

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; revising provisions relating to the period of a declarant's control of a unit-owners' association and the date on which the executive board must include a certain percentage of members elected by units' owners other than the declarant; requiring a unit-owners' association to submit and the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels to maintain certain information concerning constructional defect claims; revising provisions governing the duties of the Ombudsman; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the period of a declarant's control of a unit-owners' association and the date on which the executive board must include a certain percentage of members elected by units' owners other than the declarant. (NRS 116.31032) **Section 1** of this bill: (1) revises the period of a declarant's control for a common-interest community with 1,000 or more units; and (2) revises the date on which the executive board must include a certain percentage of members elected by units' owners other than the declarant.

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) **Section 1.5** of this bill



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removes the phrase “when appropriate” so that the Ombudsman is required to investigate and assist in resolving such disputes.

Existing law requires an association to pay a fee and register with the Ombudsman on a form prescribed by the Ombudsman. (NRS 116.31155, 116.31158) The registration form must include certain information concerning the association which is required to be maintained by the Ombudsman. (NRS 116.31158, 116.625) **Section 1.5** provides that the registration form must include and the Ombudsman must maintain a list of each constructional defect claim brought by the association.

Existing law provides that a person who is aggrieved by an alleged violation of any provision of the Uniform Common-Interest Ownership Act (chapter 116 of NRS), any regulation adopted pursuant thereto or any order of the Commission for Common-Interest Communities and Condominium Hotels or a hearing panel may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file with the Real Estate Division of the Department of Business and Industry a written affidavit that sets forth the facts constituting the alleged violation. (NRS 116.760) **Section 3** of this bill increases the time in which a person may file such an affidavit from 1 year after the person discovers or reasonably should have discovered the alleged violation to 18 months after the person discovers or reasonably should have discovered the alleged violation.

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

Section 1. 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:*

(1) Fewer 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~~ ; or

(2) One thousand or more units, 60 days after conveyance of 90 percent of the units that may be created to units’ owners other than a declarant;



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

~~[(c)]~~ (d) Five years after any right to add new units was last exercised; or

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

2. 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 ~~[(1)]~~ or 3 years after the first unit is conveyed to a unit's owner other than a declarant, whichever is earlier, 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, not less than one-third of the members of the executive board must be elected by units' owners other than the declarant.

Sec. 1.5. NRS 116.625 is hereby amended to read as follows:

116.625 1. The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels is hereby created within the Division.

2. The Administrator shall appoint the Ombudsman. The Ombudsman is in the unclassified service of the State.

3. The Ombudsman must be qualified by training and experience to perform the duties and functions of office.

4. In addition to any other duties set forth in this chapter, the Ombudsman shall:

(a) Assist in processing claims submitted to mediation or arbitration pursuant to NRS 38.300 to 38.360, inclusive;

(b) Assist owners in common-interest communities and condominium hotels to understand their rights and responsibilities as set forth in this chapter and chapter 116B of NRS and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities;

(c) Assist members of executive boards and officers of associations to carry out their duties;

(d) ~~[(When appropriate, investigate)]~~ Investigate disputes involving the provisions of this chapter or chapter 116B of NRS or the governing documents of an association and assist in resolving such disputes; and



(e) Compile and maintain a registration of each association organized within the State which includes, without limitation, the following information:

(1) The name, address and telephone number of the association;

(2) The name of each community manager for the common-interest community or the association of a condominium hotel and the name of any other person who is authorized to manage the property at the site of the common-interest community or condominium hotel;

(3) The names, mailing addresses and telephone numbers of the members of the executive board of the association;

(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 list of each claim for a constructional defect brought by the association pursuant to NRS 40.600 to 40.695, inclusive.

Sec. 2. (Deleted by amendment.)

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 may, not later than ~~1-year~~ *18 months* after the person discovers or reasonably should have discovered the alleged violation, file with the Division a written affidavit that sets forth the facts constituting the alleged violation. The affidavit may allege any actual damages suffered by the aggrieved person as a result of the alleged violation.

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 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, any actual damages suffered by the aggrieved person as a result of the alleged violation, and any corrective action proposed by the aggrieved person.



- 1 3. A written affidavit filed with the Division pursuant to this
2 section must be:
- 3 (a) On a form prescribed by the Division.
4 (b) Be accompanied by evidence that:
- 5 (1) The respondent has been given a reasonable opportunity
6 after receiving the written notice to ~~correct~~ *resolve* the alleged
7 violation; and
8 (2) Reasonable efforts to resolve the alleged violation have
9 failed.
- 10 4. The Commission or a hearing panel may impose an
11 administrative fine of not more than \$1,000 against any person who
12 knowingly files a false or fraudulent affidavit with the Division.
13 **Sec. 4.** (Deleted by amendment.)

