

ASSEMBLY BILL NO. 317—ASSEMBLYMEN WOODBURY,
HAMBRICK; AND STEWART

MARCH 18, 2013

JOINT SPONSOR: SENATOR HARDY

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to common-interest communities. (BDR 10-1012)

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 certain provisions concerning a period of declarant's control of a unit-owners' association; requiring members of the executive board of an association to make certain disclosures; revising certain provisions relating to elections of the members of an executive board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law governs common-interest communities. (Chapter 116 of NRS) **Section 1** of this bill requires an incumbent member of the executive board of a unit-owners' association to make certain disclosures concerning potential conflict of interests.

Existing law provides for a period of declarant's control, during which a declarant may appoint and remove the officers and members of the executive board of an association. (NRS 116.31032) **Section 2** of this bill revises provisions governing the period of time in which a period of declarant's control must terminate. **Section 2** also provides that if a declarant has voluntarily surrendered the right to appoint and remove officers and members of the executive board before termination of the period of declarant's control, the declarant, the declarant's agent or the declarant's successor in interest must attend any meeting of the executive board upon written request of the executive board. **Section 2** further revises certain provisions concerning the election of unit owners to the executive board during the period of declarant's control.

Existing law requires candidates nominated for membership on the executive board to make certain disclosures. (NRS 116.31034) **Section 3** of this bill clarifies



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18 that an incumbent member who is a candidate for reelection must also make the
19 same disclosures. **Section 3** also requires a candidate to disclose whether he or she
20 is a member of an executive board of another association.

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

1 **Section 1.** NRS 116.3103 is hereby amended to read as
2 follows:

3 116.3103 1. Except as otherwise provided in the declaration,
4 the bylaws, this section or other provisions of this chapter, the
5 executive board acts on behalf of the association. In the performance
6 of their duties, the officers and members of the executive board are
7 fiduciaries and shall act on an informed basis, in good faith and in
8 the honest belief that their actions are in the best interest of the
9 association. Officers and members of the executive board:

10 (a) Are required to exercise the ordinary and reasonable care of
11 officers and directors of a nonprofit corporation, subject to the
12 business-judgment rule; ~~and~~

13 (b) Are subject to conflict of interest rules governing the officers
14 and directors of a nonprofit corporation organized under the law of
15 this State ~~H~~; and

16 (c) *Are required to make a good faith effort to disclose any*
17 *change in financial, business, professional or personal*
18 *relationships or interests, including, without limitation,*
19 *membership on the executive board of another association, that*
20 *would result or would appear to a reasonable person to result in a*
21 *potential conflict of interest.*

22 2. The executive board may not act to:

23 (a) Amend the declaration.

24 (b) Terminate the common-interest community.

25 (c) Elect members of the executive board, but unless the
26 governing documents provide that a vacancy on the executive board
27 must be filled by a vote of the membership of the association, the
28 executive board may fill vacancies in its membership for the
29 unexpired portion of any term or until the next regularly scheduled
30 election of executive board members, whichever is earlier. Any
31 executive board member elected to a previously vacant position
32 which was temporarily filled by board appointment may only be
33 elected to fulfill the remainder of the unexpired portion of the term.

34 (d) Determine the qualifications, powers, duties or terms of
35 office of members of the executive board.

36 3. The executive board shall adopt budgets as provided in
37 NRS 116.31151.



Sec. 2. NRS 116.31032 is hereby amended to read as follows:

116.31032 1. Except as otherwise provided in this section, the declaration may provide for a period of declarant's control of the association, during which a declarant, or persons designated by a declarant, may appoint and remove the officers of the association and members of the executive board. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period and, in that event, the declarant may require, for the duration of the period of declarant's control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Regardless of the period provided in the declaration, a period of declarant's control terminates no later than the earliest of:

(a) ~~Sixty~~ *For a common-interest community with less than 1,000 units, 60* days after conveyance of 75 percent of the units that may be created to units' owners other than a declarant ~~for, if~~ ;

(b) *For a common-interest community with 1,000 units or more, 60 days after conveyance of 90 percent of the units that may be created to units' owners other than a declarant;*

(c) *If* the association exercises powers over a common-interest community pursuant to this chapter and a time-share plan pursuant to chapter 119A of NRS, 120 days after conveyance of 80 percent of the units that may be created to units' owners other than a declarant;

~~(b)~~ (d) Five years after all declarants have ceased to offer units for sale in the ordinary course of business;

~~(e)~~ (e) Five years after any right to add new units was last exercised; or

~~(d)~~ (f) The day the declarant, after giving notice to units' owners, records an instrument voluntarily surrendering all rights to control activities of the association.

2. *If a declarant voluntarily surrenders the right to appoint and remove officers and members of the executive board before termination of the period of declarant's control of the association, the declarant, the declarant's agent or the declarant's successor in interest must attend, upon written request from the executive board, any meeting of the executive board until such time as the period of declarant's control terminates pursuant to subsection 1.*

3. Not later than 60 days after conveyance of ~~25~~ 15 percent of the units that may be created to units' owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by units' owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created to units' owners other than a declarant,



1 not less than one-third of the members of the executive board must
2 be elected by units' owners other than the declarant.

3 **Sec. 3.** NRS 116.31034 is hereby amended to read as follows:

4 116.31034 1. Except as otherwise provided in subsection 5 of
5 NRS 116.212, not later than the termination of any period of
6 declarant's control, the units' owners shall elect an executive board
7 of at least three members, all of whom must be units' owners. The
8 executive board shall elect the officers of the association. Unless
9 the governing documents provide otherwise, the officers of the
10 association are not required to be units' owners. The members of the
11 executive board and the officers of the association shall take office
12 upon election.

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

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

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

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

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

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



1 bylaws of the association will cause notice to be given to each unit's
2 owner informing each unit's owner that:

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

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

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

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

19 6. If the notice described in subsection 5 is given and if, at the
20 closing of the prescribed period for nominations for membership on
21 the executive board described in subsection 5, the number of
22 candidates nominated for membership on the executive board is
23 equal to or less than the number of members to be elected to the
24 executive board, then:

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

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

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

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

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

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

43 8. Each person who is nominated as a candidate for
44 membership on the executive board pursuant to subsection 4 or 5 ,



1 *including, without limitation, an incumbent member of the*
2 *executive board who is seeking another term,* must:

3 (a) Make a good faith effort to disclose any financial, business,
4 professional or personal relationship or interest , *including, without*
5 *limitation, whether the person nominated as a candidate is a*
6 *member of the executive board of another association,* that would
7 result or would appear to a reasonable person to result in a potential
8 conflict of interest for the candidate if the candidate were to be
9 elected to serve as a member of the executive board; and

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

15 ➔ The candidate must make all disclosures required pursuant to this
16 subsection in writing to the association with his or her candidacy
17 information. Except as otherwise provided in this subsection, the
18 association shall distribute the disclosures, on behalf of the
19 candidate, to each member of the association with the ballot or, in
20 the event ballots are not prepared and mailed pursuant to subsection
21 6, in the next regular mailing of the association. The association is
22 not obligated to distribute any disclosure pursuant to this subsection
23 if the disclosure contains information that is believed to be
24 defamatory, libelous or profane.

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

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

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

35 (1) That master association; or

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

38 10. An officer, employee, agent or director of a corporate
39 owner of a unit, a trustee or designated beneficiary of a trust that
40 owns a unit, a partner of a partnership that owns a unit, a member or
41 manager of a limited-liability company that owns a unit, and a
42 fiduciary of an estate that owns a unit may be an officer of the
43 association or a member of the executive board. In all events where
44 the person serving or offering to serve as an officer of the
45 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.

11. 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.

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.

13. 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 before the date of the election and at the association's expense, to the mailing address of each unit within the



1 common-interest community or to any other mailing address
2 designated in writing by the unit's owner a candidate informational
3 statement. The candidate informational statement:

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

5 (2) Must not contain any defamatory, libelous or profane
6 information; and

7 (3) May be sent with the secret ballot mailed pursuant to
8 subsection 11 or in a separate mailing; or

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

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

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

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

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

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



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1 14. An association and its directors, officers, employees and
2 agents are immune from criminal or civil liability for any act or
3 omission which arises out of the publication or disclosure of any
4 information related to any person and which occurs in the course of
5 carrying out any duties required pursuant to subsection 13.

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

