require a mediator or arbitrator to present proof of that training and experience before the Division includes the mediator or arbitrator on the list and also requires the training to: (1) include at least 8 hours of continuing education approved by the Division; and (2) be completed during the 1 year period before the initial inclusion of the mediator or arbitrator on the list and each year thereafter.]~~

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

Section 1. ~~[Chapter 38 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. If the person upon whom a copy of the written claim was served pursuant to subsection 3 of NRS 38.320 fails to file a written answer with the Division within the period required pursuant to subsection 4 of that section, the Division shall find the person to be in default and appoint an arbitrator from the list maintained by the Division pursuant to NRS 38.340. Any arbitrator appointed by the Division pursuant to this subsection must be available within the geographic area.~~

~~2. An arbitrator appointed by the Division pursuant to subsection 1 shall:~~
~~(a) Set a time and place for a hearing to allow an opportunity for the person upon whom a copy of the written claim was served to prove that his or her failure to file a written answer with the Division was the result of excusable neglect; and~~
~~(b) Give notice of the hearing to the claimant and the person upon whom a copy of the written claim was served not less than 5 days before the date of the hearing.~~

~~3. If the arbitrator determines, at the hearing conducted pursuant to subsection 2, that the person upon whom a copy of the written claim was served did not prove that his or her failure to file a written answer with the Division was the result of excusable neglect or if that person does not appear at the hearing, the arbitrator shall:~~

~~(a) Allow the claimant to prove the written claim; and~~
~~(b) Decide the controversy upon the evidence produced by the claimant.~~

~~4. If the arbitrator determines, at the hearing conducted pursuant to subsection 2, that the person upon whom a copy of the written claim was served has proven his or her failure to file a written answer with the Division was the result of excusable neglect, the parties shall proceed with arbitration of the claim pursuant to the provisions of this section and NRS 38.300 to NRS 38.360, inclusive.] (Deleted by amendment.)~~

Sec. 2. ~~[NRS 38.300 is hereby amended to read as follows:~~
~~38.300 As used in NRS 38.300 to 38.360, inclusive, and section 1 of this act, unless the context otherwise requires:~~

~~1. "Assessments" means:~~
~~(a) Any charge which an association may impose against an owner of residential property pursuant to a declaration of covenants, conditions and restrictions, including any late charges, interest and costs of collecting the charges; and~~

~~(b) Any penalties, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.2102 or subsections 10, 11 and 12 of NRS 116B.420.~~

~~2. "Association" has the meaning ascribed to it in NRS 116.011 or 116B.030.~~

~~3. "Civil action" includes an action for money damages or equitable relief. The term does not include an action in equity for injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title to residential property.~~

~~4. "Division" means the Real Estate Division of the Department of Business and Industry.~~

~~5. "Geographic area" means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to NRS 38.320.~~

~~6. "Residential property" includes, but is not limited to, real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS. The term does not include commercial property if no portion thereof contains property which is used for residential purposes.~~ **(Deleted by amendment.)**

Sec. 3. [NRS 38.320 is hereby amended to read as follows:

~~38.320 1. Any civil action described in NRS 38.340 must be submitted for mediation or arbitration by filing a written claim with the Division. The claim must include:~~

~~(a) The complete names, addresses and telephone numbers of all parties to the claim;~~

~~(b) A specific statement of the nature of the claim;~~

~~(c) A statement of whether the person wishes to have the claim submitted to a mediator or to an arbitrator and, if the person wishes to have the claim submitted to an arbitrator, whether the person agrees to binding arbitration; and~~

~~(d) Such other information as the Division may require.~~

~~2. The written claim must be accompanied by a reasonable fee as determined by the Division.~~

~~3. Upon the filing of the written claim, the claimant shall serve a copy of the claim in the manner prescribed in Rule 4 of the Nevada Rules of Civil Procedure for the service of a summons and complaint. The claim so served must be accompanied by a statement explaining the procedures for mediation and arbitration set forth in NRS 38.300 to 38.360, inclusive [.] , and section 1 of this act.~~

~~4. Upon being served pursuant to subsection 3, the person upon whom a copy of the written claim was served shall, within 30 days after the date of service, file a written answer with the Division. The answer must be accompanied by a reasonable fee as determined by the Division.~~ **(Deleted by amendment.)**

Sec. 4. NRS 38.330 is hereby amended to read as follows:

~~38.330 1. [Upon the filing of the written answer pursuant to subsection 4 of NRS 38.320, the Division shall send the list of mediators and arbitrators maintained by the Division pursuant to NRS 38.340 to all parties named in the written claim filed pursuant to NRS 38.320. Except as otherwise provided by subsection 4, within 10 days after receipt of the list, the parties shall submit written notice to the Division, signed by the parties, which states whether the parties agreed to mediation or arbitration and includes, without limitation:~~

~~(a) The name of a mutually agreed upon mediator or arbitrator, as appropriate, from the list; or~~

~~(b) A statement indicating that the parties participated in the process to select a mediator or arbitrator but failed to agree upon a mediator or arbitrator from the list.~~

~~Any mediator or arbitrator selected pursuant to this subsection must be available within the geographic area.~~

~~2.7~~ If all parties named in a written claim filed pursuant to NRS 38.320 agree to have the claim submitted for mediation, the parties shall reduce the agreement to writing ~~and shall select a mediator from the list of mediators maintained by the Division pursuant to NRS 38.340. Any mediator selected must be available within the geographic area.~~ If the ~~notice submitted by the parties pursuant to subsection 1 indicates that the parties participated in the process to select a mediator but the~~ parties ~~fail~~ ~~failed~~ to agree upon a mediator, the Division shall appoint a mediator from the list of mediators maintained by the Division. Any mediator appointed must be available within the geographic area. Unless otherwise provided by an agreement of the parties, mediation must be completed within 60 days after the parties agree to mediation. Any agreement obtained through mediation conducted pursuant to this section must, within 20 days after the conclusion of mediation, be reduced to writing by the mediator and a copy thereof provided to each party. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section, the parties are responsible for all costs of mediation conducted pursuant to this section.

~~2.8~~ If all the parties named in the claim do not agree to mediation, ~~the parties shall select an arbitrator from the list of arbitrators maintained by the Division pursuant to NRS 38.340. Any arbitrator selected must be available within the geographic area. If~~ ~~and if the notice submitted by the parties pursuant to subsection 1 indicates that the parties participated in the process to select an arbitrator but~~ the parties ~~fail~~ ~~failed~~ to agree upon an arbitrator, the Division shall appoint an arbitrator from the list maintained by the Division. Any arbitrator appointed must be available within the geographic area. Upon appointing an arbitrator, the Division shall provide the name of the arbitrator to each party. An arbitrator shall, not later than 5 days after the arbitrator's selection or appointment pursuant to this ~~subsection, [section or section 1 of this act,]~~ provide to the parties an informational statement relating to the arbitration of a claim pursuant to this section. The written informational statement:

(a) Must be written in plain English;

(b) Must explain the procedures and applicable law relating to the arbitration of a claim conducted pursuant to this section, including, without limitation, the procedures, timelines and applicable law relating to confirmation of an award pursuant to NRS 38.239, vacation of an award pursuant to NRS 38.241, judgment on an award pursuant to NRS 38.243, and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and

(c) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement, which must be returned to the arbitrator by the party not later than 10 days after receipt of the informational statement.

~~3.14. If, for any reason, a party named in a written claim filed pursuant to NRS 38.320 does not select a mediator or arbitrator from the list sent by the Division within the period required for submitting notice pursuant to subsection 1, that party shall be deemed to have waived the right to participate in the selection of a mediator or arbitrator, and the other party:~~

~~(a) Has the exclusive right to select a mediator or arbitrator from the list maintained by the Division; and~~

~~(b) Shall within 5 days after the period required by subsection 1, notify the Division, in writing, of that selection and the fact that the other party did not participate in the selection of a mediator or arbitrator.~~

~~Any mediator or arbitrator selected pursuant to this subsection must be within the geographic area.~~

~~5. Upon the selection of a mediator or arbitrator pursuant to subsection 4, the Division shall notify each party of the name of the mediator or arbitrator selected.~~

~~6.~~ The Division may provide for the payment of the fees for a mediator or an arbitrator selected or appointed pursuant to this section ~~for section 1 of this act~~ from the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630, to the extent that:

(a) The Commission for Common-Interest Communities and Condominium Hotels approves the payment; and

(b) There is money available in the account for this purpose.

~~4. 7.~~ Except as otherwise provided in this section and except where inconsistent with the provisions of NRS 38.300 to 38.360, inclusive, ~~and section 1 of this act~~ the arbitration of a claim pursuant to this section must be conducted in accordance with the provisions of NRS 38.231, 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association, the arbitrator may issue an order prohibiting the action upon which the claim is based. An award must be made within 30 days after the conclusion of arbitration, unless a shorter period is agreed upon by the parties to the arbitration.

~~5. 8.~~ If all the parties have agreed to nonbinding arbitration, any party to the nonbinding arbitration may, within 30 days after a *final* decision and award *which are dispositive of any and all issues of the claim which were submitted to nonbinding arbitration* have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the provisions of NRS 38.300 to 38.360, inclusive. ~~and section 1 of this act.~~ If such an action is not commenced within that period, any party to the arbitration may, within 1 year after the service of the award, apply to the proper court for a confirmation of the award pursuant to NRS 38.239.

~~6. 9.~~ If all the parties agree in writing to binding arbitration, the arbitration must be conducted in accordance with the provisions of this chapter. An award procured pursuant to such binding arbitration may be vacated and a rehearing granted upon application of a party pursuant to the provisions of NRS 38.241.

~~7. 10.~~ If, after the conclusion of binding arbitration, a party:

(a) Applies to have an award vacated and a rehearing granted pursuant to NRS 38.241; or

(b) Commences a civil action based upon any claim which was the subject of arbitration,

the party shall, if the party fails to obtain a more favorable award or judgment than that which was obtained in the initial binding arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party after the application for a rehearing was made or after the complaint in the civil action was filed.

~~8. 11.~~ Upon request by a party, the Division shall provide a statement to the party indicating the amount of the fees for a mediator or an arbitrator selected or appointed pursuant to this section.

9. As used in this section, "geographic area" means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to NRS 38.320, ~~for section 1 of this act.~~

1 **Sec. 5.** ~~[NRS 38.240 is hereby amended to read as follows:~~

2 ~~38.340 For the purposes of NRS 38.300 to 38.360, inclusive, and section 1 of~~
3 ~~this act, the Division shall establish and maintain:~~

4 ~~1. A list of mediators and arbitrators who are available for mediation and~~
5 ~~arbitration of claims. The list must include mediators and arbitrators who, as~~
6 ~~determined by the Division, have received training and experience in mediation or~~
7 ~~arbitration and in the resolution of disputes concerning associations, including,~~
8 ~~without limitation, the interpretation, application and enforcement of covenants,~~
9 ~~conditions and restrictions pertaining to residential property and the articles of~~
10 ~~incorporation, bylaws, rules and regulations of an association. In establishing and~~
11 ~~maintaining the list, the Division may use lists of qualified persons maintained by~~
12 ~~any organization which provides mediation or arbitration services. Before including~~
13 ~~a mediator or arbitrator on a list established and maintained pursuant to this section,~~
14 ~~the Division [may] shall require the mediator or arbitrator to present proof~~
15 ~~satisfactory to the Division that the mediator or arbitrator has received the training~~
16 ~~and experience required for mediators or arbitrators pursuant to this section. The~~
17 ~~training required pursuant to this section must include, without limitation, at~~
18 ~~least 8 hours of continuing education which is approved by the Division and~~
19 ~~which includes at least 6 hours of courses in the resolution of disputes relating to~~
20 ~~residential property and at least 2 hours of courses in ethics. The continuing~~
21 ~~education courses must be completed during the 1 year period immediately~~
22 ~~preceding the initial inclusion of the mediator or arbitrator on the list and~~
23 ~~annually thereafter.~~

24 ~~2. A document which contains a written explanation of the procedures for~~
25 ~~mediating and arbitrating claims pursuant to NRS 38.300 to 38.360, inclusive [.] ,~~
26 ~~and section 1 of this act.] (Deleted by amendment.)~~

27 **Sec. 6.** ~~[NRS 38.360 is hereby amended to read as follows:~~

28 ~~38.360 1. The Division shall administer the provisions of NRS 38.300 to~~
29 ~~38.360, inclusive, and section 1 of this act, and may adopt such regulations as are~~
30 ~~necessary to carry out those provisions.~~

31 ~~2. All fees collected by the Division pursuant to the provisions of NRS 38.300~~
32 ~~to 38.360, inclusive, and section 1 of this act must be accounted for separately and~~
33 ~~may only be used by the Division to administer the provisions of NRS 38.300 to~~
34 ~~38.360, inclusive [.] , and section 1 of this act.] (Deleted by amendment.)~~

35 **Sec. 7.** ~~[NRS 116.630 is hereby amended to read as follows:~~

36 ~~116.630 1. There is hereby created the Account for Common-Interest~~
37 ~~Communities and Condominium Hotels in the State General Fund. The Account~~
38 ~~must be administered by the Administrator.~~

39 ~~2. Except as otherwise provided in subsection 3, all money received by the~~
40 ~~Commission, a hearing panel or the Division pursuant to this chapter or chapter~~
41 ~~116B of NRS, including, without limitation, the fees collected pursuant to NRS~~
42 ~~116.31155 and 116B.620, must be deposited into the Account.~~

43 ~~3. If the Commission imposes a fine or penalty, the Commission shall deposit~~
44 ~~the money collected from the imposition of the fine or penalty with the State~~
45 ~~Treasurer for credit to the State General Fund. If the money is so deposited, the~~
46 ~~Commission may present a claim to the State Board of Examiners for~~
47 ~~recommendation to the Interim Finance Committee if money is required to pay~~
48 ~~attorney's fees or the costs of an investigation, or both.~~

49 ~~4. The interest and income earned on the money in the Account, after~~
50 ~~deducting any applicable charges, must be credited to the Account.~~

51 ~~5. The money in the Account must be used solely to defray:~~

52 ~~(a) The costs and expenses of the Commission and the Office of the~~
53 ~~Ombudsman;~~

~~(b) If authorized by the Commission or any regulations adopted by the Commission, the costs and expenses of subsidizing proceedings for mediation and arbitration conducted pursuant to NRS 38.200 to 38.260, inclusive [;], and section 1 of this act; and~~

~~(c) If authorized by the Legislature or by the Interim Finance Committee if the Legislature is not in session, the costs and expenses of administering the Division.]~~
(Deleted by amendment.)