

SENATE BILL NO. 222—SENATOR HARDY

MARCH 7, 2013

JOINT SPONSOR: ASSEMBLYWOMAN FIORE

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning common-interest communities. (BDR 10-102)

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 provisions governing meetings of the executive board of a homeowners' association; authorizing a private cause of action for certain violations of provisions governing meetings of an executive board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

With some exceptions, existing law requires the executive board of a homeowners' association to hold meetings which are open to all units' owners. (NRS 116.31085) This bill requires meetings of the executive board to be open to the public and revises provisions governing meetings of the executive board by enacting certain requirements for meetings of the executive board which are based on the Open Meeting Law.

Existing law requires the executive board to meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted. Under existing law, the person who may be sanctioned for the alleged violation is entitled to attend all portions of the hearing but is not entitled to attend the deliberations of the executive board. (NRS 116.31085) **Section 2** of this bill: (1) provides that the person who may be sanctioned for the alleged violation is entitled to attend the deliberations of the executive board; and (2) clarifies that the person has certain rights at the hearing regardless of whether the person has requested an open hearing.

Under existing law, if the executive board is meeting in executive session: (1) the meeting must not be audio recorded; and (2) any matter discussed by the executive board in executive session must be generally noted in the minutes of the



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meeting of the executive board. If a hearing concerning an alleged violation of the governing documents is held in an executive session, the executive board must maintain minutes of any decision made by the executive board and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to the person's designated representative. (NRS 116.31085) **Sections 1 and 2** of this bill enact provisions governing audio recordings and minutes of meetings of the executive board which are based on the provisions of the Open Meeting Law. Under **section 1**: (1) the secretary or other officer prescribed in the bylaws of the association is authorized to cause a meeting of the executive board to be either audio recorded or transcribed by a certified court reporter; (2) all meetings of the executive board, whether open or in executive session, must be audio recorded or transcribed by a certified court reporter; and (3) a meeting of the executive board is not required to be audio recorded or transcribed if a good faith effort is made to cause the meeting to be audio recorded or transcribed but certain technical difficulties prevent an audio recording or transcript from being made. Under **section 2**, a person whose alleged violation of the executive documents was the subject of an executive session of the executive board, or his or her designated representative, must be provided a copy of the audio recording or transcript and the minutes of the executive session, upon request, in electronic format at no charge or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

Finally, **section 2**: (1) provides that an action taken in violation of the requirements governing meetings of the executive board is void; and (2) creates a private cause of action for violations of the legal requirements governing meetings of the executive board.

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

Section 1. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every quarter, and not less than once every 100 days and must be held at a time other than during standard business hours at least twice annually.

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Given to the units' owners in the manner set forth in NRS 116.31068; or

(b) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing



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1 address of each unit within the common-interest community. If
2 delivery of the notice in this manner is impracticable, the notice
3 must be hand-delivered to each unit within the common-interest
4 community or posted in a prominent place or places within the
5 common elements of the association.

6 4. The notice of a meeting of the executive board must state the
7 time and place of the meeting and include a copy of the agenda for
8 the meeting or the date on which and the locations where copies of
9 the agenda may be conveniently obtained by the units' owners. The
10 notice must include notification of the right of a unit's owner to:

11 (a) Have a copy of the audio recording, the minutes or a
12 summary of the minutes of the meeting provided to the unit's owner
13 upon request, in electronic format at no charge to the unit's owner
14 or, if the association is unable to provide the copy or summary in
15 electronic format, in paper format at a cost not to exceed 25 cents
16 per page for the first 10 pages, and 10 cents per page thereafter.

17 (b) Speak to the association or executive board, unless the
18 executive board is meeting in executive session.

19 5. The agenda of the meeting of the executive board must
20 comply with the provisions of subsection 4 of NRS 116.3108. A
21 period required to be devoted to comments by the units' owners and
22 discussion of those comments must be scheduled for both the
23 beginning and the end of each meeting. During the period devoted
24 to comments by the units' owners and discussion of those comments
25 at the beginning of each meeting, comments by the units' owners
26 and discussion of those comments must be limited to items listed on
27 the agenda. In an emergency, the executive board may take action
28 on an item which is not listed on the agenda as an item on which
29 action may be taken.

30 6. At least once every quarter, and not less than once every 100
31 days, unless the declaration or bylaws of the association impose
32 more stringent standards, the executive board shall review, at a
33 minimum, the following financial information at one of its
34 meetings:

35 (a) A current year-to-date financial statement of the association;

36 (b) A current year-to-date schedule of revenues and expenses for
37 the operating account and the reserve account, compared to the
38 budget for those accounts;

39 (c) A current reconciliation of the operating account of the
40 association;

41 (d) A current reconciliation of the reserve account of the
42 association;

43 (e) The latest account statements prepared by the financial
44 institutions in which the accounts of the association are maintained;
45 and



(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. ~~¶The~~ *Except as otherwise provided in this subsection and paragraph (a) of subsection 3 of NRS 116.31085, the secretary or other officer specified in the bylaws shall cause each meeting of the executive board, whether the executive board is meeting in public or in executive session, to be audio recorded or transcribed by a court reporter who is certified pursuant to chapter 656 of NRS and the minutes to be recorded or otherwise taken at each meeting of the executive board. ~~¶, but if the executive board is meeting in executive session, the meeting must not be audio recorded. Not~~ If the secretary or other officer specified in the bylaws and the executive board make a good faith effort to cause a meeting of the executive board to be audio recorded or transcribed pursuant to this subsection but are prevented from doing so because of factors beyond the reasonable control of the secretary or other officer or the executive board, including, without limitation, a power outage, mechanical failure or other unforeseen event, such failure does not constitute a violation of the provisions of this subsection.*

8. *Except as otherwise provided in NRS 116.31085, not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the audio recording or transcript of the meeting, the minutes of the meeting and a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection ~~¶~~ and NRS 116.31085, a copy of the audio recording ~~¶~~ or transcript, the minutes or a summary of the minutes must be provided to any unit's owner upon request, in electronic format at no charge to the unit's owner or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.*

~~¶8-¶~~ 9. *Except as otherwise provided in subsection ~~¶9~~ 10 and NRS 116.31085, the minutes of each meeting of the executive board must include:*

- (a) The date, time and place of the meeting;
- (b) Those members of the executive board who were present and those members who were absent at the meeting;
- (c) The substance of all matters proposed, discussed or decided at the meeting;
- (d) A record of each member's vote on any matter decided by vote at the meeting; and
- (e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's



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owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

~~19-1~~ 10. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

~~110-1~~ 11. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

~~111-1~~ 12. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

~~112-1~~ 13. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 2. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, *all meetings of the executive board must be open and public, and all persons must be permitted to attend a meeting of the executive board. Except as otherwise provided in this section,* a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. *A meeting of the executive board that is closed pursuant to this section may only be closed to the extent specified in the provision of this section allowing the meeting to be closed. All other portions of the meeting must be open and public, and the executive board must comply with all other provisions of this chapter pertaining to meetings of the executive board to the extent not specifically precluded by this section.* The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to open or consider bids for an association project as defined in NRS 116.31086, or to enter into, renew, modify, terminate or take any other action regarding a contract.

3. An executive board may meet in executive session only to:



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(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive. *Unless the executive board or the governing documents provide otherwise, the secretary or other officer specified in the bylaws is not required to cause a meeting in executive session pursuant to this paragraph to be audio recorded or transcribed by a court reporter who is certified pursuant to chapter 656 of NRS and is not required to cause the minutes to be recorded or otherwise taken.*

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. ~~At any hearing on an alleged violation of the governing documents, whether or not~~ the person who may be sanctioned for the alleged violation ~~requests~~ *has requested* in writing that an open hearing be conducted, the person ~~who may be sanctioned is entitled:~~

(a) ~~Is entitled to~~ *To* attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses;

(b) ~~Is entitled to~~ *To* due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; and

(c) ~~Is not entitled to~~ *To* attend the deliberations of the executive board.

5. The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.

6. ~~Except as otherwise provided in this subsection, any~~ *Any* matter discussed by the executive board when it meets in executive



1 session must be generally noted in the minutes of the meeting of the
2 executive board ~~[- The executive board shall maintain minutes of~~
3 ~~any decision made pursuant to subsection 4 concerning an alleged~~
4 ~~violation and, upon request, provide a copy of the decision to the~~
5 ~~person who was subject to being sanctioned at the hearing or to the~~
6 ~~person's designated representative.]~~ which are made available to
7 the units' owners pursuant to subsection 8 of NRS 116.31083. If
8 the executive board meets in executive session pursuant to:

9 (a) Paragraph (b) of subsection 3, except as otherwise provided
10 in this paragraph, the audio recording or transcript, the minutes
11 and a summary of the minutes of the executive session must be
12 made available to the units' owners when the executive board
13 determines that the matters discussed no longer require
14 confidentiality and the person whose character, conduct,
15 competence or health was considered has consented to their
16 disclosure. Except as otherwise provided in this paragraph, if the
17 audio recording or transcript, the minutes and the summary of the
18 minutes are made available to units' owners pursuant to this
19 paragraph, a copy of the audio recording or transcript, the
20 minutes or a summary of the minutes must be provided to any
21 unit's owner upon request, in electronic format at no charge to the
22 unit's owner or, if the association is unable to provide the copy or
23 summary in electronic format, in paper format at a cost not to
24 exceed 25 cents per page for the first 10 pages, and 10 cents per
25 page thereafter. Whether or not they are made available to the
26 unit's owners, a copy of the audio recording or transcript,
27 the minutes or a summary of the minutes must be provided to the
28 person whose character, conduct, competence or health was
29 considered upon request, in electronic format at no charge to the
30 person or, if the association is unable to provide the copy or
31 summary in electronic format, in paper format at a cost not to
32 exceed 25 cents per page for the first 10 pages, and 10 cents per
33 page thereafter.

34 (b) Paragraph (c) of subsection 3, except as otherwise provided
35 in this paragraph, the audio recording or transcript, the minutes
36 and a summary of the minutes of the executive session must be
37 made available to the units' owners when the executive board
38 determines that the matters discussed no longer require
39 confidentiality and the person whose alleged violation was the
40 subject of the hearing held pursuant to subsection 4 has consented
41 to their disclosure. Except as otherwise provided in this
42 paragraph, if the audio recording or transcript, the minutes and a
43 summary of the minutes are made available to units' owners
44 pursuant to this paragraph, a copy of the audio recording or
45 transcript, the minutes or a summary of the minutes must be



1 *provided to any unit's owner upon request, in electronic format at*
2 *no charge to the unit's owner or, if the association is unable to*
3 *provide the copy or summary in electronic format, in paper format*
4 *at a cost not to exceed 25 cents per page for the first 10 pages, and*
5 *10 cents per page thereafter. Whether or not they are made*
6 *available to the unit's owners, a copy of the audio recording or*
7 *transcript, the minutes or a summary of the minutes must be*
8 *provided to the person whose alleged violation of the governing*
9 *documents was the subject of the meeting or to his or her*
10 *designated representative, upon request, in electronic format at no*
11 *charge or, if the association is unable to provide the copy or*
12 *summary in electronic format, in paper format at a cost not to*
13 *exceed 25 cents per page for the first 10 pages, and 10 cents per*
14 *page thereafter.*

15 *(c) Paragraph (d) of subsection 3, except as otherwise provided*
16 *in this paragraph, the audio recording or transcript, the minutes*
17 *and a summary of the minutes of the executive session must be*
18 *made available to the units' owners when the executive board*
19 *determines that the matters discussed no longer require*
20 *confidentiality and the person whose alleged failure to adhere to a*
21 *schedule required pursuant to NRS 116.310305 was discussed has*
22 *consented to their disclosure. Except as otherwise provided in this*
23 *paragraph, if the audio recording or transcript, the minutes and a*
24 *summary of the minutes are made available to units' owners*
25 *pursuant to this paragraph, a copy of the audio recording or*
26 *transcript, the minutes or a summary of the minutes must be*
27 *provided to any unit's owner upon request, in electronic format at*
28 *no charge to the unit's owner or, if the association is unable to*
29 *provide the copy or summary in electronic format, in paper format*
30 *at a cost not to exceed 25 cents per page for the first 10 pages, and*
31 *10 cents per page thereafter. Whether or not they are made*
32 *available to the unit's owners, a copy of the audio recording or*
33 *transcript, the minutes or a summary of the minutes must be*
34 *provided to the person whose failure to adhere to a schedule*
35 *required pursuant to NRS 116.310305 was considered upon*
36 *request, in electronic format at no charge to the person or, if the*
37 *association is unable to provide the copy or summary in electronic*
38 *format, in paper format at a cost not to exceed 25 cents per page*
39 *for the first 10 pages, and 10 cents per page thereafter.*

40 7. Except as otherwise provided in subsection 4, a unit's owner
41 is not entitled to attend or speak at a meeting of the executive board
42 held in executive session.

43 8. *This section does not:*



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1 (a) Prevent the removal of any person who willfully disrupts a
2 meeting of the executive board to the extent that its orderly
3 conduct is made impractical.

4 (b) Prevent the exclusion of witnesses from a hearing on an
5 alleged violation of the governing documents, except that the
6 person who may be sanctioned for the alleged violation may be
7 excluded from the hearing.

8 (c) Require that any meeting of the executive board be closed
9 to the public.

10 9. An action taken by the executive board at a meeting
11 conducted in violation of this section or NRS 116.31083 is void. A
12 unit's owner denied a right conferred by this section or NRS
13 116.31083 may bring a civil action in the district court in any
14 county in which any portion of the common-interest community is
15 located to have an action taken by the executive board declared
16 void. The court may order payment of reasonable attorney's fees
17 and court costs to a successful plaintiff in an action brought under
18 this subsection.

19 10. A unit's owner or any other person denied a right
20 conferred by this section or NRS 116.31083 may bring a civil
21 action in the district court in any county in which any portion of
22 the common-interest community is located for an injunction
23 against the executive board or any other person to require
24 compliance with or prevent a violation of this section or NRS
25 116.31083 or for an order determining the applicability of this
26 section or NRS 116.31083 to discussions or decisions of the
27 executive board. An injunction may be issued pursuant to this
28 subsection without proof of actual damage or other irreparable
29 harm sustained by any person. The court may order payment of
30 reasonable attorney's fees and court costs to a successful plaintiff
31 in an action brought under this subsection.

