

SENATE BILL NO. 332—SENATOR HAMMOND

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to common-interest communities. (BDR 10-587)

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; establishing provisions governing the foreclosure of a first security lien upon a unit in a common-interest community; establishing provisions concerning the ownership interests of certain purchasers of certain units; revising provisions establishing the priority of certain liens; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law establishes provisions governing: (1) liens that are created against units and associations of a common-interest community; and (2) foreclosures of such liens. (NRS 116.3116-116.3117) Under existing law, an association of a common-interest community has a lien on any unit for certain unpaid penalties, assessments and fines, and such liens have priority over other liens and encumbrances on a unit except under certain circumstances. (NRS 116.3116)

Section 1 of this bill provides that the holder of a lien created by a first security interest may foreclose on a unit after the unit has been purchased pursuant to the foreclosure of an association’s lien, and that certain ownership interests vests in a subsequent purchaser of the unit pursuant to the foreclosure of the lien created by the first security interest. **Section 1** also provides that if an ownership interest is vested in a person other than the purchaser in the sale of the unit pursuant to the foreclosure of an association’s lien as the result of a subsequent foreclosure of a lien created by the holder of a first security interest, title to the unit vests in the purchasers as tenants in common in proportion to their respective interests.

Section 3 of this bill: (1) clarifies the circumstances under which an association’s lien maintains priority over a lien created by a first security interest; and (2) defines when an association institutes “an action to enforce the lien” or “proceedings to enforce the lien,” which is relevant to determining the amount of the lien that has priority over other liens and the date on which the lien may be extinguished for failure to institute proceedings to enforce the lien.



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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a first security interest described in NRS 116.3116 maintains priority as provided in that section over an association's lien, the purchaser in the sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 has an ownership interest in the unit not otherwise subject to any claim of an ownership interest that may arise from a subsequent foreclosure on a lien created by the holder of the first security interest.

2. If the holder of a first security interest maintaining priority over an association's lien forecloses on a lien created by that first security interest, the sale of the unit pursuant to the subsequent foreclosure vests in a subsequent purchaser, if the subsequent purchaser is a person other than the purchaser of the unit pursuant to the prior foreclosure of the association's lien, such title in the unit equal to the percentage of ownership interest not otherwise held by a purchaser described in subsection 1. The ownership interest previously vested in a purchaser described in subsection 1 remains, at a minimum, the greater of:

(a) The amount of the association's lien which was foreclosed before the foreclosure on the lien created by the first security interest; or

(b) The amount paid by the purchaser at the sale pursuant to the foreclosure of the association's lien,

↪ divided by the fair market value of the unit at the time of the sale pursuant to the foreclosure of the association's lien.

3. If, pursuant to subsection 2, ownership interest is vested in a person other than the purchaser in the sale of the unit pursuant to the foreclosure of an association's lien as the result of a subsequent foreclosure of a lien created by the holder of a first security interest, title to the unit vests in the purchasers as tenants in common in proportion to their respective interests.

Sec. 2. NRS 116.12075 is hereby amended to read as follows:

116.12075 1. The provisions of this chapter do not apply to a nonresidential condominium except to the extent that the declaration for the nonresidential condominium provides that:

(a) This entire chapter applies to the condominium;

(b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and 116.3116 to 116.31168, inclusive, *and section 1 of this act* apply to the condominium; or

(c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, *and section 1 of this act* apply to the condominium.



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2. If this entire chapter applies to a nonresidential condominium, the declaration may also require, subject to NRS 116.1112, that:

(a) Notwithstanding NRS 116.3105, any management, maintenance operations or employment contract, lease of recreational or parking areas or facilities and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(b) Notwithstanding NRS 116.1104 and subsection 3 of NRS 116.311, purchasers of units must execute proxies, powers of attorney or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

Sec. 3. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

➡ The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien **regardless of the date on which the first security interest on**



1 *the unit was recorded or, in a cooperative, the date on which the*
2 *first security interest encumbering only the unit's owner's interest*
3 *was perfected,* unless federal regulations adopted by the Federal
4 Home Loan Mortgage Corporation or the Federal National
5 Mortgage Association require a shorter period of priority for the
6 lien. If federal regulations adopted by the Federal Home Loan
7 Mortgage Corporation or the Federal National Mortgage
8 Association require a shorter period of priority for the lien, the
9 period during which the lien is prior to all security interests
10 described in paragraph (b) must be determined in accordance with
11 those federal regulations, except that notwithstanding the provisions
12 of the federal regulations, the period of priority for the lien must not
13 be less than the 6 months immediately preceding institution of an
14 action to enforce the lien. This subsection does not affect the
15 priority of mechanics' or materialmen's liens, or the priority of liens
16 for other assessments made by the association. *For the purposes of*
17 *this subsection, an "action to enforce the lien" is instituted on the*
18 *date on which the notice of sale is posted, recorded or served*
19 *pursuant to NRS 116.311635, whichever occurs later.*

20 3. Unless the declaration otherwise provides, if two or more
21 associations have liens for assessments created at any time on the
22 same property, those liens have equal priority.

23 4. Recording of the declaration constitutes record notice and
24 perfection of the lien. No further recordation of any claim of lien for
25 assessment under this section is required.

26 5. A lien for unpaid assessments is extinguished unless
27 proceedings to enforce the lien are instituted within 3 years after the
28 full amount of the assessments becomes due. *For the purposes of*
29 *this subsection, "proceedings to enforce the lien" are instituted on*
30 *the date on which the notice of sale is posted, recorded or served*
31 *pursuant to NRS 116.311635, whichever occurs later.*

32 6. This section does not prohibit actions to recover sums for
33 which subsection 1 creates a lien or prohibit an association from
34 taking a deed in lieu of foreclosure.

35 7. A judgment or decree in any action brought under this
36 section must include costs and reasonable attorney's fees for the
37 prevailing party.

38 8. The association, upon written request, shall furnish to a
39 unit's owner a statement setting forth the amount of unpaid
40 assessments against the unit. If the interest of the unit's owner is real
41 estate or if a lien for the unpaid assessments may be foreclosed
42 under NRS 116.31162 to 116.31168, inclusive, *and section 1 of this*
43 *act,* the statement must be in recordable form. The statement must
44 be furnished within 10 business days after receipt of the request and



1 is binding on the association, the executive board and every unit's
2 owner.

3 9. In a cooperative, upon nonpayment of an assessment on a
4 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 **H**, and *section 1 of*
10 *this act*.

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

13 (1) May be foreclosed as a security interest under NRS
14 104.9101 to 104.9709, inclusive; or

15 (2) If the declaration so provides, may be foreclosed under
16 NRS 116.31162 to 116.31168, inclusive **H**, and *section 1 of this*
17 *act*.

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

28 **Sec. 4.** NRS 116.31164 is hereby amended to read as follows:

29 116.31164 1. The sale must be conducted in the county in
30 which the common-interest community or part of it is situated, and
31 may be conducted by the association, its agent or attorney, or a title
32 insurance company or escrow agent licensed to do business in this
33 State, except that the sale may be made at the office of the
34 association if the notice of the sale so provided, whether the unit is
35 located within the same county as the office of the association or
36 not. The association or other person conducting the sale may from
37 time to time postpone the sale by such advertisement and notice as it
38 considers reasonable or, without further advertisement or notice, by
39 proclamation made to the persons assembled at the time and place
40 previously set and advertised for the sale.

41 2. On the day of sale originally advertised or to which the sale
42 is postponed, at the time and place specified in the notice or
43 postponement, the person conducting the sale may sell the unit at
44 public auction to the highest cash bidder. Unless otherwise provided
45 in the declaration or by agreement, the association may purchase the



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1 unit and hold, lease, mortgage or convey it. The association may
2 purchase by a credit bid up to the amount of the unpaid assessments
3 and any permitted costs, fees and expenses incident to the
4 enforcement of its lien.

5 3. After the sale, the person conducting the sale shall:

6 (a) Make, execute and, after payment is made, deliver to the
7 purchaser, or his or her successor or assign, a deed without warranty
8 which conveys to the grantee all title of the unit's owner to the unit
9 **†, subject to the provisions of section 1 of this act;**

10 (b) Deliver a copy of the deed to the Ombudsman within 30
11 days after the deed is delivered to the purchaser, or his or her
12 successor or assign; and

13 (c) Apply the proceeds of the sale for the following purposes in
14 the following order:

15 (1) The reasonable expenses of sale;

16 (2) The reasonable expenses of securing possession before
17 sale, holding, maintaining, and preparing the unit for sale, including
18 payment of taxes and other governmental charges, premiums on
19 hazard and liability insurance, and, to the extent provided for by the
20 declaration, reasonable attorney's fees and other legal expenses
21 incurred by the association;

22 (3) Satisfaction of the association's lien;

23 (4) Satisfaction in the order of priority of any subordinate
24 claim of record; and

25 (5) Remittance of any excess to the unit's owner.

