

SENATE BILL NO. 243—SENATOR COPENING

MARCH 16, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to financial obligations in common-interest communities. (BDR 10-295)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to common-interest communities; revising provisions governing the imposition of fees on units' owners to cover the costs of collecting past due obligations; establishing limits on the amount which may be charged to a unit's owner to cover the costs of collecting a past due financial obligation; revising provisions governing the manner in which payments received from units' owners are accounted for and applied; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations establishing the amount of the fees that may be charged to a unit's owner to cover the cost of collecting a past due obligation. (NRS 116.310313) **Section 1** of this bill removes this requirement and provides that the total amount of such fees may not exceed \$1,800. In addition to this amount, reasonable management company fees of not more than \$200, reasonable attorney's fees and actual costs incurred for certain legal services may be charged to a unit's owner. If a unit's owner owns 25 or more units in one common-interest community, the total amount of fees to cover the cost of collecting a past due obligation may not exceed \$1,800 multiplied by the number of units for which such fees are imposed.

Section 1 also prescribes the amount of the fees which may be charged to a unit's owner to cover the cost of certain actions undertaken to collect a past due obligation. In addition to the authorized amount of fees to cover these costs, a unit's owner may be charged certain costs incurred in connection with these actions to collect a past due obligation.

Under **section 1**, no fees to cover the costs of collecting a past due obligation may be charged to a unit's owner for a one-time period of 15 business days



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19 immediately following receipt of a demand payoff from a unit's owner, unless the
20 fee is a fee for the preparation of an escrow payoff demand or imposed to cover the
21 cost of an action required by law to be taken during the 15-day period. In addition,
22 any fees to cover the costs of collecting a past due obligation charged to a unit's
23 owner must be posted to the account of the unit's owner not later than 20 days after
24 the end of the month in which the costs were incurred.

25 Under existing law, if a fine for a violation of the governing documents is
26 imposed against a unit's owner or a tenant or an invitee of a unit's owner, the
27 association must account for the fine in an account which is separate from the
28 account established to account for assessments. (NRS 116.310315) **Sections 2 and**
29 **3** of this bill require the association to apply any payment received from a unit's
30 owner to any past due assessments, including late charges and interest, owed by the
31 unit's owner before the payment is applied to any other financial obligation owed
32 by the unit's owner, unless the unit's owner specifies otherwise in writing.

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

1 **Section 1.** NRS 116.310313 is hereby amended to read as
2 follows:

3 116.310313 1. ~~[An]~~ *Except as otherwise provided in this*
4 *section, an association, or any person acting on behalf of an*
5 *association to collect a past due obligation, including, without*
6 *limitation, an officer or employee of the association, a community*
7 *manager or a collection agency, may not charge a unit's owner*
8 *[reasonable] fees to cover the costs of collecting any past due*
9 *obligation [The Commission shall adopt regulations establishing*
10 *the amount of the fees that an association may charge pursuant to*
11 *this section.] which exceed a total of \$1,800.*

12 2. ~~[The provisions of this section apply]~~ *An association, or any*
13 *person acting on behalf of an association to collect a past due*
14 *obligation, including, without limitation, an officer or employee of*
15 *the association, a community manager or a collection agency, may*
16 *not charge fees which exceed the following amounts:*

17 (a) *For a letter stating the intent of the association or the*
18 *person acting on its behalf to record a notice of delinquent*
19 *assessment, \$75.*

20 (b) *For a letter stating the intent of the association or the*
21 *person acting on its behalf to record a notice of default and*
22 *election to sell, \$75.*

23 (c) *For a letter stating the intent of the association or the*
24 *person acting on its behalf to record a notice of sale, \$75.*

25 (d) *For the preparation and recordation of a notice of*
26 *delinquent assessment lien, \$300.*

27 (e) *For the preparation and recordation of a notice of default*
28 *and election to sell, \$350.*



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(f) For the preparation and recordation of a notice of sale, \$275.

(g) For the conduct of a foreclosure sale, \$125.

(h) For the postponement of a foreclosure sale, \$75.

(i) For the preparation and recordation of a transfer deed, \$125.

(j) For the preparation and recordation of a release of the notice of delinquent assessment, \$75.

(k) For the preparation and recordation of a notice of rescission, \$75.

(l) For the preparation and recordation of an escrow payoff demand, \$50.

(m) For the preparation and administration of a payment plan agreement, \$100.

(n) For the monitoring of a foreclosure action engaged in by the holder of a first security interest on the unit, \$75.

(o) For the preparation of a super-priority demand letter, \$75.

(p) For the preparation of a bankruptcy proof of claim, \$75.

(q) For the monitoring of a bankruptcy filed by a unit's owner, \$75.

3. In addition to ~~any~~ the fees charged to a unit's owner to cover the costs of collecting a past due obligation ~~charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.~~

~~3.1~~ pursuant to subsection 2, if:

(a) An association or a person acting on behalf of an association to collect a past due obligation of a unit's owner incurs any costs in connection with an activity described in subsection 2, including, without limitation, the cost of a trustee's sale guarantee and other title costs, recording costs, posting and publishing costs, sale costs, mailing costs, express delivery costs and skip trace fees; and

(b) Those costs are not charged by an officer, director, agent or affiliate of the community manager or its agent,

↳ the association may recover from the unit's owner the actual costs incurred without any increase or markup.

4. In addition to the amount set forth in subsection 1, if an association or any person acting on behalf of an association is attempting to collect a past due obligation from a unit's owner, the association may recover from the unit's owner:

(a) Reasonable management company fees which may not exceed a total of \$200; and



1 (b) Reasonable attorney's fees and actual costs, without any
2 increase or markup, incurred by the association for any legal
3 services which do not include an activity described in paragraphs
4 (a) to (q), inclusive, of subsection 2.

5 5. If a unit's owner owns 25 or more units in one common-
6 interest community, the amount described in subsection 1 must not
7 exceed an amount equal to \$1,800 multiplied by the number of
8 units owned by the unit's owner for which fees to cover the costs
9 of collecting a past due obligation are being imposed, reduced by
10 an amount set forth in a resolution adopted by the executive
11 board.

12 6. For a one-time period of 15 business days immediately
13 following receipt of a demand payoff from a unit's owner, no fee
14 to cover the cost of collecting a past due obligation, other than the
15 fee described in paragraph (l) of subsection 2 and any other fee to
16 cover any cost of collecting a past due obligation which is imposed
17 because of an action required by statute to be taken during the
18 15-day period, may be charged to the unit's owner.

19 7. Any costs of collecting a past due obligation charged to a
20 unit's owner pursuant to this section must be posted to the account
21 of the unit's owner not later than 20 days after the end of the
22 month in which the costs were incurred.

23 8. As used in this section:

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

34 (b) "Obligation" means any assessment, fine, construction
35 penalty, fee, charge or interest levied or imposed against a unit's
36 owner pursuant to any provision of this chapter or the governing
37 documents.

38 **Sec. 2.** NRS 116.310315 is hereby amended to read as
39 follows:

40 116.310315 If an association has imposed a fine against a
41 unit's owner or a tenant or an invitee of a unit's owner or a tenant
42 pursuant to NRS 116.31031 for violations of the governing
43 documents of the association, the association ~~[:] must:~~

44 1. ~~[Shall, in the books and records of the association, account~~
45 ~~for the fine separately from any assessment, fee or other charge;]~~



1 *Establish a compliance account to account for the fine, which*
2 *must be separate from any account established for assessments;*
3 and

4 2. ~~[Shall not apply, in whole or in part, any]~~ *Apply a* payment
5 ~~[made by]~~ *received from* the unit's owner ~~[for]~~ *to any past due*
6 assessment, ~~[fee or other charge toward]~~ *including any late fees and*
7 *interest on the past due assessment, before any portion of* the
8 payment ~~[of the outstanding balance of the fine or any costs of~~
9 ~~collecting the fine, unless the unit's owner provides written~~
10 ~~authorization which directs the association to apply the payment~~
11 ~~made by the unit's owner in such a manner.]~~ *is applied to any other*
12 *assessment or any fine, penalty, fee, charge or interest which has*
13 *been levied or imposed against the unit's owner pursuant to this*
14 *chapter or the governing documents, unless the unit's owner*
15 *specifies in writing a different application of the payment.*

16 **Sec. 3.** NRS 116.310315 is hereby amended to read as
17 follows:

18 116.310315 If an association has imposed a fine against a
19 unit's owner or a tenant or an invitee of a unit's owner or a tenant
20 pursuant to NRS 116.31031 for violations of the governing
21 documents of the association, the association ~~[shall establish]~~ *must:*

22 1. *Establish* a compliance account to account for the fine,
23 which must be separate from any account established for
24 assessments ~~[]~~ *; and*

25 2. *Apply a payment received from the unit's owner to any past*
26 *due assessment, including any late fees and interest on the past*
27 *due assessment, before any portion of the payment is applied to*
28 *any other assessment or any fine, penalty, fee, charge or interest*
29 *which has been levied or imposed against the unit's owner*
30 *pursuant to this chapter or the governing documents, unless the*
31 *unit's owner specifies in writing a different application of the*
32 *payment.*

33 **Sec. 4.** 1. This section and sections 1 and 2 of this act
34 become effective on July 1, 2011.

35 2. Section 3 of this act becomes effective on October 1, 2011.

