

ASSEMBLY BILL NO. 98—ASSEMBLYMEN AIZLEY; AND SPIEGEL

FEBRUARY 13, 2013

Referred to Committee on Judiciary

SUMMARY—Revises various provisions relating to common-interest communities. (BDR 10-488)

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 a person nominated as a candidate for membership on the executive board of an association to be a member of the association in good standing; authorizing an association to reject a person's nomination as a candidate for membership on the executive board in certain circumstances; authorizing an association to distribute the disclosure of a potential conflict of interest on behalf of a candidate; requiring an association that solicits bids for an association project to review and compare initial bids; authorizing such an association to request revised bids; revising the definition of "association project"; revising the process by which financial statements of certain associations are reviewed or audited; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires each person who is nominated as a candidate for membership on the executive board of an association to disclose potential conflicts of interest and whether he or she is a member of the association in good standing. A person is deemed not to be in good standing if he or she owes certain assessments or penalties to the association. (NRS 116.31034) **Section 1** of this bill removes the disclosure requirement relating to being a member in good standing and instead requires a person who is nominated as a candidate for membership on the executive board to be a member in good standing. **Section 1** also provides that if a candidate fails to disclose any potential conflict of interest before the closing period prescribed for nominations for membership on the executive board, the association may: (1) reject the person's nomination; or (2) if the association has reason to believe that a potential conflict of interest exists, distribute the disclosure, on behalf



of the candidate, to each member of the association with the ballot or in the next regular mailing of the association.

Existing law provides that if an association solicits bids for an association project, the bids must be opened during a meeting of the executive board. (NRS 116.31086) **Section 2** of this bill requires an association to review and compare the initial bids for the association project and authorizes the association to request any of the bidders to submit a revised bid. **Section 2** also revises the definition of "association project" to specify that such a project costs \$2,500 or more or 10 percent or more of the total annual assessment made by the association.

Existing law sets forth the process for the review or audit of the financial statement of an association by an independent certified public accountant. For an association with an annual budget that is less than \$150,000, the frequency with which a review occurs depends on the specific annual budget of the association. The financial statement of such an association must be audited only if, within 180 days before the end of the fiscal year, 15 percent of the total number of voting members of the association submit a written request for such an audit. (NRS 116.31144) **Section 3** of this bill revises this process and requires that the financial statement of an association with an annual budget that is less than \$150,000 be reviewed every fiscal year. For any fiscal year, the financial statement must be audited if, within 180 days before the end of the fiscal year, 51 percent of the total number of voting members of the association submit a written request for such an audit.

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}~~ *Be* 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}~~ *If a candidate who is not deemed to be in good standing*
35 *pursuant to this paragraph satisfies all such unpaid and past due*
36 *assessments or construction penalties before the closing of the*
37 *prescribed period for nominations for membership on the*
38 *executive board, he or she shall be deemed to be in good standing*
39 *and may proceed as a candidate for membership on the executive*
40 *board.*

41 9. A candidate must make all disclosures required pursuant to
42 ~~{this}~~ *paragraph (a) of subsection 8* in writing to the association
43 with his or her candidacy information. Except as otherwise provided
44 in this subsection, the association shall distribute the disclosures, on
45 behalf of the candidate, to each member of the association with the



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1 ballot or, in the event ballots are not prepared and mailed pursuant
2 to subsection 6, in the next regular mailing of the association. The
3 association is not obligated to distribute any disclosure pursuant to
4 this subsection if the disclosure contains information that is believed
5 to be defamatory, libelous or profane.

6 ~~19.1~~ 10. *If a candidate fails to make all disclosures required*
7 *pursuant to paragraph (a) of subsection 8 before the closing of the*
8 *prescribed period for nominations for membership on the*
9 *executive board, the association may:*

10 (a) *Reject his or her nomination as a candidate for*
11 *membership on the executive board; or*

12 (b) *If the association has reason to believe that a potential*
13 *conflict of interest exists, distribute the disclosure, on behalf of the*
14 *candidate, to each member of the association with the ballot or, in*
15 *the event ballots are not prepared and mailed pursuant to*
16 *subsection 6, in the next regular mailing of the association.*

17 11. Unless a person is appointed by the declarant:

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

22 (b) A person may not be a member of the executive board of a
23 master association or an officer of that master association if the
24 person, the person's spouse or the person's parent or child, by
25 blood, marriage or adoption, performs the duties of a community
26 manager for:

27 (1) That master association; or

28 (2) Any association that is subject to the governing
29 documents of that master association.

30 ~~H0.1~~ 12. An officer, employee, agent or director of a corporate
31 owner of a unit, a trustee or designated beneficiary of a trust that
32 owns a unit, a partner of a partnership that owns a unit, a member or
33 manager of a limited-liability company that owns a unit, and a
34 fiduciary of an estate that owns a unit may be an officer of the
35 association or a member of the executive board. In all events where
36 the person serving or offering to serve as an officer of the
37 association or a member of the executive board is not the record
38 owner, the person shall file proof in the records of the association
39 that:

40 (a) The person is associated with the corporate owner, trust,
41 partnership, limited-liability company or estate as required by this
42 subsection; and

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



~~1111~~ 13. 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.

~~1121~~ 14. 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.

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15. *An eligible* 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 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) Must be no longer than a single, typed page;

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



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(3) May be sent with the secret ballot mailed pursuant to subsection ~~144~~ 13 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.

~~144~~ 16. An 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 subsection ~~143~~ 15.



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~~15-~~ 17. 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. NRS 116.31086 is hereby amended to read as follows:

116.31086 1. If an association solicits bids for an association project, the *association shall review and compare the initial bids for the association project and, after such a review and comparison, may request any of the bidders to submit a revised bid to ensure that the bids received are consistent with respect to the specified services or goods being purchased by the association.*

2. *If an association requests a revised bid from a bidder pursuant to subsection 1, the association shall explain to the bidder the way in which the bid needs to be revised, including, without limitation, any specifications needed in the revised bid. Any revised bids received by the association must not be sealed and must be* opened during a meeting of the executive board.

~~2-~~ 3. As used in this section, "association project" ~~includes, without limitation,~~ means a project that ~~involves~~:

(a) *Involves* the maintenance, repair, replacement or restoration of any part of the common elements; or ~~which involves~~

(b) *Involves* the provision of services to the association ~~+~~, *↪ and costs \$2,500 or more or 10 percent or more of the total annual assessment made by the association.*

Sec. 3. NRS 116.31144 is hereby amended to read as follows:

116.31144 1. Except as otherwise provided in subsection 2, the executive board shall:

(a) If the annual budget of the association is ~~15,000 or more but~~ less than ~~75,000,~~ *\$150,000*, cause the financial statement of the association to be reviewed ~~by an independent certified public accountant during the year immediately preceding the year in which a study of the reserves of the association is to be conducted pursuant to NRS 116.31152.~~

~~—(b) If the annual budget of the association is \$75,000 or more but less than \$150,000, cause the financial statement of the association to be reviewed~~ by an independent certified public accountant every fiscal year.

~~(c)~~ (b) If the annual budget of the association is \$150,000 or more, cause the financial statement of the association to be audited by an independent certified public accountant every fiscal year.



1 2. ~~{Except as otherwise provided in this subsection, for}~~ *For*
2 any fiscal year, the executive board of an association shall cause the
3 financial statement for that fiscal year to be audited by an
4 independent certified public accountant if, within 180 days before
5 the end of the fiscal year, ~~{5}~~ *51* percent of the total number of
6 voting members of the association submit a written request for such
7 an audit. ~~{The provisions of this subsection do not apply to an~~
8 ~~association described in paragraph (c) of subsection 1.}~~

9 3. The Commission shall adopt regulations prescribing the
10 requirements for the auditing or reviewing of financial statements of
11 an association pursuant to this section. Such regulations must
12 include, without limitation:

13 (a) The qualifications necessary for a person to audit or review
14 financial statements of an association; and

15 (b) The standards and format to be followed in auditing or
16 reviewing financial statements of an association ~~{}~~ *in accordance*
17 *with generally accepted accounting principles in the United States.*

