

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; 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 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.

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 provisions of law pertaining to the responsibilities of the association with respect to the 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.

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 provides that an association, 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.

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.



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,*



* S B 1 8 5 R 1 *

1 any fee payable to the lessor for consenting to any assignment,
2 subletting, encumbrance or transfer of the lease;

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

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

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

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

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

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

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

35 **Sec. 9.** The Legislature finds and declares that:

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

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



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

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

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

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

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

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

17 **(b) The legal description of the real property;**

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

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

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

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

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

30 **(h) If the payee is:**

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

32 **or**

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

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

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

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

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



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

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

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

9 (c) Sets forth the name of the owner of the real property as
10 recorded in the office of the county recorder;

11 (d) States that the private transfer fee obligation was created
12 before July 1, 2011, and specifies the date on which the private
13 transfer fee obligation was created;

14 (e) States that the payee under the private transfer fee
15 obligation failed on or before December 31, 2011, to record in the
16 office of the county recorder of the county in which the real
17 property that is subject to the private transfer fee obligation is
18 located a notice which complies with the requirements of
19 subsection 1; and

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

21 5. When properly recorded, the affidavit described in
22 subsection 4 constitutes prima facie evidence that:

23 (a) The real property described in the affidavit was subject to a
24 private transfer fee obligation that was created before July 1,
25 2011;

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

31 (c) The private transfer fee obligation is void and
32 unenforceable and any interest in the real property that is subject
33 to the private transfer fee obligation may thereafter be conveyed
34 free and clear of the private transfer fee obligation.

35 Sec. 12. 1. If a written request for a written statement of
36 the amount of the private transfer fee due upon the sale of real
37 property is sent by certified mail, return receipt requested, to the
38 payee under a private transfer fee obligation that was created
39 before July 1, 2011, at the address appearing in the recorded
40 notice described in section 11 of this act, the payee shall provide
41 such a written statement to the person who requested the written
42 statement not later than 30 days after the date of mailing.

43 2. If the payee fails to comply with the requirements of
44 subsection 1:



* S B 1 8 5 R 1 *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

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

116.2105 1. The declaration must contain:

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

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

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



* S B 1 8 5 R 1 *

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

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

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

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

(h) A description of any developmental rights and other special declarant's 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 **H** , *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*



1 *to secure or obtain any approval from the association in order to*
2 *rent or lease his or her unit; and*

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

7 (m) *A statement written in plain English describing the*
8 *provisions of NRS 116.3107 pertaining to the responsibility of*
9 *the association for maintenance, repair and replacement of the*
10 *common elements and the responsibility of each unit's owner for*
11 *maintenance, repair and replacement of his or her unit;*

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

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

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

21 **Sec. 19.** (Deleted by amendment.)

22 **Sec. 20.** (Deleted by amendment.)

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

25 116.31034 1. Except as otherwise provided in subsection 5 of
26 NRS 116.212, not later than the termination of any period of
27 declarant's control, the units' owners shall elect an executive board
28 of at least three members, ~~all~~ *at least a majority* of whom must be
29 units' owners. *Unless the governing documents provide otherwise,*
30 *the remaining members of the executive board are not required to*
31 *be units' owners.* The executive board shall elect the officers of the
32 association. Unless the governing documents provide otherwise, the
33 officers of the association are not required to be units' owners. The
34 members of the executive board and the officers of the association
35 shall take office upon election.

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

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



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

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

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

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

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

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

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

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

6. 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



1 equal to or less than the number of members to be elected to the
2 executive board, then:

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

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

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

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

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

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

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

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

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

33 ➤ The candidate must make all disclosures required pursuant to this
34 subsection in writing to the association with his or her candidacy
35 information. Except as otherwise provided in this subsection, the
36 association shall distribute the disclosures, on behalf of the
37 candidate, to each member of the association with the ballot or, in
38 the event ballots are not prepared and mailed pursuant to subsection
39 6, in the next regular mailing of the association. The association is
40 not obligated to distribute any disclosure pursuant to this subsection
41 if the disclosure contains information that is believed to be
42 defamatory, libelous or profane.

43 9. Unless a person is appointed by the declarant:

44 (a) A person may not be a member of the executive board or an
45 officer of the association if the person, the person's spouse or the



1 person's parent or child, by blood, marriage or adoption, performs
2 the duties of a community manager for that association.

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

8 (1) That master association; or

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

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

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

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

26 11. Except as otherwise provided in subsection 6 or NRS
27 116.31105, the election of any member of the executive board must
28 be conducted by secret written ballot in the following manner:

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

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

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

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

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



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

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

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

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

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

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

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

Sec. 22. (Deleted by amendment.)

Sec. 23. (Deleted by amendment.)

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

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



1 may establish reasonable limitations on the time a unit's owner may
2 speak at such a meeting.

3 2. An executive board may not meet in executive session to
4 open or consider bids for an association project as defined in NRS
5 116.31086, or to enter into, renew, modify, terminate or take any
6 other action regarding a contract.

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

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

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

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

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

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

25 ~~[[[~~ *At any hearing on an alleged violation of the governing*
26 *documents, whether or not* the person who may be sanctioned for
27 the alleged violation ~~requests]~~ *has requested* in writing that an
28 open hearing be conducted, the person ~~[[[~~ *who may be sanctioned:*

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

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

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

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

44 6. Except as otherwise provided in this subsection, any matter
45 discussed by the executive board when it meets in executive session



* S B 1 8 5 R 1 *

1 must be generally noted in the minutes of the meeting of the
2 executive board. The executive board shall maintain minutes of any
3 decision made pursuant to subsection 4 concerning an alleged
4 violation and, upon request, provide a copy of the decision to the
5 person who was subject to being sanctioned at the hearing or to the
6 person's designated representative.

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

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

12 116.31088 1. *The association, or the executive board acting*
13 *on behalf of the association, may not retain an attorney for the*
14 *purpose of considering or commencing a civil action to protect the*
15 *health, safety and welfare of the members of the association*
16 *unless the retention of the attorney is first approved by the*
17 *association in accordance with the following requirements:*

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

23 (1) *A statement that the retention of an attorney for such a*
24 *purpose will be considered at a meeting to be held not earlier than*
25 *60 calendar days after the date of the written notice.*

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

32 (3) *A reasonable estimate of the costs to the association of*
33 *retaining the attorney for such a purpose.*

34 (4) *An explanation of the potential benefits of retaining the*
35 *attorney and the potential adverse consequences if the association*
36 *does not retain the attorney.*

37 (b) *At least 30 calendar days before the date of the scheduled*
38 *meeting, the association shall provide a second written notice to*
39 *each unit's owner that includes the information provided in the*
40 *initial written notice, along with a secret written ballot allowing*
41 *the unit's owner to vote on whether or not an attorney will be*
42 *retained for such a purpose. The secretary or other officer*
43 *specified in the bylaws of the association shall cause a secret*
44 *written ballot and a return envelope to be sent, prepaid by United*
45 *States mail, to the mailing address of each unit within the*



* S B 1 8 5 R 1 *

1 *common-interest community or to any other mailing address*
2 *designated in writing by the unit's owner. Each unit's owner must*
3 *be provided with at least 21 calendar days after the date the secret*
4 *written ballot is mailed to the unit's owner to return the secret*
5 *written ballot to the association.*

6 *(c) The secret written ballots must be opened and counted at a*
7 *meeting of the association or executive board. Only the secret*
8 *written ballots that are returned to the association may be counted*
9 *to determine the outcome of the vote. A quorum is not required to*
10 *be present when the secret written ballots are opened and counted*
11 *at the meeting.*

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

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

25 (a) To enforce the payment of an assessment;

26 (b) To enforce the declaration, bylaws or rules of the
27 association;

28 (c) To enforce a contract with a vendor;

29 (d) To proceed with a counterclaim; or

30 (e) To protect the health, safety and welfare of the members of
31 the association. If a civil action is commenced pursuant to this
32 paragraph without the required vote or agreement, the action must
33 be ratified within 90 days after the commencement of the action by
34 a vote or written agreement of the owners of the units to which at
35 least a majority of votes of the members of the association are
36 allocated. If the association, after making a good faith effort, cannot
37 obtain the required vote or agreement to commence or ratify such a
38 civil action, the association may thereafter seek to dismiss the action
39 without prejudice for that reason only if a vote or written agreement
40 of the owners of the units to which at least a majority of votes of the
41 members of the association are allocated was obtained at the time
42 the approval to commence or ratify the action was sought.

43 ~~[2-]~~ 3. At least 10 days before an association commences or
44 seeks to ratify the commencement of a civil action, the association



1 shall provide a written statement to all the units' owners that
2 includes:

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

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

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

11 ~~§ 4.~~ 4. No person other than a unit's owner may request the
12 dismissal of a civil action commenced by the association on the
13 ground that the association failed to comply with any provision of
14 this section.

15 ~~§ 5.~~ 5. If any civil action in which the association is a party is
16 settled, the executive board shall disclose the terms and conditions
17 of the settlement at the next regularly scheduled meeting of the
18 executive board after the settlement has been reached. The executive
19 board may not approve a settlement which contains any terms and
20 conditions that would prevent the executive board from complying
21 with the provisions of this subsection.

22 **Sec. 26.** (Deleted by amendment.)

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

25 116.31177 1. The executive board of an association shall
26 maintain and make available for review at the business office of the
27 association or some other suitable location within the county where
28 the common-interest community is situated or, if it is situated in
29 more than one county, within one of those counties:

30 (a) The financial statement of the association;

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

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

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

42 **Sec. 28.** (Deleted by amendment.)

43 **Sec. 29.** (Deleted by amendment.)



* S B 1 8 5 R 1 *

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



* S B 1 8 5 R 1 *

1 furnish the resale package, or any portion thereof, as required by this
2 section.

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

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

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

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

14 (a) The unit's owner or his or her authorized agent shall include
15 the documents and certificate in the resale package provided to the
16 purchaser, and neither the unit's owner nor his or her authorized
17 agent is liable to the purchaser for any erroneous information
18 provided by the association and included in the documents and
19 certificate.

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

27 (c) The association may charge the unit's owner a reasonable
28 fee, not to exceed 25 cents per page **for the first 10 pages, and 10**
29 **cents per page thereafter**, to cover the cost of copying the other
30 documents furnished pursuant to subsection 3.

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

35 5. ***If the association enters into a contract or agreement with***
36 ***any person or entity to furnish the documents and certificate***
37 ***pursuant to subsection 3:***

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

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

43 6. Neither a purchaser nor the purchaser's interest in a unit is
44 liable for any unpaid assessment or fee greater than the amount set
45 forth in the documents and certificate prepared by the association. If



* S B 1 8 5 R 1 *

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. This act becomes effective upon passage and approval for the purpose of adopting regulations, and on July 1, 2011, for all other purposes.

