

Amendment No. 396

Assembly Amendment to Assembly Bill No. 320

(BDR 10-737)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

BAW



Date: 4/15/2013

A.B. No. 320—Revises provisions governing common-interest communities.
(BDR 10-737)



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 ~~settlements and awards obtained by the association for a~~ constructional defect ~~claim;~~ 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) ~~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 1.5 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, 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 ~~11~~ 1.5** provides that the registration form must include and the Ombudsman must maintain a ~~record~~ **list** of each ~~settlement and judgment obtained by the association for a~~ constructional defect claim ~~11~~ **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;

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

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

~~(e)~~ **(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 ~~75~~ **15** percent of the units that may be created to units' owners other than a declarant ~~11~~ **or 3 years after the first unit is conveyed to a unit's owner other than a declarant, whichever is earlier,** at

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

6 ~~Section 1.~~ **Sec. 1.5** NRS 116.625 is hereby amended to read as follows:

7 116.625 1. The Office of the Ombudsman for Owners in Common-Interest
8 Communities and Condominium Hotels is hereby created within the Division.

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

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

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

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

17 (b) Assist owners in common-interest communities and condominium hotels to
18 understand their rights and responsibilities as set forth in this chapter and chapter
19 116B of NRS and the governing documents of their associations, including, without
20 limitation, publishing materials related to those rights and responsibilities;

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

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

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

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

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

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

35 (4) The name of the declarant;

36 (5) The number of units in the common-interest community or
37 condominium hotel;

38 (6) The total annual assessment made by the association;

39 (7) The number of foreclosures which were completed on units within the
40 common-interest community or condominium hotel and which were based on liens
41 for the failure of the unit's owner to pay any assessments levied against the unit or
42 any fines imposed against the unit's owner; ~~and~~

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

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

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

52 ~~116.745 As used in NRS 116.745 to 116.795, inclusive, unless the context~~
53 ~~otherwise requires, "violation" is~~

~~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.~~ (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 ~~for breach~~ may, not later than ~~11 year~~ 18 months after the person discovers or reasonably should have discovered the alleged violation ~~for breach~~ file with the Division a written affidavit that sets forth the facts constituting the alleged violation ~~for breach~~. The affidavit may allege any actual damages suffered by the aggrieved person as a result of the alleged violation ~~for 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 ~~for 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 ~~for breach~~, any actual damages suffered by the aggrieved person as a result of the alleged violation ~~for 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 ~~for breach~~ and

(2) Reasonable efforts to resolve the alleged violation ~~for 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.~~ (Deleted by amendment.)