

Amendment No. 478

Assembly Amendment to Assembly Bill No. 394

(BDR 10-346)

Proposed by: Assemblymen Ohrenschall and Frierson**Amendment Box:** Consistent with Amendment No. 449.**Amends:** Summary: No 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.

BFG/BAW



Date: 4/24/2011

A.B. No. 394—Revises provisions relating to common-interest communities.
(BDR 10-346)



ASSEMBLY BILL NO. 394—ASSEMBLYMAN OHRENSCHALL

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities.
(BDR 10-346)

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; revising provisions governing the collection of past due financial obligations in common-interest communities; establishing limits on the amount which may be charged to a unit's owner to cover the costs of collecting a past due financial obligation; revising provisions governing an association's lien for assessments; revising provisions governing the foreclosure of an association's lien by sale; revising provisions governing the manner of collecting debts owed to an association; establishing a limit on the amount of the fee which may be charged to a unit's owner to record a transfer of the unit in the records of the association; revising various provisions relating to common-interest communities; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes certain restrictions on the actions of an association of a common-interest community with respect to regulating the use of a unit by a unit's owner. (NRS 116.2111) **Section 3** of this bill prohibits an association from prohibiting or unreasonably restricting a unit's owner from installing and using a clothesline within the boundaries of his or her unit.

Existing law requires the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations establishing the amount of the fees that may be charged to a unit's owner to cover the costs of collecting a past due financial obligation owed to an association of a common-interest community. (NRS 116.310313) **Section 5** of this bill prohibits the association from charging a unit's owner the costs of collecting a past due obligation unless ~~two-thirds of the total number of voting members of the association~~ a majority of the unit's owners who cast votes approve a collection policy for the association. **Section 5 also: (1)** requires the collection policy to ~~establish the rates for~~ include a list or schedule of the maximum amount of each fee, cost, charge or other amount which may be charged to a unit's owner to cover the costs of collecting a past due obligation; and ~~(2)~~ establishes limits on the amount a unit's owner may be charged to cover the costs of collecting such obligations, which are based on the amount of the outstanding balance of the past due obligation. In addition, **section 5 : (1)** prohibits an association from transferring to another person, other than an officer or employee of the association or its community manager, the collection activity with respect to a fine for a violation of the governing

~~documents; and (2)~~ establishes limits on the amount of the fee charged to a unit's owner to transfer an account for collection and to change the name of the unit's owner on such an account.

Under existing law, the association has a lien for certain amounts due the association. This lien is prior to the lien of a first security interest on the unit to the extent of charges incurred by the association to maintain certain units which are being foreclosed and to the extent of a specified number of months of assessments. (NRS 116.3116) **Section 8** of this bill provides that if the title to the unit is acquired at a foreclosure sale or trustee's sale and the mortgage on the unit was insured by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the amount secured by the lien given priority must not exceed the amount of common expenses and assessments authorized to be given such priority by the federal regulations or underwriting guidelines of the federal entity which insured the debt.

Existing law authorizes the association to foreclose its lien by sale of the unit and prescribes the procedures for such a foreclosure. (NRS 116.31162-116.31168) ~~Sections 9 and 10~~ of this bill ~~revise~~ **revises** provisions governing such foreclosures by prohibiting the association from: (1) foreclosing its lien by sale based on delinquent assessments unless the amount of delinquent assessments exceeds a certain amount; **and** (2) foreclosing its lien by sale unless the executive board of the association ~~authorizes~~ **votes to authorize** the foreclosure. ~~[in an executive session after providing notice of the meeting to a unit's owner; and (3) selling the unit and charging any costs of collecting to a unit's owner if the sale does not occur within 120 days after the association mails the notice of default and election to sell to the unit's owner.]~~

Existing law requires the association to provide a statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit in the resale package which is provided to a potential purchaser of a unit. (NRS 116.4109) **Section 11** of this bill establishes a limit of not more than \$50 on a fee charged to a unit's owner to record the transfer of a unit in the records of the association or its community manager.

Existing law provides that a collection agency which violates the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., or any regulation adopted pursuant thereto violates the provisions in existing state law relating to collection agencies. (NRS 649.370) Because the Fair Debt Collection Practices Act applies to consumer debts owed by natural persons, it does not apply when a collection agency collects any debt owed by an entity. (15 U.S.C. §§ 1692 et seq.) **Section 12** of this bill provides that a collection agency which violates the federal Fair Debt Collection Practices Act with respect to any debt owed to an association by a unit's owner is deemed to violate existing state law relating to collection agencies.

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:

"Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a notice of default and election to sell or notice of foreclosure sale or a rescission thereof, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

Sec. 2. 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

1 NRS 116.005 to 116.095, inclusive, *and section 1 of this act* have the meanings
2 ascribed to them in those sections.

3 **Sec. 3.** NRS 116.2111 is hereby amended to read as follows:

4 116.2111 1. Except as otherwise provided in this section and subject to the
5 provisions of the declaration and other provisions of law, a unit's owner:

6 (a) May make any improvements or alterations to his or her unit that do not
7 impair the structural integrity or mechanical systems or lessen the support of any
8 portion of the common-interest community;

9 (b) May not change the appearance of the common elements, or the exterior
10 appearance of a unit or any other portion of the common-interest community,
11 without permission of the association; and

12 (c) After acquiring an adjoining unit or an adjoining part of an adjoining unit,
13 may remove or alter any intervening partition or create apertures therein, even if the
14 partition in whole or in part is a common element, if those acts do not impair the
15 structural integrity or mechanical systems or lessen the support of any portion of
16 the common-interest community. Removal of partitions or creation of apertures
17 under this paragraph is not an alteration of boundaries.

18 2. An association may not:

19 (a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a
20 unit's owner to have reasonable access to his or her unit.

21 (b) Charge any fee for a person to enter the common-interest community to
22 provide services to a unit, a unit's owner or a tenant of a unit's owner or for any
23 visitor to the common-interest community or invitee of a unit's owner or a tenant of
24 a unit's owner to enter the common-interest community.

25 (c) Unreasonably restrict, prohibit or withhold approval for a unit's owner to
26 add to a unit:

27 (1) Improvements such as ramps, railings or elevators that are necessary to
28 improve access to the unit for any occupant of the unit who has a disability;

29 (2) Additional locks to improve the security of the unit;

30 (3) Shutters to improve the security of the unit or to reduce the costs of
31 energy for the unit; or

32 (4) A system that uses wind energy to reduce the costs of energy for the
33 unit if the boundaries of the unit encompass 2 acres or more within the common-
34 interest community.

35 (d) With regard to approving or disapproving any improvement or alteration
36 made to a unit, act in violation of any state or federal law.

37 *(e) Prohibit or unreasonably restrict a unit's owner from installing and using*
38 *a clothesline within the boundaries of his or her unit.*

39 3. Any improvement or alteration made pursuant to subsection 2 that is
40 visible from any other portion of the common-interest community must be installed,
41 constructed or added in accordance with the procedures set forth in the governing
42 documents of the association and must be selected or designed to the maximum
43 extent practicable to be compatible with the style of the common-interest
44 community.

45 4. An association may not unreasonably restrict, prohibit or withhold approval
46 for a unit's owner to add shutters to improve the security of the unit or to reduce the
47 costs of energy for the unit, including, without limitation, rolling shutters, that are
48 attached to a portion of an interior or exterior window, interior or exterior door or
49 interior or exterior wall which is not part of the unit and which is a common
50 element or limited common element if:

51 (a) The portion of the window, door or wall to which the shutters are attached
52 is adjoining the unit; and

(b) The shutters must necessarily be attached to that portion of the window, door or wall during installation to achieve the maximum benefit in improving the security of the unit or reducing the costs of energy for the unit.

5. If a unit's owner adds shutters pursuant to subsection 4, the unit's owner is responsible for the maintenance of the shutters.

6. For the purposes of subsection 4, a covenant, restriction or condition which does not unreasonably restrict the addition of shutters and which is contained in the governing documents of a common-interest community or a policy established by a common-interest community is enforceable so long as the covenant, restriction or condition was:

(a) In existence on July 1, 2009; or

(b) Contained in the governing documents in effect on the close of escrow of the first sale of a unit in the common-interest community.

7. A unit's owner may not add to the unit a system that uses wind energy as described in subparagraph (4) of paragraph (c) of subsection 2 unless the unit's owner first obtains the written consent of each owner of property within 300 feet of any boundary of the unit.

Sec. 4. NRS 116.310312 is hereby amended to read as follows:

116.310312 1. A person who holds a security interest in a unit must provide the association with the person's contact information as soon as reasonably practicable, but not later than 30 days after the person:

(a) Files an action for recovery of a debt or enforcement of any right secured by the unit pursuant to NRS 40.430; or

(b) Records or has recorded on his or her 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.

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 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 standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, 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, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against

the unit and has a lien on the unit for any unpaid amount of the charges. The lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

5. A lien described in subsection 4 bears interest from the date that the charges become due at a rate determined pursuant to NRS 17.130 until the charges, including all interest due, are paid.

6. ~~{Except as otherwise provided in this subsection,}~~ *Subject to the limitations provided in NRS 116.3116,* a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116. ~~{If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.}~~

7. A person who purchases or acquires a unit at a foreclosure sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS 107.080 is bound by the governing documents of the association and shall maintain the exterior of the unit in accordance with the governing documents of the association. Such a unit may only be removed from a common-interest community in accordance with the governing documents pursuant to this chapter.

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

9. As used in this section:

(a) "a)terior of the unit" includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

(b) "b)ant" means a unit:

(1) Which reasonably appears to be unoccupied;

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

(3) On which the owner has failed to pay assessments for more than 60 days.

Sec. 5. NRS 116.310313 is hereby amended to read as follows:

116.310313 1. An association may *not* charge a unit's owner ~~{reasonable fees to cover}~~ the costs of collecting any past due obligation ~~{The Commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.}~~ *unless:*

(a) *The executive board proposes a collection policy which includes, without limitation:*

(1) *The responsibility of the unit's owner to pay an obligation in a timely manner;*

(2) *The association's rights concerning the collection of an obligation if the unit's owner fails to pay the obligation in a timely manner; and*

(3) ~~{The rate established by the association for}~~ *A list or schedule of the maximum amount of each fee, cost, charge or other amount which may be charged to a unit's owner to cover the costs of collecting a past due obligation; and*

(b) *Units' owners constituting ~~{at least two-thirds}~~ a majority ~~{of the total number of voting members of the association}~~ of the votes cast approve the collection policy proposed by the executive board.*

2. *Subject to the limitation set forth in subsection 3, if, pursuant to subsection 1, the association is authorized to charge a unit's owner the costs of*

collecting a past due obligation, the rate established by the association for the costs of collecting the past due obligation:

- (a) May not exceed \$50, if the outstanding balance is less than \$200.
- (b) May not exceed \$75, if the outstanding balance is \$200 or more but is less than \$500.
- (c) May not exceed \$100, if the outstanding balance is \$500 or more but is less than \$1,000.
- (d) May not exceed \$250, if the outstanding balance is \$1,000 or more but is less than \$5,000.
- (e) May not exceed \$500, if the outstanding balance is \$5,000 or more.

3. The rate established by the association for the costs of collecting a past due obligation must provide that, during any 24-month period, the association may not charge a unit's owner the costs of collecting a past due obligation in an amount which exceeds \$600 per unit.

4. An association may not transfer an account for the collection of a past due fine for a violation of the governing documents to any person other than an officer or employee of the association or the community manager. If an association transfers an account for the collection of a past due fine for a violation of the governing documents to the community manager of the association, the community manager may not transfer the account to any person other than an officer or employee of the community manager.

5. Each written attempt to collect from a unit's owner a past due obligation which is more than 60 days past due in which the association or its authorized agent expresses an intent to engage in further collection activity if the unit's owner fails to pay the total amount due must include:

- (a) A statement of the current amount due; and
- (b) A schedule of the amount of the fees, costs, charges or other amounts which may be charged to the unit's owner if the unit's owner fails to pay the total amount due.

For the purposes of this subsection, providing a standard monthly statement or a coupon book is not an attempt to collect a past due obligation.

6. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

~~5.7~~ 7. *An association or a community manager may not charge a unit's owner, or require a unit's owner to pay, a fee of more than:*

- (a) Fifty dollars for transferring an account for the collection of a past due obligation to another person; and*
- (b) Twenty-five dollars for changing the name of the unit's owner on the account for the collection of a past due obligation.*

~~[3.]~~ ~~6.7~~ 8. *As used in this section:*

~~(a) "[Costs of collecting]" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.~~

1 ~~—(b)—~~ “Obligation” means any assessment, fine, construction penalty, fee, charge
2 or interest levied or imposed against a unit’s owner pursuant to any provision of
3 this chapter or the governing documents.

4 *(b) “Outstanding balance” means the amount of a past due obligation that*
5 *remains unpaid before any interest, charges for late payment or costs of*
6 *collecting the past due obligation are added.*

7 **Sec. 6.** NRS 116.31085 is hereby amended to read as follows:

8 116.31085 1. Except as otherwise provided in this section, a unit’s owner
9 may attend any meeting of the units’ owners or of the executive board and speak at
10 any such meeting. The executive board may establish reasonable limitations on the
11 time a unit’s owner may speak at such a meeting.

12 2. An executive board may not meet in executive session to open or consider
13 bids for an association project as defined in NRS 116.31086, or to enter into, renew,
14 modify, terminate or take any other action regarding a contract.

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

16 (a) Consult with the attorney for the association on matters relating to proposed
17 or pending litigation if the contents of the discussion would otherwise be governed
18 by the privilege set forth in NRS 49.035 to 49.115, inclusive.

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

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

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

28 *(e) Discuss an authorization to foreclose the association’s lien by sale*
29 *pursuant to paragraph (b) of subsection 1 of NRS 116.31162. The vote of each*
30 *member of the executive board concerning whether to authorize the foreclosure*
31 *of the association’s lien by sale must be recorded in the minutes of the meeting.*

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

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

40 (b) Is entitled to due process, as set forth in the standards adopted by regulation
41 by the Commission, which must include, without limitation, the right to counsel,
42 the right to present witnesses and the right to present information relating to any
43 conflict of interest of any member of the hearing panel; and

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

45 5. The provisions of subsection 4 establish the minimum protections that the
46 executive board must provide before it may make a decision. The provisions of
47 subsection 4 do not preempt any provisions of the governing documents that
48 provide greater protections.

49 6. Except as otherwise provided in this subsection, any matter discussed by
50 the executive board when it meets in executive session must be generally noted in
51 the minutes of the meeting of the executive board. The executive board shall
52 maintain minutes of any decision made pursuant to subsection 4 concerning an
53 alleged violation and, upon request, provide a copy of the decision to the person

1 who was subject to being sanctioned at the hearing or to the person's designated
2 representative.

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

5 **Sec. 7.** NRS 116.31151 is hereby amended to read as follows:

6 116.31151 1. Except as otherwise provided in subsection 2 and unless the
7 declaration of a common-interest community imposes more stringent standards, the
8 executive board shall, not less than 30 days or more than 60 days before the
9 beginning of the fiscal year of the association, prepare and distribute to each unit's
10 owner a copy of:

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

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

18 (1) The current estimated replacement cost, estimated remaining life and
19 estimated useful life of each major component of the common elements and any
20 other portion of the common-interest community that the association is obligated to
21 maintain, repair, replace or restore;

22 (2) As of the end of the fiscal year for which the budget is prepared, the
23 current estimate of the amount of cash reserves that are necessary, and the current
24 amount of accumulated cash reserves that are set aside, to repair, replace or restore
25 the major components of the common elements and any other portion of the
26 common-interest community that the association is obligated to maintain, repair,
27 replace or restore;

28 (3) A statement as to whether the executive board has determined or
29 anticipates that the levy of one or more special assessments will be necessary to
30 repair, replace or restore any major component of the common elements or any
31 other portion of the common-interest community that the association is obligated to
32 maintain, repair, replace or restore or to provide adequate funding for the reserves
33 designated for that purpose; and

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

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

41 (a) The budgets are available for review at the business office of the
42 association or some other suitable location within the county where the common-
43 interest community is situated or, if it is situated in more than one county, within
44 one of those counties but not to exceed 60 miles from the physical location of the
45 common-interest community; and

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

47 3. Within 60 days after adoption of any proposed budget for the common-
48 interest community, the executive board shall provide a summary of the proposed
49 budget to each unit's owner and shall set a date for a meeting of the units' owners
50 to consider ratification of the proposed budget not less than 14 days or more than
51 30 days after the mailing of the summaries. Unless at that meeting a majority of all
52 units' owners, or any larger vote specified in the declaration, reject the proposed
53 budget, the proposed budget is ratified, whether or not a quorum is present. If the

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

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

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

12 ~~—(b) The association's rights concerning the collection of such fees, fines,~~
13 ~~assessments or costs if the unit's owner fails to pay the fees, fines, assessments or~~
14 ~~costs in a timely manner.] adopted pursuant to NRS 116.310313.~~

15 **Sec. 8.** NRS 116.3116 is hereby amended to read as follows:

16 116.3116 1. The association has a lien on a unit for any construction penalty
17 that is imposed against the unit's owner pursuant to NRS 116.310305, any
18 assessment levied against that unit or any fines imposed against the unit's owner
19 from the time the construction penalty, assessment or fine becomes due. Unless the
20 declaration otherwise provides, any penalties, fees, charges, late charges, fines and
21 interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS
22 116.3102 are enforceable as assessments under this section. If an assessment is
23 payable in installments, the full amount of the assessment is a lien from the time the
24 first installment thereof becomes due.

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

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

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

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

36 ~~{→}~~

37 3. The lien **under this section** is also prior to all security interests described in
38 paragraph (b) **of subsection 2** to the extent of any charges incurred by the
39 association on a unit pursuant to NRS 116.310312 and to the extent of the
40 assessments for common expenses based on the periodic budget adopted by the
41 association pursuant to NRS 116.3115 which would have become due in the
42 absence of acceleration during the 9 months immediately preceding institution of an
43 action to enforce the lien, unless federal regulations **or underwriting guidelines**
44 adopted by the Federal Home Loan Mortgage Corporation or the Federal National
45 Mortgage Association require a shorter period of priority for the lien. If federal
46 regulations **or underwriting guidelines** adopted by the Federal Home Loan
47 Mortgage Corporation or the Federal National Mortgage Association require a
48 shorter period of priority for the lien, the period ~~[during which the lien is prior to all~~
49 ~~security interests described in paragraph (b)]~~ **of priority** must be determined in
50 accordance with those federal regulations ~~[or underwriting guidelines,~~
51 ~~except that notwithstanding the provisions of the federal regulations [or underwriting~~
52 ~~guidelines,~~ the period of priority for the lien must not be less than the 6 months
53 immediately preceding institution of an action to enforce the lien. ~~[This subsection~~

~~does~~ If title to a unit is acquired by a sale conducted pursuant to NRS 40.430 or 107.080 to obtain payment of a debt secured by a security interest described in paragraph (b) of subsection 2 and that debt was insured by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the amount secured by the lien given priority over the security interests described in paragraph (b) of subsection 2 must not exceed the amount of common expenses and assessments authorized to be given such priority by the federal regulations or underwriting guidelines adopted by the entity which insured the debt.

4. The provisions of subsections 2 and 3 do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

~~3.3~~ 5. 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.

~~4.4~~ 6. 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.

~~5.5~~ 7. 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.

~~6.6~~ 8. 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.

~~7.7~~ 9. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~8.8~~ 10. 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.

~~9.9~~ 11. 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. 9. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in ~~subsection~~ subsections 4 ~~and 5, and paragraph (a) of subsection 2 of NRS 116.31164,~~ in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its 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) Before the association records the notice of default and election to sell in the manner required by paragraph (c), the executive board authorizes the foreclosure of the association's lien by sale by a majority vote of the members of the executive board which is recorded in the minutes of the meeting at which such action is taken. [Except as otherwise provided in this paragraph, if the lien is imposed against a unit which is occupied by the unit's owner, not later than 20 days before the meeting, the association must provide to the unit's owner or his or her successor in interest by personal delivery notice that the executive board will determine whether to authorize the foreclosure of the association's lien by sale of the unit. If the lien is imposed against a unit which is not occupied by the unit's owner, the association may provide the notice by first class mail to the last known mailing address of the unit's owner.]~~

(c) 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)~~ (d) 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:

(a) The violation 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; or

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

5. *The association may not foreclose a lien by sale based on a delinquent assessment unless the amount of the delinquent assessment, excluding acceleration and any interest, charges for late payment or costs of collecting the assessment:*

(a) *Is more than \$1,800; or*

(b) *Is equal to or greater than the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which became due during the 12 months immediately preceding institution of the foreclosure.*

Sec. 10. ~~NRS 116.31164 is hereby amended to read as follows:~~

~~1. The sale must be conducted in the county in which the common interest community or part of it is situated, and may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State, except that the sale may be made at the office of the association if the notice of the sale so provided, whether the unit is located within the same county as the office of the association or not. The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale.~~

~~2. If the sale does not occur within 120 days after the date on which a copy of the notice of default and election to sell was personally delivered or mailed to the unit's owner or his or her successor in interest in the manner required by paragraph (b) of subsection 1 of NRS 116.31162, the association and any person acting on behalf of the association may not:~~

~~(a) Foreclose the association's lien by sale; or~~

~~(b) Charge to, or collect from, the unit's owner or his or her successor in interest any costs of collecting the past due obligation to which the notice of default relates unless the unit's owner or his or her successor in interest has agreed to a payment plan which includes the payment, in whole or in part, of the costs of collecting the past due obligation.~~

~~3. On the day of sale originally advertised or to which the sale is postponed, at the time and place specified in the notice or postponement, the person conducting the sale may sell the unit at public auction to the highest cash bidder. Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. The association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.~~

~~[3.] 4. After the sale, the person conducting the sale shall:~~

~~(a) Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit;~~

~~(b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his or her successor or assign; and~~

~~(c) Apply the proceeds of the sale for the following purposes in the following order:~~

~~(1) The reasonable expenses of sale;~~

~~(2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;~~

~~(3) Satisfaction of the association's lien;~~

~~(4) Satisfaction in the order of priority of any subordinate claim of record, and~~
~~(5) Remittance of any excess to the unit's owner.] (Deleted by amendment.)~~

Sec. 11. 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 or her 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, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;

(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;

(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;

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

(f) In addition to any other document, a statement describing all current and expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each 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, the purchaser must hand deliver the notice of cancellation to the unit's owner or his or her authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his or her 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 or her 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 or her authorized agent, the association shall furnish all of the following to the unit's owner or his or her 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), (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 or her authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his or her authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

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

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

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

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

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

7. An association or a community manager may not charge a unit's owner, and may not require a unit's owner to pay, a fee of more than \$50 to cover the cost of recording in the books and records of the association or community manager the transfer of the ownership of the unit.

Sec. 12. NRS 649.370 is hereby amended to read as follows:

649.370 *1.* A violation of any provision of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ ~~1682~~ **1692** et seq., or any regulation adopted pursuant thereto, shall be deemed to be a violation of this chapter.

2. Even if a claim is not governed by the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., a violation of any provision of that Act, or any regulation adopted pursuant thereto, with respect to collecting or attempting to collect a claim owed to a unit-owners' association by a unit's owner shall be deemed to be a violation of this chapter.

Sec. 13. The amendatory provisions of ~~sections~~ **section 9** ~~and 10~~ of this act apply only if a notice of default and election to sell is recorded pursuant to NRS 116.31162 on or after July 1, 2011.

Sec. 14. This act becomes effective on July 1, 2011.