

ASSEMBLY BILL NO. 320—ASSEMBLYMEN STEWART; GRADY,
HAMBRICK, HARDY, HICKEY, KIRNER AND LIVERMORE (BY
REQUEST)

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing common-interest
communities. (BDR 10-737)

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 common-interest communities; requiring a unit
owners' association to submit and the Ombudsman for
Owners in Common-Interest Communities and
Condominium Hotels to maintain certain information
concerning settlements and awards obtained by the
association for a constructional defect claim; revising
provisions governing the duties of the Ombudsman; and
providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, when appropriate, the Ombudsman for Owners in
Common-Interest Communities and Condominium Hotels is required to: (1)
investigate disputes involving the provisions of existing law governing common-
interest communities or the governing documents of a unit owners' association; and
(2) assist in resolving such disputes. (NRS 116.625) Existing law further provides
that the Ombudsman has jurisdiction to investigate alleged violations of existing
law governing common-interest communities and must assist the parties in
resolving a dispute concerning a violation of such laws. (NRS 116.750, 116.765)
Section 1 of this bill removes the phrase "when appropriate" so that the
Ombudsman is required to investigate and assist in resolving such disputes.
Sections 2, 3 and 4 of this bill: (1) provide that an affidavit alleging a breach of the
governing documents may be filed with the Real Estate Division of the Department
of Business and Industry; (2) require the Division to refer such an affidavit to the
Ombudsman; and (3) require the Ombudsman to give such guidance to the parties
as the Ombudsman deems necessary to assist the parties to resolve the dispute
concerning the alleged breach of the governing documents.

Existing law requires an association to pay a fee and register with the
Ombudsman on a form prescribed by the Ombudsman. (NRS 116.31155,



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19 116.31158) The registration form must include certain information concerning the
20 association which is required to be maintained by the Ombudsman. (NRS
21 116.31158, 116.625) **Section 1** provides that the registration form must include and
22 the Ombudsman must maintain a record of each settlement and judgment obtained
23 by the association for a constructional defect claim.

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

1 **Section 1.** NRS 116.625 is hereby amended to read as follows:
2 116.625 1. The Office of the Ombudsman for Owners in
3 Common-Interest Communities and Condominium Hotels is hereby
4 created within the Division.
5 2. The Administrator shall appoint the Ombudsman. The
6 Ombudsman is in the unclassified service of the State.
7 3. The Ombudsman must be qualified by training and
8 experience to perform the duties and functions of office.
9 4. In addition to any other duties set forth in this chapter, the
10 Ombudsman shall:
11 (a) Assist in processing claims submitted to mediation or
12 arbitration pursuant to NRS 38.300 to 38.360, inclusive;
13 (b) Assist owners in common-interest communities and
14 condominium hotels to understand their rights and responsibilities
15 as set forth in this chapter and chapter 116B of NRS and the
16 governing documents of their associations, including, without
17 limitation, publishing materials related to those rights and
18 responsibilities;
19 (c) Assist members of executive boards and officers of
20 associations to carry out their duties;
21 (d) ~~{When appropriate, investigate}~~ *Investigate* disputes
22 involving the provisions of this chapter or chapter 116B of NRS or
23 the governing documents of an association and assist in resolving
24 such disputes; and
25 (e) Compile and maintain a registration of each association
26 organized within the State which includes, without limitation, the
27 following information:
28 (1) The name, address and telephone number of the
29 association;
30 (2) The name of each community manager for the common-
31 interest community or the association of a condominium hotel and
32 the name of any other person who is authorized to manage the
33 property at the site of the common-interest community or
34 condominium hotel;
35 (3) The names, mailing addresses and telephone numbers of
36 the members of the executive board of the association;



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- (4) The name of the declarant;
- (5) The number of units in the common-interest community or condominium hotel;
- (6) The total annual assessment made by the association;
- (7) The number of foreclosures which were completed on units within the common-interest community or condominium hotel and which were based on liens for the failure of the unit's owner to pay any assessments levied against the unit or any fines imposed against the unit's owner; ~~and~~

(8) Whether the study of the reserves of the association has been conducted pursuant to NRS 116.31152 or 116B.605 and, if so, the date on which it was completed ~~and~~; *and*

(9) A record of each settlement of a claim, and each judgment in an action, for a constructional defect brought by the association pursuant to NRS 40.600 to 40.695, inclusive, which contains such information as the Ombudsman deems necessary to provide relevant information concerning the settlement or judgment to the units' owners.

Sec. 2. NRS 116.745 is hereby amended to read as follows:

116.745 As used in NRS 116.745 to 116.795, inclusive, unless the context otherwise requires ~~the~~, "violation":

1. "Breach" means a *breach of the governing documents*.

2. "Violation" means a violation of any provision of this chapter, any regulation adopted pursuant thereto or any order of the Commission or a hearing panel.

Sec. 3. NRS 116.760 is hereby amended to read as follows:

116.760 1. Except as otherwise provided in this section, a person who is aggrieved by an alleged violation *or breach* may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation ~~the~~ *or breach*, file with the Division a written affidavit that sets forth the facts constituting the alleged violation ~~the~~ *or breach*. The affidavit may allege any actual damages suffered by the aggrieved person as a result of the alleged violation ~~the~~ *or breach*.

2. An aggrieved person may not file such an affidavit unless the aggrieved person has provided the respondent by certified mail, return receipt requested, with written notice of the alleged violation *or breach* set forth in the affidavit. The notice must:

(a) Be mailed to the respondent's last known address.

(b) Specify, in reasonable detail, the alleged violation ~~the~~ *or breach*, any actual damages suffered by the aggrieved person as a result of the alleged violation ~~the~~ *or breach*, and any corrective action proposed by the aggrieved person.

3. A written affidavit filed with the Division pursuant to this section must be:



(a) On a form prescribed by the Division.

(b) Be accompanied by evidence that:

(1) The respondent has been given a reasonable opportunity after receiving the written notice to ~~correct~~ *resolve* the alleged violation ~~or~~ *breach*; and

(2) Reasonable efforts to resolve the alleged violation *or breach* have failed.

4. The Commission or a hearing panel may impose an administrative fine of not more than \$1,000 against any person who knowingly files a false or fraudulent affidavit with the Division.

Sec. 4. NRS 116.765 is hereby amended to read as follows:

116.765 1. Upon receipt of an affidavit that complies with the provisions of NRS 116.760, the Division shall refer the affidavit to the Ombudsman.

2. The Ombudsman shall give such guidance to the parties as the Ombudsman deems necessary to assist the parties to resolve the alleged violation ~~or~~ *breach*.

3. If the parties are unable to resolve ~~the~~ *an* alleged violation with the assistance of the Ombudsman, the Ombudsman shall provide to the Division a report concerning the alleged violation and any information collected by the Ombudsman during his or her efforts to assist the parties to resolve the alleged violation.

~~4.~~ Upon receipt of the report from the Ombudsman, the Division shall conduct an investigation to determine whether good cause exists to proceed with a hearing on the alleged violation.

~~5.~~ If, after investigating the alleged violation, the Division determines that the allegations in the affidavit are not frivolous, false or fraudulent and that good cause exists to proceed with a hearing on the alleged violation, the Administrator shall file a formal complaint with the Commission and schedule a hearing on the complaint before the Commission or a hearing panel.

