

ASSEMBLY BILL NO. 121—ASSEMBLYMEN STEWART AND HICKEY

FEBRUARY 14, 2013

JOINT SPONSORS: SENATORS HARDY; AND GOICOECHEA

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the campaigns of candidates for membership on the executive board of a homeowners' association. (BDR 10-164)

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; requiring the association of a common-interest community to make available to candidates for membership on the executive board the association's list of units' owners under certain circumstances; authorizing a candidate for membership on the executive board to request that the association send a candidate informational statement to units' owners; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes a candidate who has submitted a nomination form for election as a member of the executive board of a homeowners' association to request that the association or its agent either: (1) send a candidate informational statement to the units' owners; or (2) provide to the candidate a list of the addresses of each unit in the common-interest community so that the candidate may send campaign material directly to units' owners. Existing law further provides that: (1) if the voting rights of units' owners who are owners of time shares within a time-share plan are exercised by delegates or representatives, the list provided to the candidate must be a list of the mailing addresses of the delegates or representatives who exercise the voting rights of those owners; or (2) if the voting rights of units' owners who are owners of time shares within a time-share plan are not exercised by such delegates or representatives, the candidate must be provided with the mailing address of the association for the time-share plan and that association must send the candidate's campaign material directly to each owner of a time share within the time-share plan upon the candidate's compliance with certain requirements. Under existing law: (1) a list provided to a candidate must not include the names of the



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units' owners or the name of any tenant of a unit's owner; and (2) the candidate must provide a written statement that the candidate is requesting the list for the purpose of distributing his or her campaign material and will not make any other use of the information. (NRS 116.31034)

This bill replaces these provisions of existing law with a requirement that a homeowners' association or its agent make available to a candidate for membership on the executive board, at no charge to the candidate, the list of units' owners maintained by the association or its agent if the candidate submits: (1) a written request for that list; and (2) a written statement that the candidate is requesting the list to obtain information to allow the candidate to distribute his or her campaign material directly to the units' owners and that the candidate will not make any other use of the information. Under this bill: (1) if the voting rights of units' owners who are owners of time shares within a time-share plan are exercised by delegates or representatives, the association or its agent must provide to the candidate the list of those delegates or representatives maintained by the association in lieu of providing a list of units' owners; and (2) if the voting rights of units' owners who are owners of time shares within a time-share plan are not exercised by delegates or representatives, the association or its agent must provide the name and address of the association for the time-share plan and that association must send to each time share owner within the time-share plan the campaign material provided by the candidate. This bill further provides that a candidate may request that the secretary or other officer specified in the bylaws of the association send, 30 days before the election and at the association's expense, a candidate informational statement to units' owners.

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

**Section 1.** 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, all of whom must be units' owners. The executive board shall elect the officers of the association. Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners. The members of the executive board and the officers of the association shall take office upon election.

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

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



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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  
22 membership on the executive board pursuant to subsection 4 or 5  
23 must:

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

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

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

44 9. *Notwithstanding the provisions of NRS 116.31175 and*  
45 *except as otherwise provided in this subsection, upon the written*



1 request of a person who is a candidate for membership on the  
2 executive board and at no charge to the candidate, the association  
3 or its agent must make available to the candidate, for the purpose  
4 of obtaining information to allow the candidate to communicate  
5 campaign material directly to units' owners, a complete list of the  
6 names and mailing addresses of all units' owners which is  
7 maintained by the association or its agent for review at the  
8 business office of the association or a designated business location  
9 not to exceed 60 miles from the physical location of the common-  
10 interest community and during the regular working hours of the  
11 association. If the members of the association are owners of time  
12 shares within a time-share plan created pursuant to chapter 119A  
13 of NRS and:

14 (a) The voting rights of those owners are exercised by  
15 delegates or representatives pursuant to NRS 116.31105, the  
16 association or its agent must provide to the candidate the list of the  
17 names and addresses of those delegates or representatives which is  
18 maintained by the association pursuant to subsection 2 of NRS  
19 119A.515 in lieu of a list of units' owners who are owners of time  
20 shares within a time-share plan.

21 (b) The voting rights of those owners are not exercised by  
22 delegates or representatives, the association must provide the  
23 name and address of the association established pursuant to NRS  
24 119A.520 in lieu of making available to the candidate a list of  
25 units' owners who are owners of time shares within a time-share  
26 plan. If the mailing address of the association established  
27 pursuant to NRS 119A.520 is provided to the candidate pursuant  
28 to this paragraph, that association must send to each owner of a  
29 time share within the time-share plan the campaign material  
30 provided by the candidate. If the campaign material will be sent by  
31 mail, the candidate who provides the campaign material must  
32 provide to the association a separate copy of the campaign  
33 material for each owner and must pay the actual costs of mailing  
34 before the campaign material is mailed. If the campaign material  
35 will be sent by electronic transmission, the candidate must provide  
36 to the association one copy of the campaign material in an  
37 electronic format.

38 ➡ A written request pursuant to this subsection must be  
39 accompanied by a written statement signed by the candidate which  
40 states that the candidate is making the request to obtain  
41 information to allow the candidate to communicate campaign  
42 material directly to units' owners and that the candidate will not  
43 make any other use of the information. The association or its  
44 agent may refuse a written request submitted pursuant to this



*subsection only if the candidate does not provide the statement required by this subsection.*

**10.** 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.

~~110.1~~ **11.** 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

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

~~111.1~~ **12.** Except as otherwise provided in subsection 6 or NRS 116.31105, the election of any member of the executive board must be conducted by secret written ballot in the following manner:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, 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.

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

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



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

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

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for membership on 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.

~~112.1~~ **13.** 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.

~~113.1~~ A candidate ~~{who has submitted a nomination form for election as a member of the executive board}~~ may request that the ~~{association or its agent either:~~

~~—(a) Send} 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:

~~{(1)}~~ (a) Must be no longer than a single, typed page;

~~{(2)}~~ (b) Must not contain any defamatory, libelous or profane information; and

~~{(3)}~~ (c) May be sent with the secret ballot mailed pursuant to subsection ~~111~~ **12** or in a separate mailing. ~~}; or~~

~~—(b) To allow the candidate to communicate campaign material directly to the units' owners, provide to the candidate, in paper format at a cost not to exceed 25 cents per page for the first 10 pages and 10 cents per page thereafter, in the format of a compact disc at a cost of not more than \$5 or by electronic mail at no cost:~~

~~——(1) A list of the mailing address of each unit, which must not include the names of the units' owners or the name of any tenant of a unit's owner; or~~

~~——(2) If the members of the association are owners of time shares within a time share plan created pursuant to chapter 119A of NRS and:~~



~~(I) The voting rights of those owners are exercised by delegates or representatives pursuant to NRS 116.31105, the mailing address of the delegates or representatives.~~

~~(II) The voting rights of those owners are not exercised by delegates or representatives, the mailing address of the association established pursuant to NRS 119A.520. If the mailing address of the association is provided to the candidate pursuant to this subparagraph, the association must send to each owner of a time share within the time share plan the campaign material provided by the candidate. If the campaign material will be sent by mail, the candidate who provides the campaign material must provide to the association a separate copy of the campaign material for each owner and must pay the actual costs of mailing before the campaign material is mailed. If the campaign material will be sent by electronic transmission, the candidate must provide to the association one copy of the campaign material in an electronic format.~~

~~→ The information provided pursuant to this paragraph must not include the name of any unit's owner or any tenant of a unit's owner. If a candidate who makes a request for the information described in this paragraph fails or refuses to provide a written statement signed by the candidate which states that the candidate is making the request to allow the candidate to communicate campaign material directly to units' owners and that the candidate will not use the information for any other purpose, the association or its agent may refuse the request.~~

~~—14.—An}~~

~~→ 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. ~~113.~~~~

~~—15.} 14.~~ 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. 2.** This act becomes effective on July 1, 2013.

