

ASSEMBLY BILL NO. 238—ASSEMBLYMEN DOOLING, SHELTON,
JONES, MOORE, FIORE; EDWARDS, GARDNER,
OHRENSCHALL, O'NEILL, SEAMAN, TROWBRIDGE AND
WHEELER

MARCH 6, 2015

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions relating to a
homeowners' association. (BDR 10-808)

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 eligibility to be a member of the
executive board or an officer of a homeowners'
association; revising provisions relating to the solicitation
of bids for a homeowners' association project; and
providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law establishes the Uniform Common-Interest Ownership Act, which
2 governs common-interest communities. (Chapter 116 of NRS) Under existing law,
3 unless a person is appointed by the declarant, a person may not be a member of the
4 executive board or an officer of a homeowners' association if the person or certain
5 other persons perform the duties of a community manager for that association.
6 (NRS 116.31034) **Section 1** of this bill additionally excludes a person, other than a
7 person appointed by the declarant, from being a member of the executive board or
8 an officer of a homeowners' association if: (1) the person resides with, is married to
9 or is related within the third degree of consanguinity to a member of the board or an
10 officer of the association; (2) the person stands to gain any personal profit or
11 compensation from a matter before the board; or (3) the person is a business
12 associate of, or a co-owner of a business co-owned by, a person who is a member
13 of the executive board or is an officer of the association or who performs the duties
14 of a community manager for that association.

15 Existing law also requires a homeowners' association to open and consider bids
16 for an association project at a meeting of its executive board. (NRS 116.31086)
17 **Section 2** of this bill requires an association to solicit, whenever reasonably
18 possible, at least three bids if the association project is expected to cost: (1) in a
19 common-interest community that consists of less than 1,000 units, \$2,500 or more;



or (2) in a common-interest community that consists of 1,000 or more units, \$5,000 or more. **Section 2** further: (1) specifies that the contents of bids which are opened at a meeting of the executive board must be read aloud in summary form; (2) requires such contents to be posted on the Internet website of the association, if one exists; (3) authorizes the inclusion of such contents in an official newsletter or other similar publication that is circulated to each unit's owner; and (4) requires the members of the executive board to vote on the acceptance of a bid in accordance with *Robert's Rules of Order Newly Revised*.

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 equal to or less than the number of members to be elected to the executive board, then:

(a) The association will not prepare or mail any ballots to units' owners pursuant to this section;

(b) The nominated candidates shall be deemed to be duly elected to the executive board not later than 30 days after the date of the closing of the period for nominations described in subsection 5; and

(c) The association shall send to each unit's owner notification that the candidates nominated have been elected to the executive board.

7. 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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greater than the number of members to be elected to the executive board, then the association shall:

(a) Prepare and mail ballots to the units' owners pursuant to this section; and

(b) Conduct an election for membership on the executive board pursuant to this section.

8. Each person who is nominated as a candidate for membership on the executive board pursuant to subsection 4 or 5 must:

(a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board; and

(b) Disclose whether the candidate is a member in good standing. For the purposes of this paragraph, a candidate shall not be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

➔ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his or her candidacy information. Except as otherwise provided in this subsection, the association shall distribute the disclosures, on behalf of the candidate, to each member of the association with the ballot or, in the event ballots are not prepared and mailed pursuant to subsection 6, in the next regular mailing of the association. The association is not obligated to distribute any disclosure pursuant to this subsection if the disclosure contains information that is believed to be defamatory, libelous or profane.

9. Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if ~~the~~:

(1) The person resides with another person in a unit, is married to that other person or is related by blood or adoption within the third degree of consanguinity or affinity, and if the other person is also a member of the executive board or is an officer of the association;

(2) The person stands to gain any personal profit or compensation of any kind from a matter before the executive board of the association;

(3) The person is a business associate of, or a co-owner of a business co-owned by, a person who is a member of the executive board or is an officer of the association or who performs the duties of a community manager for that association; or



1 **(4) The** person, the person's spouse or the person's parent or
2 child, by blood, marriage or adoption, performs the duties of a
3 community manager for that association.

4 (b) A person may not be a member of the executive board of a
5 master association or an officer of that master association if the
6 person, the person's spouse or the person's parent or child, by
7 blood, marriage or adoption, performs the duties of a community
8 manager for:

9 (1) That master association; or

10 (2) Any association that is subject to the governing
11 documents of that master association.

12 10. An officer, employee, agent or director of a corporate
13 owner of a unit, a trustee or designated beneficiary of a trust that
14 owns a unit, a partner of a partnership that owns a unit, a member or
15 manager of a limited-liability company that owns a unit, and a
16 fiduciary of an estate that owns a unit may be an officer of the
17 association or a member of the executive board. In all events where
18 the person serving or offering to serve as an officer of the
19 association or a member of the executive board is not the record
20 owner, the person shall file proof in the records of the association
21 that:

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

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

27 11. Except as otherwise provided in subsection 6 or NRS
28 116.31105, the election of any member of the executive board must
29 be conducted by secret written ballot in the following manner:

30 (a) The secretary or other officer specified in the bylaws of the
31 association shall cause a secret ballot and a return envelope to be
32 sent, prepaid by United States mail, to the mailing address of each
33 unit within the common-interest community or to any other mailing
34 address designated in writing by the unit's owner.

35 (b) Each unit's owner must be provided with at least 15 days
36 after the date the secret written ballot is mailed to the unit's owner
37 to return the secret written ballot to the association.

38 (c) A quorum is not required for the election of any member of
39 the executive board.

40 (d) Only the secret written ballots that are returned to the
41 association may be counted to determine the outcome of the
42 election.

43 (e) The secret written ballots must be opened and counted at a
44 meeting of the association. A quorum is not required to be present



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1 when the secret written ballots are opened and counted at the
2 meeting.

3 (f) The incumbent members of the executive board and each
4 person whose name is placed on the ballot as a candidate for
5 membership on the executive board may not possess, be given
6 access to or participate in the opening or counting of the secret
7 written ballots that are returned to the association before those secret
8 written ballots have been opened and counted at a meeting of the
9 association.

10 12. An association shall not adopt any rule or regulation that
11 has the effect of prohibiting or unreasonably interfering with a
12 candidate in the candidate's campaign for election as a member of
13 the executive board, except that the candidate's campaign may be
14 limited to 90 days before the date that ballots are required to be
15 returned to the association.

16 13. A candidate who has submitted a nomination form for
17 election as a member of the executive board may request that the
18 association or its agent either:

19 (a) Send before the date of the election and at the association's
20 expense, to the mailing address of each unit within the common-
21 interest community or to any other mailing address designated in
22 writing by the unit's owner a candidate informational statement. The
23 candidate informational statement:

24 (1) Must be no longer than a single, typed page;

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

27 (3) May be sent with the secret ballot mailed pursuant to
28 subsection 11 or in a separate mailing; or

29 (b) To allow the candidate to communicate campaign material
30 directly to the units' owners, provide to the candidate, in paper
31 format at a cost not to exceed 25 cents per page for the first 10 pages
32 and 10 cents per page thereafter, in the format of a compact disc at a
33 cost of not more than \$5 or by electronic mail at no cost:

34 (1) A list of the mailing address of each unit, which must not
35 include the names of the units' owners or the name of any tenant of
36 a unit's owner; or

37 (2) If the members of the association are owners of time
38 shares within a time share plan created pursuant to chapter 119A of
39 NRS and:

40 (I) The voting rights of those owners are exercised by
41 delegates or representatives pursuant to NRS 116.31105, the mailing
42 address of the delegates or representatives.

43 (II) The voting rights of those owners are not exercised by
44 delegates or representatives, the mailing address of the association
45 established pursuant to NRS 119A.520. If the mailing address of the



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1 association is provided to the candidate pursuant to this sub-
2 subparagraph, the association must send to each owner of a time
3 share within the time share plan the campaign material provided by
4 the candidate. If the campaign material will be sent by mail, the
5 candidate who provides the campaign material must provide to the
6 association a separate copy of the campaign material for each owner
7 and must pay the actual costs of mailing before the campaign
8 material is mailed. If the campaign material will be sent by
9 electronic transmission, the candidate must provide to the
10 association one copy of the campaign material in an electronic
11 format.

12 ➤ The information provided pursuant to this paragraph must not
13 include the name of any unit's owner or any tenant of a unit's
14 owner. If a candidate who makes a request for the information
15 described in this paragraph fails or refuses to provide a written
16 statement signed by the candidate which states that the candidate is
17 making the request to allow the candidate to communicate campaign
18 material directly to units' owners and that the candidate will not use
19 the information for any other purpose, the association or its agent
20 may refuse the request.

21 14. An association and its directors, officers, employees and
22 agents are immune from criminal or civil liability for any act or
23 omission which arises out of the publication or disclosure of any
24 information related to any person and which occurs in the course of
25 carrying out any duties required pursuant to subsection 13.

26 15. Each member of the executive board shall, within 90 days
27 after his or her appointment or election, certify in writing to the
28 association, on a form prescribed by the Administrator, that the
29 member has read and understands the governing documents of
30 the association and the provisions of this chapter to the best of his or
31 her ability. The Administrator may require the association to submit
32 a copy of the certification of each member of the executive board of
33 that association at the time the association registers with the
34 Ombudsman pursuant to NRS 116.31158.

35 **Sec. 2.** NRS 116.31086 is hereby amended to read as follows:

36 116.31086 1. If an association solicits bids for an association
37 project ~~to, the~~ :

38 *(a) The association must, whenever reasonably possible, solicit*
39 *at least three bids if the association project is expected to cost:*

40 *(1) In a common-interest community that consists of less*
41 *than 1,000 units, \$2,500 or more; or*

42 *(2) In a common-interest community that consists of 1,000*
43 *or more units, \$5,000 or more;*

44 *(b) The bids must be opened and the contents of each bid,*
45 *including, without limitation, the titles of the project, the scope of*



1 *each work and the bid amounts, must be read aloud in summary*
2 *form* during a meeting of the executive board ~~§~~;

3 *(c) The contents of each bid must be posted in summary form*
4 *on the Internet website of the association, if one exists, and may be*
5 *included in an official newsletter or other similar publication that*
6 *is circulated to each unit's owner; and*

7 *(d) The members of the executive board must vote on the*
8 *acceptance of a bid in accordance with the most recent edition of*
9 *Robert's Rules of Order Newly Revised.*

10 2. As used in this section, "association project" includes,
11 without limitation, a project that involves the maintenance, repair,
12 replacement or restoration of any part of the common elements or
13 which involves the provision of *professional* services to the
14 association ~~§~~ , *including, without limitation, accounting,*
15 *engineering and legal services.*

16 **Sec. 3.** This act becomes effective on July 1, 2015.

