

Amendment No. 521

Senate Amendment to Senate Bill No. 185

(BDR 10-23)

Proposed by: Senate Committee on Judiciary**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.

BAW



Date: 4/25/2011

S.B. No. 185—Makes various changes relating to real property. (BDR 10-23)



SENATE BILL NO. 185—SENATOR SCHNEIDER

FEBRUARY 22, 2011

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to real property. (BDR 10-23)

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 real property; providing for the regulation of private transfer fee obligations affecting real property; revising the disclosures that a seller of real property must make to a buyer to include certain information concerning private transfer fee obligations; ~~revising provisions governing fees charged for products or services provided to owners of units in a common interest community; prohibiting the use of information from radar guns as a basis for a fine or penalty in a common interest community;~~ requiring certain additional information to be included in the declaration of a common-interest community; amending provisions governing the composition of the executive board of an association of a common-interest community; revising provisions relating to hearings on alleged violations of the governing documents of a common-interest community; revising provisions governing civil actions ~~commenced~~ to protect health, safety and welfare within a common-interest community; amending provisions governing fees imposed by an association upon the sale of real property within a common-interest community; making various other changes relating to common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1-14 of this bill regulate obligations created by a conveyance or other instrument affecting the title to real property that require the payment of a fee to a payee upon a subsequent transfer of an interest in the real property. **Section 10** provides that certain transfer fee obligations created or recorded in this State on or after July 1, 2011, are void and unenforceable. **Sections 11 and 12** impose certain requirements on the payee under a private transfer fee obligation created before July 1, 2011. If a payee does not comply with these requirements, the private transfer fee obligation becomes void and unenforceable and, under **section 13**, the payee is subject to civil liability. **Section 14** revises the disclosures that a seller of real property must make to a buyer by requiring a seller of real property that is subject to a private transfer fee obligation to furnish to the buyer a written statement disclosing certain information concerning the private transfer fee obligation.

~~Existing law authorizes homeowners' associations to impose and receive various fees for services provided to units' owners. (NRS 116.3102, 116.3108, 116.31083, 116.31175, 116.4109) Sections 16, 19, 20, 22, 23, 26-33 and 35 of this bill revise the provisions governing fees charged by homeowners' associations. According to these sections, from July 1, 2011, through September 30, 2012, an association is prohibited from charging a fee for a good or service provided to a unit's owner, tenant or invitee in an amount which exceeds: (1) the actual cost incurred by the association to provide the good or service; or (2) the maximum amount of the fee authorized by statute or by a regulation adopted by the Commission for Common Interest Communities and Condominium Hotels. On and after October 1, 2012, a homeowners' association is prohibited from charging a fee for a good or service provided to a unit's owner, tenant or invitee unless: (1) the fee is specifically authorized by statute or by a regulation adopted by the Commission; and (2) the maximum amount of the fee is established by statute or by a regulation adopted by the Commission. The amounts of certain existing fees which have been prescribed by statute remain effective until October 1, 2012, or the effective date of a regulation adopted by the Commission which prescribes the maximum amount of the fee, whichever is later.~~

~~Section 17 of this bill prohibits a common interest community from using information from radar guns as the basis for a fine or penalty.~~

Section 18 of this bill requires the declaration creating the common-interest community to contain information concerning: (1) any restrictions on the ability of a unit's owner to rent or lease his or her unit; and (2) describing the [specific obligations, duties and] provisions of law pertaining to the responsibilities of the association with respect to the maintenance, repair and replacement of [specific] the common elements [specific limited common elements and other specific areas within the common interest community], and the responsibility of each unit's owner for maintenance, repair and replacement of his or her unit.

Section 21 of this bill replaces the requirement that all members of the executive board of an association be units' owners with a requirement that at least a majority of the members of the executive board be units' owners unless the declaration provides otherwise.

Existing law requires the executive board to meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned requests an open hearing. Under existing law, if the person who may be sanctioned requests an open hearing, that person has certain rights with respect to the hearing. (NRS 116.31085)

Section 24 of this bill requires that the person who may be sanctioned be provided these rights whether or not the person requests an open hearing.

Existing law requires a homeowner's association to obtain the approval of units' owners before commencing certain civil actions. However, existing law authorizes an association to commence a civil action without such approval if the civil action is commenced to protect the health, safety and welfare of the members of the association. (NRS 116.31088) **Section 25** of this bill requires] provides that an association [which has commenced], or the executive board acting on behalf of an association, may not retain an attorney for the purpose of considering or commencing such a civil action without the preapproval of its members. [to apply for and obtain court approval to proceed with the civil action. Under section 25, if the court makes certain findings, the association may proceed with the civil action and the civil action must be ratified by the units' owners within 90 days after the court's approval.]

Existing law authorizes an association to charge 25 cents per page for providing copies of certain documents to a unit's owner. (NRS 116.31177, 116.4109) Sections 27 and 30 of this bill provide that an association may charge 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

Existing law authorizes an association to charge certain fees for furnishing certain documents and certificates in connection with the resale of a unit. (NRS 116.4109) **Sections 30 and 31** of this bill prohibit an agreement entered into by the association for the furnishing of such documents or certificates from allowing a unit's owner to be charged a fee exceeding the amount which the association is authorized to charge. [In addition, under sections 20 and 25 of this bill, from July 1, 2011, through September 30, 2012, an association is prohibited from charging a unit's owner any fee related to the resale of a unit that is not specifically authorized, except that the association may charge a fee to cover the actual cost of transferring the unit to a new owner in the books and records of the association. Under sections 31, 33 and 35, on and after October 1, 2012, the association is prohibited from charging any fee related to

~~the resale of a unit, unless the fee is authorized, and the maximum amount of the fee established, by statute or regulation.~~

~~Section 32 of this bill revises provisions governing the nonbinding arbitration of certain claims relating to residential property subject to covenants, conditions and restrictions to: (1) prohibit the award of costs and attorney's fees to the parties to the arbitration unless, during a proceeding to confirm an award, a court finds that a party has asserted a frivolous or vexatious claim or engaged in conduct for the purpose of harassment or delay; (2) require the parties to pay an equal share of the arbitrator's fees and expenses in certain circumstances; and (3) allow a party to apply to vacate the arbitration award if another party has applied to confirm the award.~~

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

Section 1. Chapter 111 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this act.

Sec. 2. *As used in sections 2 to 13, inclusive, of this act, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Buyer" includes, without limitation, a grantee or other transferee of an interest in real property.*

Sec. 4. *"Payee" means the natural person to whom or the entity to which a private transfer fee is to be paid and the successors or assigns of the natural person or entity.*

Sec. 5. 1. *"Private transfer fee" means a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in real property, or payable for the right to make or accept such a transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the interest in real property or the purchase price or other consideration paid for the transfer of the interest in real property.*

2. *The term does not include any:*

(a) *Consideration payable by the buyer to the seller for the interest in real property being transferred, including any subsequent additional consideration payable by the buyer based upon any subsequent appreciation, development or sale of the property if the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind successors in title to the property;*

(b) *Commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the seller or buyer, including any subsequent additional commission payable by the seller or buyer based upon any subsequent appreciation, development or sale of the property;*

(c) *Interest, charge, fee or other amount payable by a borrower to a lender pursuant to a loan secured by a mortgage on real property, including, without limitation, any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property, any amount paid to the lender pursuant to an agreement which gives the lender the right to share in any subsequent appreciation in the value of the property and any other consideration payable to the lender in connection with the loan;*

(d) *Rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor under a lease, including, without limitation, any fee payable to the lessor*

for consenting to any assignment, subletting, encumbrance or transfer of the lease;

(e) Consideration payable to the holder of an option to purchase an interest in real property or to the holder of a right of first refusal to purchase an interest in real property for waiving, releasing or not exercising the option or right upon the transfer of the real property to another person;

(f) Tax, fee, charge, assessment, fine or other amount payable to or imposed by a governmental entity; ~~fee~~

(g) Fee, charge, assessment, fine or other amount payable to an association of property owners or any other form of organization of property owners, including, without limitation, a unit-owners' association or master association of a common-interest community, a unit-owners' association of a condominium hotel or an association of owners of a time-share plan, pursuant to a declaration, covenant or specific statute applicable to the association or organization. ~~fee~~; or

(h) Any fee or charge payable to the master developer of a planned community on account of the failure of an owner of real property to construct a residence and own that residence for a specified period before a subsequent sale, as set forth in a document which is recorded before the date on which the master developer initially sells the real property and which binds all subsequent owners of the real property.

Sec. 6. "Private transfer fee obligation" means an obligation created by a conveyance or other instrument affecting the title to real property that requires the payment of a private transfer fee to a payee upon a subsequent transfer of an interest in the real property.

Sec. 7. "Seller" includes, without limitation, a grantor or other transferor of an interest in real property.

Sec. 8. "Transfer" means the sale, gift, conveyance, assignment, inheritance or other transfer of an interest in real property.

Sec. 9. The Legislature finds and declares that:

1. The public policy of this State favors the marketability of real property and the transferability of interests in real property free of defects in title or unreasonable restraints on the alienation of real property; and

2. A private transfer fee obligation violates the public policy of this State by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on the alienation of real property regardless of the duration or amount of the private transfer fee or the method by which the private transfer fee obligation is created or imposed.

Sec. 10. 1. Except as otherwise provided in section 11 of this act:

(a) A person shall not, on or after July 1, 2011, create or record a private transfer fee obligation in this State; and

(b) A private transfer fee obligation that is created or recorded in this State on or after July 1, 2011, is void and unenforceable.

2. The provisions of subsection 1 do not validate or make enforceable any private transfer fee obligation that was created or recorded in this State before July 1, 2011.

Sec. 11. 1. The payee under a private transfer fee obligation that was created before July 1, 2011, shall, on or before December 31, 2011, record in the office of the county recorder of the county in which the real property that is subject to the private transfer fee obligation is located a notice which includes:

(a) The title "Notice of Private Transfer Fee Obligation" in not less than 14-point boldface type;

(b) The legal description of the real property;

1 (c) *The amount of the private transfer fee or the method by which the private*
2 *transfer fee must be calculated;*

3 (d) *If the real property is residential property, the amount of the private*
4 *transfer fee that would be imposed on the sale of a home for \$100,000, the sale of*
5 *a home for \$250,000 and the sale of a home for \$500,000;*

6 (e) *The date or circumstances under which the private transfer fee obligation*
7 *expires, if any;*

8 (f) *The purpose for which the money received from the payment of the*
9 *private transfer fee will be used;*

10 (g) *The name, address and telephone number of the payee; and*

11 (h) *If the payee is:*

12 (1) *A natural person, the notarized signature of the payee; or*

13 (2) *An entity, the notarized signature of an authorized officer or*
14 *employee of the entity.*

15 2. *Upon any change in the information set forth in the notice described in*
16 *subsection 1, the payee may record an amendment to the notice.*

17 3. *If the payee fails to comply with the requirements of subsection 1:*

18 (a) *The private transfer fee obligation is void and unenforceable and any*
19 *interest in the real property that is subject to the private transfer fee obligation*
20 *may thereafter be conveyed free and clear of the private transfer fee obligation;*
21 *and*

22 (b) *The payee is subject to the liability described in section 13 of this act.*

23 4. *Any person with an interest in the real property that is subject to the*
24 *private transfer fee obligation may record in the office of the county recorder of*
25 *the county in which the real property is located an affidavit which:*

26 (a) *States that the affiant has actual knowledge of, and is competent to testify*
27 *to, the facts set forth in the affidavit;*

28 (b) *Sets forth the legal description of the real property that is subject to the*
29 *private transfer fee obligation;*

30 (c) *Sets forth the name of the owner of the real property as recorded in the*
31 *office of the county recorder;*

32 (d) *States that the private transfer fee obligation was created before July 1,*
33 *2011, and specifies the date on which the private transfer fee obligation was*
34 *created;*

35 (e) *States that the payee under the private transfer fee obligation failed on or*
36 *before December 31, 2011, to record in the office of the county recorder of the*
37 *county in which the real property that is subject to the private transfer fee*
38 *obligation is located a notice which complies with the requirements of subsection*
39 *1; and*

40 (f) *Is signed by the affiant under penalty of perjury.*

41 5. *When properly recorded, the affidavit described in subsection 4*
42 *constitutes prima facie evidence that:*

43 (a) *The real property described in the affidavit was subject to a private*
44 *transfer fee obligation that was created before July 1, 2011;*

45 (b) *The payee under the private transfer fee obligation failed on or before*
46 *December 31, 2011, to record in the office of the county recorder of the county in*
47 *which the real property that was subject to the private transfer fee obligation is*
48 *located a notice which complies with the requirements of subsection 1; and*

49 (c) *The private transfer fee obligation is void and unenforceable and any*
50 *interest in the real property that is subject to the private transfer fee obligation*
51 *may thereafter be conveyed free and clear of the private transfer fee obligation.*

52 **Sec. 12. 1. If a written request for a written statement of the amount of**
53 **the private transfer fee due upon the sale of real property is sent by certified mail,**

1 *return receipt requested, to the payee under a private transfer fee obligation that*
2 *was created before July 1, 2011, at the address appearing in the recorded notice*
3 *described in section 11 of this act, the payee shall provide such a written*
4 *statement to the person who requested the written statement not later than 30*
5 *days after the date of mailing.*

6 *2. If the payee fails to comply with the requirements of subsection 1:*

7 *(a) The private transfer fee obligation is void and unenforceable and any*
8 *interest in the real property that is subject to the private transfer fee obligation*
9 *may thereafter be conveyed free and clear of the private transfer fee obligation;*
10 *and*

11 *(b) The payee is subject to the liability described in section 13 of this act.*

12 *3. The person who requested the written statement may record in the office*
13 *of the county recorder of the county in which the real property is located an*
14 *affidavit which:*

15 *(a) States that the affiant has actual knowledge of, and is competent to testify*
16 *to, the facts set forth in the affidavit;*

17 *(b) Sets forth the legal description of the real property that is subject to the*
18 *private transfer fee obligation;*

19 *(c) Sets forth the name of the owner of the real property as recorded in the*
20 *office of the county recorder;*

21 *(d) Expressly refers to the recorded notice described in section 11 of this act*
22 *by:*

23 *(1) The date on which the notice was recorded in the office of the county*
24 *recorder; and*

25 *(2) The book, page and document number, as applicable, of the recorded*
26 *notice;*

27 *(e) States that a written request for a written statement of the amount of the*
28 *private transfer fee due upon the sale of the real property was sent by certified*
29 *mail, return receipt requested, to the payee at the address appearing in the*
30 *recorded notice described in section 11 of this act, and that the payee failed to*
31 *provide such a written statement to the person who requested the written*
32 *statement within 30 days after the date of mailing; and*

33 *(f) Is signed by the affiant under penalty of perjury.*

34 *4. When properly recorded, the affidavit described in subsection 3*
35 *constitutes prima facie evidence that:*

36 *(a) A written request for a written statement of the amount of the private*
37 *transfer fee due upon the sale of the real property was sent by certified mail,*
38 *return receipt requested, to the payee at the address appearing in the recorded*
39 *notice described in section 11 of this act;*

40 *(b) The payee failed to provide such a written statement to the person who*
41 *requested the written statement within 30 days after the date of mailing; and*

42 *(c) The private transfer fee obligation is void and unenforceable and any*
43 *interest in the real property that is subject to the private transfer fee obligation*
44 *may thereafter be conveyed free and clear of the private transfer fee obligation.*

45 **Sec. 13. 1.** *Any person who fails to comply with a requirement imposed by*
46 *subsection 1 of section 11 of this act or subsection 1 of section 12 of this act is*
47 *liable for all:*

48 *(a) Damages resulting from the enforcement of the private transfer fee*
49 *obligation upon the transfer of an interest in the real property, including, without*
50 *limitation, the amount of any private transfer fee paid by a party to the transfer;*
51 *and*

1 ***(b) Attorney's fees, expenses and costs incurred by a party to the transfer or***
2 ***mortgagee of the real property to recover any private transfer fee paid or in***
3 ***connection with an action to quiet title.***

4 ***2. A principal is liable pursuant to this section for the acts or omissions of***
5 ***an authorized agent of the principal.***

6 **Sec. 14.** Chapter 113 of NRS is hereby amended by adding thereto a new
7 section to read as follows:

8 ***1. A seller of real property that is subject to a private transfer fee obligation***
9 ***shall furnish to the buyer a written statement which discloses the existence of the***
10 ***private transfer fee obligation, includes a description of the private transfer fee***
11 ***obligation and sets forth a notice in substantially the following form:***
12

13 ***A private transfer fee obligation has been created with respect to this***
14 ***property. The private transfer fee obligation may lower the value of this***
15 ***property. The laws of this State prohibit the enforcement of certain***
16 ***private transfer fee obligations that are created or recorded on or after***
17 ***July 1, 2011 (section 10 of this act), and impose certain notice***
18 ***requirements with respect to private transfer fee obligations that were***
19 ***created before July 1, 2011 (section 11 of this act).***
20

21 ***2. As used in this section, "private transfer fee obligation" has the meaning***
22 ***ascribed to it in section 6 of this act.***

23 **Sec. 15. (Deleted by amendment.)**

24 **Sec. 16. (Deleted by amendment.)**

25 **Sec. 17. (Deleted by amendment.)**

26 **Sec. 18.** NRS 116.2105 is hereby amended to read as follows:

27 116.2105 1. The declaration must contain:

28 (a) The names of the common-interest community and the association and a
29 statement that the common-interest community is either a condominium,
30 cooperative or planned community;

31 (b) The name of every county in which any part of the common-interest
32 community is situated;

33 (c) A sufficient description of the real estate included in the common-interest
34 community;

35 (d) A statement of the maximum number of units that the declarant reserves the
36 right to create;

37 (e) In a condominium or planned community, a description of the boundaries
38 of each unit created by the declaration, including the unit's identifying number or,
39 in a cooperative, a description, which may be by plats, of each unit created by the
40 declaration, including the unit's identifying number, its size or number of rooms,
41 and its location within a building if it is within a building containing more than one
42 unit;

43 (f) A description of any limited common elements, other than those specified
44 in subsections 2 and 4 of NRS 116.2102, as provided in paragraph (g) of subsection
45 2 of NRS 116.2109 and, in a planned community, any real estate that is or must
46 become common elements;

47 (g) A description of any real estate, except real estate subject to developmental
48 rights, that may be allocated subsequently as limited common elements, other than
49 limited common elements specified in subsections 2 and 4 of NRS 116.2102,
50 together with a statement that they may be so allocated;

51 (h) A description of any developmental rights and other special declarant's
52 rights reserved by the declarant, together with a legally sufficient description of the

real estate to which each of those rights applies, and a time within which each of those rights must be exercised;

(i) If any developmental right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(1) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each developmental right or a statement that no assurances are made in those regards; and

(2) A statement whether, if any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right must be exercised in all or in any other portion of the remainder of that real estate;

(j) Any other conditions or limitations under which the rights described in paragraph (h) may be exercised or will lapse;

(k) An allocation to each unit of the allocated interests in the manner described in NRS 116.2107;

(l) Any restrictions:

(1) On use, occupancy and alienation of the units ~~that~~, *including, without limitation, a clear and conspicuous statement written in plain English, in bold type and in a font that is easy to read indicating whether a unit's owner is prohibited from renting or leasing his or her unit and whether a unit's owner is required to secure or obtain any approval from the association in order to rent or lease his or her unit;* and

(2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on sale, condemnation or casualty to the unit or to the common-interest community, or on termination of the common-interest community;

(m) *A statement written in plain English ~~that~~*

~~(1) Describing the provisions of NRS 116.3107 pertaining to the responsibility of the association for maintenance, repair and replacement of the common elements and the responsibility of each unit's owner for maintenance, repair and replacement of his or her unit; and~~

~~(2) Identifying and describing the specific obligations, duties and responsibilities of the association with respect to the maintenance, repair and replacement of specific common elements, specific limited common elements and other specific areas within the common interest community and identifying and describing any limitations or restrictions on such obligations, duties and responsibilities;~~

(n) The file number and book or other information to show where easements and licenses are recorded appurtenant to or included in the common-interest community or to which any portion of the common-interest community is or may become subject by virtue of a reservation in the declaration; and

~~(n)~~ (o) All matters required by NRS 116.2106 to 116.2109, inclusive, 116.2115 and 116.2116 and 116.31032.

2. The declaration may contain any other matters the declarant considers appropriate.

Sec. 19. ~~(Deleted by amendment.)~~

Sec. 20. ~~(Deleted by amendment.)~~

Sec. 21. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, ~~that~~ *at least a majority* of whom must be units' owners. *Unless the governing documents*

1 *provide otherwise, the remaining members of the executive board are not*
2 *required to be units' owners.* The executive board shall elect the officers of the
3 association. Unless the governing documents provide otherwise, the officers of the
4 association are not required to be units' owners. The members of the executive
5 board and the officers of the association shall take office upon election.

6 2. The term of office of a member of the executive board may not exceed 3
7 years, except for members who are appointed by the declarant. Unless the
8 governing documents provide otherwise, there is no limitation on the number of
9 terms that a person may serve as a member of the executive board.

10 3. The governing documents of the association must provide for terms of
11 office that are staggered in such a manner that, to the extent possible, an equal
12 number of members of the executive board are elected at each election. The
13 provisions of this subsection do not apply to:

14 (a) Members of the executive board who are appointed by the declarant; and

15 (b) Members of the executive board who serve a term of 1 year or less.

16 4. Not less than 30 days before the preparation of a ballot for the election of
17 members of the executive board, the secretary or other officer specified in the
18 bylaws of the association shall cause notice to be given to each unit's owner of the
19 unit's owner's eligibility to serve as a member of the executive board. Each unit's
20 owner who is qualified to serve as a member of the executive board may have his or
21 her name placed on the ballot along with the names of the nominees selected by the
22 members of the executive board or a nominating committee established by the
23 association.

24 5. Before the secretary or other officer specified in the bylaws of the
25 association causes notice to be given to each unit's owner of his or her eligibility to
26 serve as a member of the executive board pursuant to subsection 4, the executive
27 board may determine that if, at the closing of the prescribed period for nominations
28 for membership on the executive board, the number of candidates nominated for
29 membership on the executive board is equal to or less than the number of members
30 to be elected to the executive board at the election, then the secretary or other
31 officer specified in the bylaws of the association will cause notice to be given to
32 each unit's owner informing each unit's owner that:

33 (a) The association will not prepare or mail any ballots to units' owners
34 pursuant to this section and the nominated candidates shall be deemed to be duly
35 elected to the executive board unless:

36 (1) A unit's owner who is qualified to serve on the executive board
37 nominates himself or herself for membership on the executive board by submitting
38 a nomination to the executive board within 30 days after the notice provided by this
39 subsection; and

40 (2) The number of units' owners who submit such a nomination causes the
41 number of candidates nominated for membership on the executive board to be
42 greater than the number of members to be elected to the executive board.

43 (b) Each unit's owner who is qualified to serve as a member of the executive
44 board may nominate himself or herself for membership on the executive board by
45 submitting a nomination to the executive board within 30 days after the notice
46 provided by this subsection.

47 6. If the notice described in subsection 5 is given and if, at the closing of the
48 prescribed period for nominations for membership on the executive board described
49 in subsection 5, the number of candidates nominated for membership on the
50 executive board is equal to or less than the number of members to be elected to the
51 executive board, then:

52 (a) The association will not prepare or mail any ballots to units' owners
53 pursuant to this section;

(b) The nominated candidates shall be deemed to be duly elected to the executive board not later than 30 days after the date of the closing of the period for nominations described in subsection 5; and

(c) The association shall send to each unit's owner notification that the candidates nominated have been elected to the executive board.

7. If the notice described in subsection 5 is given and if, at the closing of the prescribed period for nominations for membership on the executive board described in subsection 5, the number of candidates nominated for membership on the executive board is greater than the number of members to be elected to the executive board, then the association shall:

(a) Prepare and mail ballots to the units' owners pursuant to this section; and

(b) Conduct an election for membership on the executive board pursuant to this section.

8. Each person who is nominated as a candidate for a member of the executive board pursuant to subsection 4 or 5 must:

(a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board; and

(b) Disclose whether the candidate is a member in good standing. For the purposes of this paragraph, a candidate shall not be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

➤ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his or her candidacy information. Except as otherwise provided in this subsection, the association shall distribute the disclosures, on behalf of the candidate, to each member of the association with the ballot or, in the event ballots are not prepared and mailed pursuant to subsection 6, in the next regular mailing of the association. The association is not obligated to distribute any disclosure pursuant to this subsection if the disclosure contains information that is believed to be defamatory, libelous or profane.

9. Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, the person's spouse or the person's parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

(b) A person may not be a member of the executive board of a master association or an officer of that master association if the person, the person's spouse or the person's parent or child, by blood, marriage or adoption, performs the duties of a community manager for:

(1) That master association; or

(2) Any association that is subject to the governing documents of that master association.

10. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, the person shall file proof in the records of the association that:

(a) The person is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

1 (b) Identifies the unit or units owned by the corporate owner, trust, partnership,
2 limited-liability company or estate.

3 11. Except as otherwise provided in subsection 6 or NRS 116.31105, the
4 election of any member of the executive board must be conducted by secret written
5 ballot in the following manner:

6 (a) The secretary or other officer specified in the bylaws of the association
7 shall cause a secret ballot and a return envelope to be sent, prepaid by United States
8 mail, to the mailing address of each unit within the common-interest community or
9 to any other mailing address designated in writing by the unit's owner.

10 (b) Each unit's owner must be provided with at least 15 days after the date the
11 secret written ballot is mailed to the unit's owner to return the secret written ballot
12 to the association.

13 (c) A quorum is not required for the election of any member of the executive
14 board.

15 (d) Only the secret written ballots that are returned to the association may be
16 counted to determine the outcome of the election.

17 (e) The secret written ballots must be opened and counted at a meeting of the
18 association. A quorum is not required to be present when the secret written ballots
19 are opened and counted at the meeting.

20 (f) The incumbent members of the executive board and each person whose
21 name is placed on the ballot as a candidate for a member of the executive board
22 may not possess, be given access to or participate in the opening or counting of the
23 secret written ballots that are returned to the association before those secret written
24 ballots have been opened and counted at a meeting of the association.

25 12. An association shall not adopt any rule or regulation that has the effect of
26 prohibiting or unreasonably interfering with a candidate in the candidate's
27 campaign for election as a member of the executive board, except that the
28 candidate's campaign may be limited to 90 days before the date that ballots are
29 required to be returned to the association. A candidate may request that the
30 secretary or other officer specified in the bylaws of the association send, 30 days
31 before the date of the election and at the association's expense, to the mailing
32 address of each unit within the common-interest community or to any other mailing
33 address designated in writing by the unit's owner a candidate informational
34 statement. The candidate informational statement:

35 (a) Must be no longer than a single, typed page;

36 (b) Must not contain any defamatory, libelous or profane information; and

37 (c) May be sent with the secret ballot mailed pursuant to subsection 11 or in a
38 separate mailing.

39 The association and its directors, officers, employees and agents are immune
40 from criminal or civil liability for any act or omission which arises out of the
41 publication or disclosure of any information related to any person and which occurs
42 in the course of carrying out any duties required pursuant to this subsection.

43 13. Each member of the executive board shall, within 90 days after his or her
44 appointment or election, certify in writing to the association, on a form prescribed
45 by the Administrator, that the member has read and understands the governing
46 documents of the association and the provisions of this chapter to the best of his or
47 her ability. The Administrator may require the association to submit a copy of the
48 certification of each member of the executive board of that association at the time
49 the association registers with the Ombudsman pursuant to NRS 116.31158.

1 **Sec. 22. (Deleted by amendment.)**

2 **Sec. 23. (Deleted by amendment.)**

3 **Sec. 24.** NRS 116.31085 is hereby amended to read as follows:

4 116.31085 1. Except as otherwise provided in this section, a unit's owner
5 may attend any meeting of the units' owners or of the executive board and speak at
6 any such meeting. The executive board may establish reasonable limitations on the
7 time a unit's owner may speak at such a meeting.

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

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

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

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

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

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

24 4. An executive board shall meet in executive session to hold a hearing on an
25 alleged violation of the governing documents unless the person who may be
26 sanctioned for the alleged violation requests in writing that an open hearing be
27 conducted by the executive board. ~~##~~ *At any hearing on an alleged violation of*
28 *the governing documents, whether or not* the person who may be sanctioned for
29 the alleged violation ~~requests~~ *has requested* in writing that an open hearing be
30 conducted, the person ~~##~~ *who may be sanctioned:*

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

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

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

39 5. The provisions of subsection 4 establish the minimum protections that the
40 executive board must provide before it may make a decision. The provisions of
41 subsection 4 do not preempt any provisions of the governing documents that
42 provide greater protections.

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

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

1 **Sec. 25.** NRS 116.31088 is hereby amended to read as follows:

2 116.31088 1. The association, or the executive board acting on behalf of
3 the association, may not retain an attorney for the purpose of considering or
4 commencing a civil action to protect the health, safety and welfare of the
5 members of the association unless the retention of the attorney is first approved
6 by the association in accordance with the following requirements:

7 (a) At least 60 calendar days before a meeting of the association or executive
8 board at which the retention of an attorney for such a purpose is to be
9 considered, the association shall provide an initial written notice to each unit's
10 owner that includes the following information:

11 (1) A statement that the retention of an attorney for such a purpose will
12 be considered at a meeting to be held not earlier than 60 calendar days after the
13 date of the written notice.

14 (2) A statement that at least 30 calendar days before the date of the
15 scheduled meeting, the association will provide a second written notice
16 containing the information set forth in the initial written notice, along with a
17 secret written ballot allowing the unit's owner to vote on whether or not an
18 attorney will be retained for such a purpose.

19 (3) A reasonable estimate of the costs to the association of retaining the
20 attorney for such a purpose.

21 (4) An explanation of the potential benefits of retaining the attorney and
22 the potential adverse consequences if the association does not retain the attorney.

23 (b) At least 30 calendar days before the date of the scheduled meeting, the
24 association shall provide a second written notice to each unit's owner that
25 includes the information provided in the initial written notice, along with a secret
26 written ballot allowing the unit's owner to vote on whether or not an attorney will
27 be retained for such a purpose. The secretary or other officer specified in the
28 bylaws of the association shall cause a secret written ballot and a return envelope
29 to be sent, prepaid by United States mail, to the mailing address of each unit
30 within the common-interest community or to any other mailing address
31 designated in writing by the unit's owner. Each unit's owner must be provided
32 with at least 21 calendar days after the date the secret written ballot is mailed to
33 the unit's owner to return the secret written ballot to the association.

34 (c) The secret written ballots must be opened and counted at a meeting of the
35 association or executive board. Only the secret written ballots that are returned to
36 the association may be counted to determine the outcome of the vote. A quorum is
37 not required to be present when the secret written ballots are opened and counted
38 at the meeting.

39 (d) The association, or the executive board acting on behalf of the
40 association, may not retain an attorney for such a purpose unless a majority of
41 the votes cast pursuant to this subsection are cast in favor of retaining the
42 attorney.

43 2. The association shall provide written notice to each unit's owner of a
44 meeting at which the commencement of a civil action is to be considered at least 21
45 calendar days before the date of the meeting. Except as otherwise provided in this
46 subsection, the association may commence a civil action only upon a vote or
47 written agreement of the owners of units to which at least a majority of the votes of
48 the members of the association are allocated. The provisions of this subsection do
49 not apply to a civil action that is commenced:

- 50 (a) To enforce the payment of an assessment;
51 (b) To enforce the declaration, bylaws or rules of the association;
52 (c) To enforce a contract with a vendor;
53 (d) To proceed with a counterclaim; or

(e) To protect the health, safety and welfare of the members of the association ~~for the occupants of units within the common interest community.~~ If a civil action is commenced pursuant to this paragraph without the required vote or agreement, the action must be ratified ~~by~~

~~(1) Approved in accordance with this section by the district court in which the action is commenced; and~~

~~(2) Ratified~~ within 90 days after the commencement of the action ~~such approval~~ by a vote or written agreement of the owners of the units to which at least a majority of votes of the members of the association are allocated. If the association, after making a good faith effort, cannot obtain the required vote or agreement to commence or ratify such a civil action, the association may thereafter seek to dismiss the action without prejudice for that reason only if a vote or written agreement of the owners of the units to which at least a majority of votes of the members of the association are allocated was obtained at the time the approval to commence or ratify the action was sought.

~~[2. To obtain court approval for a civil action commenced pursuant to paragraph (e) of subsection 1, the association must file with the district court in which the action was commenced an application seeking such approval. Upon the filing of an application pursuant to this subsection, the court shall give preference in setting a date for the hearing on the application. Any member of an association which has filed an application pursuant to this subsection and the Ombudsman may intervene in a hearing on the application. If a member of an association or the Ombudsman intervenes in such a hearing, the member or Ombudsman is a party of record to that hearing.~~

~~3. At least 10 days before filing an application pursuant to subsection 2, the association:~~

~~(a) Shall prominently post a notice of its intent to file the application at each place within the common interest community where the association ordinarily posts notice of matters of interest to members of the association;~~

~~(b) Shall send such a notice by electronic mail to each member of the association who has requested such a notice in a written record or electronic mail which includes the electronic mail address of the member; and~~

~~(c) Shall send such a notice to the Ombudsman by electronic mail and registered mail.~~

~~4. If, after a hearing on an application filed pursuant to subsection 2, the court finds that the civil action commenced pursuant to paragraph (e) of subsection 1 seeks to prevent or remedy a substantial likelihood of immediate and serious harm to the health, safety and welfare of the members of the association or the occupants of units within the common interest community, the court must issue an order approving the civil action. If the court does not make such a finding:~~

~~(a) The court must dismiss the civil action for which the application was filed without prejudice;~~

~~(b) The association may not commence another civil action based on the same claims unless units' owners approve the action by a vote or written agreement of the units' owners to which at least a majority of the votes of the members of the association are allocated; and~~

~~(c) Any statutes of limitation or repose applicable to the civil action are tolled from the time the action was commenced pursuant to paragraph (e) of subsection 1 until the time the court dismissed the action without prejudice.~~

~~5.]~~ 3. At least 10 days before an association commences or seeks to ratify the commencement of a civil action, the association shall provide a written statement to all the units' owners that includes:

(a) A reasonable estimate of the costs of the civil action, including reasonable attorney's fees;

(b) An explanation of the potential benefits of the civil action and the potential adverse consequences if the association does not commence the action or if the outcome of the action is not favorable to the association; and

(c) All disclosures that are required to be made upon the sale of the property.

~~[3-] [6-] 4.~~ No person other than a unit's owner may request the dismissal of a civil action commenced by the association on the ground that the association failed to comply with any provision of this section.

~~[4-] [7-] 5.~~ If any civil action in which the association is a party is settled, the executive board shall disclose the terms and conditions of the settlement at the next regularly scheduled meeting of the executive board after the settlement has been reached. The executive board may not approve a settlement which contains any terms and conditions that would prevent the executive board from complying with the provisions of this subsection.

Sec. 26. (Deleted by amendment.)

Sec. 27. NRS 116.31177 is hereby amended to read as follows:

116.31177 1. The executive board of an association shall maintain and make available for review 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:

(a) The financial statement of the association;

(b) The budgets of the association required to be prepared pursuant to NRS 116.31151; and

(c) The study of the reserves of the association required to be conducted pursuant to NRS 116.31152.

2. The executive board shall provide a copy of any of the records required to be maintained pursuant to subsection 1 to a unit's owner or the Ombudsman within 14 days after receiving a written request therefor. The executive board may charge a fee to cover the actual costs of preparing a copy, but not to exceed 25 cents per page [1] for the first 10 pages, and 10 cents per page thereafter.

Sec. 28. (Deleted by amendment.)

Sec. 29. (Deleted by amendment.)

Sec. 30. 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 ~~for the first 10 pages, and 10 cents per page thereafter~~, 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. *If the association enters into a contract or agreement with any person or entity to furnish the documents and certificate pursuant to subsection 3:*

(a) The contract or agreement must not allow a unit's owner to be charged any fee that exceeds the amount of the fee that the association may charge pursuant to subsection 4; and

(b) The person or entity shall not charge or attempt to charge any such fee.

6. 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-]~~ 7. 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.

8. *The association may not charge a unit's owner, and may not require a unit's owner to pay, any fee related to the resale of a unit that is not specifically authorized pursuant to this section, including, without limitation, any transaction fee, transfer fee, asset enhancement fee or other similar fee, except the association may charge the unit's owner a reasonable fee to cover the cost of recording in the books and records of the association the transfer of the ownership of the unit. Such a fee must be based on the actual cost the association incurs to record the transfer of the ownership of the unit. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for transferring the ownership of a unit.*

Sec. 31. ~~(Deleted by amendment.)~~

Sec. 32. ~~(Deleted by amendment.)~~

Sec. 33. ~~(Deleted by amendment.)~~

Sec. 34. The Commission for Common-Interest Communities and Condominium Hotels shall adopt the regulations required by section 30 of this act on or before December 31, 2011.

Sec. 35. ~~[1-]~~ This ~~[section and sections 30 and 34 of this]~~ act ~~[become]~~ becomes effective upon passage and approval for the purpose of adopting regulations, and on July 1, 2011, for all other purposes.

~~{ 2. Sections 1 to 19, inclusive, 21, 24, 25, 28 and 32 of this act become effective on July 1, 2011.~~

~~3. Sections 20, 29, 31 and 33 of this act become effective on October 1, 2012.~~

~~4. Section 22 of this act becomes effective on October 1, 2012, or the effective date of a regulation adopted by the Commission for Common-Interest Communities and Condominium Hotels which authorizes, and establishes the maximum amount of, the fees set forth in NRS 116.3108, whichever is later.~~

~~5. Section 23 of this act becomes effective on October 1, 2012, or the effective date of a regulation adopted by the Commission for Common-Interest Communities and Condominium Hotels which authorizes, and establishes the maximum amount of, the fees set forth in NRS 116.3108, whichever is later.~~

~~6. Section 26 of this act becomes effective on October 1, 2012, or the effective date of a regulation adopted by the Commission for Common-Interest Communities and Condominium Hotels which authorizes, and establishes the maximum amount of, the fee set forth in NRS 116.31175, whichever is later.~~

~~7. Section 27 of this act becomes effective on October 1, 2012, or the effective date of a regulation adopted by the Commission for Common-Interest Communities and Condominium Hotels which authorizes, and establishes the maximum amount of, the fee set forth in NRS 116.31175, whichever is later.]~~