

SENATE BILL NO. 280—SENATOR KIHUEN

MARCH 15, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-863)

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; authorizing the establishment of an impound account for the payment of assessments under certain circumstances; revising provisions governing the collection of past due financial obligations owed to an association; revising provisions governing the foreclosure of an association's lien by sale; requiring an association to provide a statement concerning certain amounts due to the association under certain circumstances; authorizing an association to charge a fee for such a statement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a homeowners' association has a lien on a unit for certain amounts due to the association. (NRS 116.3116) Existing law authorizes the association to foreclose its lien by sale and prescribes the procedures for such a foreclosure. (NRS 116.31162-116.31168)

Section 7 of this bill authorizes the establishment of an impound account for advance contributions for the payment of assessments. Under **section 8** of this bill, not earlier than 60 days after a unit's owner becomes delinquent on a payment owed to the association and before the association mails a notice of delinquent assessment or takes any other action to collect a past due obligation, the association must mail a notice to the unit's owner setting forth the fees that may be charged if the unit's owner fails to pay the past due obligation, a proposed repayment plan and certain information concerning the procedure for requesting a hearing before the executive board.

Section 11 of this bill authorizes a unit's owner, the authorized agent of a unit's owner or the holder of a security interest on the unit to request from the association a statement concerning certain amounts owed to the association. Under **section 11**, the association may charge certain fees for such a statement. **Section 11** also



18 revises provisions governing the resale package provided to a prospective purchaser
19 of a unit and authorizes the association to charge a fee for providing in electronic
20 format certain documents related to the resale package.

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

1 **Section 1.** (Deleted by amendment.)
2 **Sec. 2.** (Deleted by amendment.)
3 **Sec. 3.** (Deleted by amendment.)
4 **Sec. 4.** (Deleted by amendment.)
5 **Sec. 5.** (Deleted by amendment.)
6 **Sec. 6.** (Deleted by amendment.)
7 **Sec. 7.** NRS 116.3116 is hereby amended to read as follows:
8 116.3116 1. The association has a lien on a unit for any
9 construction penalty that is imposed against the unit's owner
10 pursuant to NRS 116.310305, any assessment levied against that
11 unit or any fines imposed against the unit's owner from the time the
12 construction penalty, assessment or fine becomes due. Unless the
13 declaration otherwise provides, any penalties, fees, charges, late
14 charges, fines and interest charged pursuant to paragraphs (j) to (n),
15 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
16 assessments under this section. If an assessment is payable in
17 installments, the full amount of the assessment is a lien from the
18 time the first installment thereof becomes due.
19 2. A lien under this section is prior to all other liens and
20 encumbrances on a unit except:
21 (a) Liens and encumbrances recorded before the recordation of
22 the declaration and, in a cooperative, liens and encumbrances which
23 the association creates, assumes or takes subject to;
24 (b) A first security interest on the unit recorded before the date
25 on which the assessment sought to be enforced became delinquent
26 or, in a cooperative, the first security interest encumbering only the
27 unit's owner's interest and perfected before the date on which the
28 assessment sought to be enforced became delinquent; and
29 (c) Liens for real estate taxes and other governmental
30 assessments or charges against the unit or cooperative.
31 ➤ The lien is also prior to all security interests described in
32 paragraph (b) to the extent of any charges incurred by the
33 association on a unit pursuant to NRS 116.310312 and to the extent
34 of the assessments for common expenses based on the periodic
35 budget adopted by the association pursuant to NRS 116.3115 which
36 would have become due in the absence of acceleration during the 9
37 months immediately preceding institution of an action to enforce the
38 lien, unless federal regulations adopted by the Federal Home Loan



1 Mortgage Corporation or the Federal National Mortgage
2 Association require a shorter period of priority for the lien. If federal
3 regulations adopted by the Federal Home Loan Mortgage
4 Corporation or the Federal National Mortgage Association require a
5 shorter period of priority for the lien, the period during which the
6 lien is prior to all security interests described in paragraph (b) must
7 be determined in accordance with those federal regulations, except
8 that notwithstanding the provisions of the federal regulations, the
9 period of priority for the lien must not be less than the 6 months
10 immediately preceding institution of an action to enforce the lien.
11 This subsection does not affect the priority of mechanics' or
12 materialmen's liens, or the priority of liens for other assessments
13 made by the association.

14 3. *The holder of the security interest described in paragraph*
15 *(b) of subsection 2 or the holder's authorized agent may establish*
16 *an escrow account, loan trust account or other impound account*
17 *for advance contributions for the payment of assessments for*
18 *common expenses based on the periodic budget adopted by the*
19 *association pursuant to NRS 116.3115 if the unit's owner and the*
20 *holder of that security interest consent to the establishment of*
21 *such an account. If such an account is established, payments from*
22 *the account for assessments for common expenses must be made*
23 *in accordance with the same due dates as apply to payments of*
24 *such assessments by a unit's owner.*

25 4. Unless the declaration otherwise provides, if two or more
26 associations have liens for assessments created at any time on the
27 same property, those liens have equal priority.

28 ~~14-~~ 5. Recording of the declaration constitutes record notice
29 and perfection of the lien. No further recordation of any claim of
30 lien for assessment under this section is required.

31 ~~15-~~ 6. A lien for unpaid assessments is extinguished unless
32 proceedings to enforce the lien are instituted within 3 years after the
33 full amount of the assessments becomes due.

34 ~~16-~~ 7. This section does not prohibit actions to recover sums
35 for which subsection 1 creates a lien or prohibit an association from
36 taking a deed in lieu of foreclosure.

37 ~~17-~~ 8. A judgment or decree in any action brought under this
38 section must include costs and reasonable attorney's fees for the
39 prevailing party.

40 ~~18-~~ 9. The association, upon written request, shall furnish to a
41 unit's owner a statement setting forth the amount of unpaid
42 assessments against the unit. If the interest of the unit's owner is real
43 estate or if a lien for the unpaid assessments may be foreclosed
44 under NRS 116.31162 to 116.31168, inclusive, the statement must
45 be in recordable form. The statement must be furnished within 10



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1 business days after receipt of the request and is binding on the
2 association, the executive board and every unit's owner.

3 ~~19.1~~ 10. In a cooperative, upon nonpayment of an assessment
4 on a unit, the unit's owner may be evicted in the same manner as
5 provided by law in the case of an unlawful holdover by a
6 commercial tenant, and:

7 (a) In a cooperative where the owner's interest in a unit is real
8 estate under NRS 116.1105, the association's lien may be foreclosed
9 under NRS 116.31162 to 116.31168, inclusive.

10 (b) In a cooperative where the owner's interest in a unit is
11 personal property under NRS 116.1105, the association's lien:

12 (1) May be foreclosed as a security interest under NRS
13 104.9101 to 104.9709, inclusive; or

14 (2) If the declaration so provides, may be foreclosed under
15 NRS 116.31162 to 116.31168, inclusive.

16 ~~10.1~~ 11. In an action by an association to collect assessments
17 or to foreclose a lien created under this section, the court may
18 appoint a receiver to collect all rents or other income from the unit
19 alleged to be due and owing to a unit's owner before
20 commencement or during pendency of the action. The receivership
21 is governed by chapter 32 of NRS. The court may order the receiver
22 to pay any sums held by the receiver to the association during
23 pendency of the action to the extent of the association's common
24 expense assessments based on a periodic budget adopted by the
25 association pursuant to NRS 116.3115.

26 **Sec. 8.** NRS 116.31162 is hereby amended to read as follows:

27 116.31162 1. Except as otherwise provided in subsection ~~14.1~~
28 5, in a condominium, in a planned community, in a cooperative
29 where the owner's interest in a unit is real estate under NRS
30 116.1105, or in a cooperative where the owner's interest in a unit is
31 personal property under NRS 116.1105 and the declaration provides
32 that a lien may be foreclosed under NRS 116.31162 to 116.31168,
33 inclusive, the association may foreclose its lien by sale after all of
34 the following occur:

35 (a) The association has mailed by certified or registered mail,
36 return receipt requested, to the unit's owner or his or her successor
37 in interest, at his or her address, if known, and at the address of the
38 unit, a notice of delinquent assessment which states the amount of
39 the assessments and other sums which are due in accordance with
40 subsection 1 of NRS 116.3116, a description of the unit against
41 which the lien is imposed and the name of the record owner of the
42 unit.

43 (b) Not less than 30 days after mailing the notice of delinquent
44 assessment pursuant to paragraph (a), the association or other person
45 conducting the sale has executed and caused to be recorded, with the



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1 county recorder of the county in which the common-interest
2 community or any part of it is situated, a notice of default and
3 election to sell the unit to satisfy the lien which must contain the
4 same information as the notice of delinquent assessment and which
5 must also comply with the following:

- 6 (1) Describe the deficiency in payment.
- 7 (2) State the name and address of the person authorized by
8 the association to enforce the lien by sale.
- 9 (3) Contain, in 14-point bold type, the following warning:

10
11 **WARNING! IF YOU FAIL TO PAY THE AMOUNT**
12 **SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR**
13 **HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**
14

15 (c) The unit's owner or his or her successor in interest has failed
16 to pay the amount of the lien, including costs, fees and expenses
17 incident to its enforcement, for 90 days following the recording of
18 the notice of default and election to sell.

19 2. The notice of default and election to sell must be signed by
20 the person designated in the declaration or by the association for that
21 purpose or, if no one is designated, by the president of the
22 association.

23 3. The period of 90 days begins on the first day following:

24 (a) The date on which the notice of default is recorded; or

25 (b) The date on which a copy of the notice of default is mailed
26 by certified or registered mail, return receipt requested, to the unit's
27 owner or his or her successor in interest at his or her address, if
28 known, and at the address of the unit,
29 ➤ whichever date occurs later.

30 4. *An association may not mail to a unit's owner or his or her*
31 *successor in interest a letter of its intent to mail a notice of*
32 *delinquent assessment pursuant to paragraph (a) of subsection 1,*
33 *mail the notice of delinquent assessment or take any other action*
34 *to collect a past due obligation from a unit's owner or his or her*
35 *successor in interest unless, not earlier than 60 days after the*
36 *obligation becomes past due, the association mails to the address*
37 *on file for the unit's owner:*

38 (a) *A schedule of the fees that may be charged if the unit's*
39 *owner fails to pay the past due obligation;*

40 (b) *A proposed repayment plan; and*

41 (c) *A notice of the right to contest the past due obligation at a*
42 *hearing before the executive board and the procedures for*
43 *requesting such a hearing.*



1 **5.** The association may not foreclose a lien by sale based on a
2 fine or penalty for a violation of the governing documents of the
3 association unless:

4 (a) The violation poses an imminent threat of causing a
5 substantial adverse effect on the health, safety or welfare of the
6 units' owners or residents of the common-interest community; or

7 (b) The penalty is imposed for failure to adhere to a schedule
8 required pursuant to NRS 116.310305.

9 **Sec. 9.** NRS 116.311635 is hereby amended to read as
10 follows:

11 116.311635 1. The association or other person conducting
12 the sale shall also, after the expiration of the 90 days and before
13 selling the unit:

14 (a) Give notice of the time and place of the sale in the manner
15 and for a time not less than that required by law for the sale of real
16 property upon execution, except that in lieu of following the
17 procedure for service on a judgment debtor pursuant to NRS 21.130,
18 service must be made on the unit's owner as follows:

19 (1) A copy of the notice of sale must be mailed, on or before
20 the date of first publication or posting, by certified or registered
21 mail, return receipt requested, to the unit's owner or his or her
22 successor in interest at his or her address, if known, and to the
23 address of the unit; and

24 (2) A copy of the notice of sale must be served, on or before
25 the date of first publication or posting, in the manner set forth in
26 subsection 2; and

27 (b) Mail, on or before the date of first publication or posting, a
28 copy of the notice by ~~first-class mail~~ *certified or registered mail,*
29 *return receipt requested,* to:

30 (1) Each person entitled to receive a copy of the notice of
31 default and election to sell notice under NRS 116.31163;

32 (2) The holder of a recorded security interest or the purchaser
33 of the unit, if either of them has notified the association, before the
34 mailing of the notice of sale, of the existence of the security interest,
35 lease or contract of sale, as applicable; and

36 (3) The Ombudsman.

37 2. In addition to the requirements set forth in subsection 1, a
38 copy of the notice of sale must be served:

39 (a) By a person who is 18 years of age or older and who is not a
40 party to or interested in the sale by personally delivering a copy of
41 the notice of sale to an occupant of the unit who is of suitable age;
42 or

43 (b) By posting a copy of the notice of sale in a conspicuous
44 place on the unit.



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1 3. Any copy of the notice of sale required to be served pursuant
2 to this section must include:

3 (a) The amount necessary to satisfy the lien as of the date of the
4 proposed sale; and

5 (b) The following warning in 14-point bold type:

6
7 **WARNING! A SALE OF YOUR PROPERTY IS**
8 **IMMINENT! UNLESS YOU PAY THE AMOUNT**
9 **SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE,**
10 **YOU COULD LOSE YOUR HOME, EVEN IF THE**
11 **AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE**
12 **THE SALE DATE. IF YOU HAVE ANY QUESTIONS,**
13 **PLEASE CALL (name and telephone number of the contact**
14 **person for the association). IF YOU NEED ASSISTANCE,**
15 **PLEASE CALL THE FORECLOSURE SECTION OF THE**
16 **OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE**
17 **DIVISION, AT (toll-free telephone number designated by the**
18 **Division) IMMEDIATELY.**
19

20 4. Proof of service of any copy of the notice of sale required to
21 be served pursuant to this section must consist of:

22 (a) A certificate of mailing which evidences that the notice was
23 mailed through the United States Postal Service; or

24 (b) An affidavit of service signed by the person who served the
25 notice stating:

26 (1) The time of service, manner of service and location of
27 service; and

28 (2) The name of the person served or, if the notice was not
29 served on a person, a description of the location where the notice
30 was posted on the unit.

31 **Sec. 10.** (Deleted by amendment.)

32 **Sec. 11.** NRS 116.4109 is hereby amended to read as follows:

33 116.4109 1. Except in the case of a sale in which delivery of
34 a public offering statement is required, or unless exempt under
35 subsection 2 of NRS 116.4101, a unit's owner or his or her
36 authorized agent shall, at the expense of the unit's owner, furnish to
37 a purchaser a resale package containing all of the following:

38 (a) A copy of the declaration, other than any plats, the bylaws,
39 the rules or regulations of the association and the information
40 statement required by NRS 116.41095.

41 (b) A statement from the association setting forth the amount of
42 the monthly assessment for common expenses and any unpaid
43 obligation of any kind, including, without limitation, management
44 fees, transfer fees, fines, penalties, interest, collection costs,
45 foreclosure fees and attorney's fees currently due from the selling



1 unit's owner. ~~{The statement remains effective for the period~~
2 ~~specified in the statement, which must not be less than 15 working~~
3 ~~days from the date of delivery by the association to the unit's owner~~
4 ~~or his or her agent. If the association becomes aware of an error in~~
5 ~~the statement during the period in which the statement is effective~~
6 ~~but before the consummation of the resale, the association must~~
7 ~~deliver a replacement statement to the unit's owner or his or her~~
8 ~~agent and obtain an acknowledgment in writing by the unit's owner~~
9 ~~or his or her agent before that consummation. Unless the unit's~~
10 ~~owner or his or her agent receives a replacement statement, the~~
11 ~~unit's owner or his or her agent may rely upon the accuracy of the~~
12 ~~information set forth in a statement provided by the association for~~
13 ~~the resale.}~~

14 (c) A copy of the current operating budget of the association and
15 current year-to-date financial statement for the association, which
16 must include a summary of the reserves of the association required
17 by NRS 116.31152 and which must include, without limitation, a
18 summary of the information described in paragraphs (a) to (e),
19 inclusive, of subsection 3 of NRS 116.31152.

20 (d) A statement of any unsatisfied judgments or pending legal
21 actions against the association and the status of any pending legal
22 actions relating to the common-interest community of which the
23 unit's owner has actual knowledge.

24 (e) A statement of any transfer fees, transaction fees or any other
25 fees associated with the resale of a unit.

26 (f) In addition to any other document, a statement describing all
27 current and expected fees or charges for each unit, including,
28 without limitation, association fees, fines, assessments, late charges
29 or penalties, interest rates on delinquent assessments, additional
30 costs for collecting past due fines and charges for opening or closing
31 any file for each unit.

32 2. The purchaser may, by written notice, cancel the contract of
33 purchase until midnight of the fifth calendar day following the date
34 of receipt of the resale package described in subsection 1, and the
35 contract for purchase must contain a provision to that effect. If the
36 purchaser elects to cancel a contract pursuant to this subsection,
37 the purchaser must hand deliver the notice of cancellation to the
38 unit's owner or his or her authorized agent or mail the notice of
39 cancellation by prepaid United States mail to the unit's owner or his
40 or her authorized agent. Cancellation is without penalty, and all
41 payments made by the purchaser before cancellation must be
42 refunded promptly. If the purchaser has accepted a conveyance of
43 the unit, the purchaser is not entitled to:

44 (a) Cancel the contract pursuant to this subsection; or



(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his or her authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his or her authorized agent, the association shall furnish all of the following to the unit's owner or his or her authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b), (d), (e) and (f) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his or her authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his or her authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The other documents furnished pursuant to subsection 3 must be provided in electronic format ~~at no charge~~ to the unit's owner. ~~for, if~~ *The association may charge the unit's owner a fee, not to exceed \$20, to provide such documents in electronic format. If* the association is unable to provide such documents in electronic format, the association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter, to cover the cost of copying.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within



the 10 days allowed by this section, the purchaser is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his or her authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his or her authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

7. A unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit may request a statement of demand from the association. Not later than 10 days after receipt of a written request from the unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit for a statement of demand, the association shall furnish a statement of demand to the person who requested the statement. The association may charge a fee of not more than \$150 to prepare and furnish a statement of demand pursuant to this subsection and an additional fee of not more than \$100 to furnish a statement of demand within 3 days after receipt of a written request for a statement of demand. The statement of demand:

(a) Must set forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner; and

(b) Remains effective for the period specified in the statement of demand, which must not be less than 15 business days after the date of delivery by the association to the unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit, whichever is applicable.

8. If the association becomes aware of an error in a statement of demand furnished pursuant to subsection 7 during the period in which the statement of demand is effective but before the consummation of a resale for which a resale package was furnished pursuant to subsection 1, the association must deliver a replacement statement of demand to the person who requested the statement of demand. Unless the person who requested the statement of demand receives a replacement statement of demand, the person may rely upon the accuracy of the information set forth



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- 1 *in the statement of demand provided by the association for the*
- 2 *resale. Payment of the amount set forth in the statement of*
- 3 *demand constitutes full payment of the amount due from the*
- 4 *selling unit's owner.*

