

ASSEMBLY BILL NO. 240—ASSEMBLYMEN MOORE, SEAMAN, FIORE,
JONES, DOOLING; GARDNER, O’NEILL, OSCARSON AND SHELTON

MARCH 9, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing liens of a unit-owners’
association. (BDR 10-821)

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 the enforcement and priority of a
unit-owners’ association’s lien on a unit; repealing
provisions authorizing the nonjudicial foreclosure of an
association’s lien; and providing other matters properly
relating thereto.

Legislative Counsel’s Digest:

Under existing law, a unit-owners’ association has a lien on a unit for certain
amounts due to the association. Generally, the association’s lien is prior to all other
liens on a unit, except: (1) liens recorded before the recordation of the declaration;
(2) the first security interest on the unit; and (3) liens for real estate taxes and other
governmental assessments or charges against the unit. However, the association’s
lien is prior to the first security interest on the unit to the extent of certain
maintenance and abatement charges and a certain amount of assessments for
common expenses. The portion of the association’s lien that is prior to the first
security interest is commonly referred to as the “super-priority lien.” (NRS
116.3116) Existing law authorizes a unit-owners’ association to foreclose its lien
through a nonjudicial foreclosure process. (NRS 116.31162-116.31168)

This bill repeals provisions authorizing a unit-owners’ association to foreclose
its lien through a nonjudicial foreclosure process and removes provisions granting
the association’s lien priority over other liens and encumbrances. **Section 4** of this
bill provides that the association may enforce its lien by recording a notice of lien
and commencing a judicial action to enforce its lien. Under **section 4**, the
association’s lien on a unit has no priority over other liens and encumbrances on the
unit that were recorded before the association recorded its notice of lien. **Section 8**
of this bill provides that the amendatory provisions of **section 4** apply to the
enforcement of the association’s lien unless the association has foreclosed its lien
by sale on or before June 30, 2015.



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

Section 1. 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,~~ apply to the condominium; or

(c) Only the provisions of NRS 116.3116 ~~to 116.31168, inclusive,~~ apply to the condominium.

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. 2. NRS 116.310312 is hereby amended to read as follows:

116.310312 1. A person who holds a security interest in a unit must provide the association with the person's contact information as soon as reasonably practicable, but not later than 30 days after the person:

(a) Files an action for recovery of a debt or enforcement of any right secured by the unit pursuant to NRS 40.430; or

(b) Records or has recorded on his or her behalf a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to NRS 107.080.

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is



vacant, to take any of the following actions if the unit's owner refuses or fails to take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.

(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community or public streets;

(2) Threatens the health or safety of the residents of the common-interest community;

(3) Results in blighting or deterioration of the unit or surrounding area; and

(4) Adversely affects the use and enjoyment of nearby units.

3. If a unit is vacant and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance as described in subsection 2 if the unit's owner refuses or fails to do so.

4. The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges. ~~{The lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.}~~

5. A lien described in subsection 4 bears interest from the date that the charges become due at a rate determined pursuant to NRS 17.130 until the charges, including all interest due, are paid.

6. ~~{Except as otherwise provided in this subsection, a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than~~



~~the 6 months immediately preceding the institution of an action to enforce the lien.~~

~~7.]~~ A person who purchases or acquires a unit at a foreclosure sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS 107.080 is bound by the governing documents of the association and shall maintain the exterior of the unit in accordance with the governing documents of the association. Such a unit may only be removed from a common-interest community in accordance with the governing documents pursuant to this chapter.

~~18.]~~ 7. Notwithstanding any other provision of law, an association, its directors or members of the executive board, employees, agents or community manager who enter the grounds of a unit pursuant to this section are not liable for trespass.

~~19.]~~ 8. As used in this section:

(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

(b) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

(2) On which the owner has failed to maintain the exterior to the standards set forth in the governing documents the association; and

(3) On which the owner has failed to pay assessments for more than 60 days.

Sec. 3. NRS 116.31068 is hereby amended to read as follows:

116.31068 1. Except as otherwise provided in subsection 3, an association shall deliver any notice required to be given by the association under this chapter to any mailing or electronic mail address a unit's owner designates. Except as otherwise provided in subsection 3, if a unit's owner has not designated a mailing or electronic mail address to which a notice must be delivered, the association may deliver notices by:

(a) Hand delivery to each unit's owner;

(b) Hand delivery, United States mail, postage paid, or commercially reasonable delivery service to the mailing address of each unit;

(c) Electronic means, if the unit's owner has given the association an electronic mail address; or

(d) Any other method reasonably calculated to provide notice to the unit's owner.

2. The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

3. The provisions of this section do not apply:



(a) To a notice required to be given pursuant to NRS 116.3116 ;
~~{to 116.31168, inclusive;} or~~

(b) If any other provision of this chapter specifies the manner in
which a notice must be given by an association.

Sec. 4. 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, unless federal regulations adopted by the Federal Home Loan
Mortgage Corporation or the Federal National Mortgage
Association require a shorter period of priority for the lien. If federal
regulations adopted by the Federal Home Loan Mortgage
Corporation or the Federal National Mortgage Association require a
shorter period of priority for the lien, the period during which the
lien is prior to all security interests described in paragraph (b) must
be determined in accordance with those federal regulations, except
that notwithstanding the provisions of the federal regulations, the
period of priority for the lien must not be less than the 6 months~~



~~immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.~~

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

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

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

~~—6.1 To perfect its lien, the association must record a notice of lien in the office of the county recorder of the county in which the unit or some part thereof is located. An association may not record a notice of lien unless the amounts listed in subsection 1 are more than 90 days past due.~~

~~3. A notice of lien recorded pursuant to subsection 2 must be verified by the oath of the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association, and must contain:~~

~~(a) A statement of the amount of the association's lien;~~

~~(b) The name and last known address of the record owner of the unit; and~~

~~(c) A description of the unit against which the lien is imposed.~~

~~4. The association shall serve a copy of the notice of lien upon the unit's owner not later than 30 days after recording the notice of lien pursuant to subsection 2 by:~~

~~(a) Personally delivering a copy of the notice of lien to the unit's owner; or~~

~~(b) Mailing a copy of the notice of lien to the unit's owner or his or her successor in interest by certified mail, return receipt requested, at his or her address, if known, and at the address of the unit.~~

~~5. Not earlier than 90 days after the date on which a copy of the notice of lien is served on the unit's owner pursuant to~~



subsection 4, a notice of lien under this section may be enforced by an action in any court of competent jurisdiction that is located within the county where the unit subject to the notice of lien or any portion thereof is located, on setting out in the complaint the particulars of the demand, with a description of the unit to be charged with the lien. At the time of filing the complaint and issuing the summons, the association or other person authorized by the association to enforce the lien shall file a notice of pendency of the action in the manner provided in NRS 14.010.

6. In an action to enforce a lien under this section, the court shall:

(a) Enter judgment according to the right of the parties.

(b) Upon ascertaining the amount of the association's lien under this section, cause the property to be sold in satisfaction of the lien and costs of sale. An association in whose favor judgment may be rendered may cause the unit to be sold within the time and in the manner provided for sales on execution, issued out of any district court, for the sale of real property.

7. If the proceeds of a sale pursuant to subsection 6, after payment of the costs of sale, are not sufficient to satisfy the association's lien, the association is entitled to a personal judgment for the amount remaining due against the unit's owner. If the proceeds of the sale amount to more than the association's lien and the cost of sale, the remainder must be paid over to the unit's owner.

8. As soon as practicable, but not later than 10 days after a notice of lien upon a unit is fully satisfied or discharged, the association shall cause to be recorded a discharge or release of the notice of lien. If the association fails to comply with this section, the association is liable in a civil action to the unit's owner or his or her successor in interest for any actual damages caused by the association's failure to comply with the provisions of this subsection or \$100, whichever is greater, and for reasonable attorney's fees and the costs of bringing the action.

9. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are ~~instituted~~ commenced in a court of competent jurisdiction within ~~3 years after the full amount of the assessments becomes due.~~

~~—7.]~~ 1 year after the date on which the notice of lien is recorded pursuant to subsection 3.

10. This section does not prohibit ~~actions to~~ an association from bringing or maintaining a civil action to recover sums for which subsection 1 creates a lien . ~~for prohibit an association from taking a deed in lieu of foreclosure.~~



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

~~9.] 11.~~ The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate, ~~for if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive,~~ the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

~~10.] 12.~~ In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be ~~foreclosed under NRS 116.31162 to 116.31168, inclusive.]~~ **enforced pursuant to this section.**

(b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien ~~;~~ **may** be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive. ~~;~~ **or**

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

~~11.] 13.~~ In an action by an association to collect assessments or to ~~foreclose~~ **enforce** a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

Sec. 5. NRS 116.4105 is hereby amended to read as follows:

116.4105 If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by NRS 116.4103 and 116.41035:

1. The number and identity of units in which time shares may be created;

2. The total number of time shares that may be created;

3. The minimum duration of any time shares that may be created; and



4. The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in NRS 116.3116. ~~and 116.31162.~~

Sec. 6. NRS 278A.170 is hereby amended to read as follows:

278A.170 The procedures for enforcing payment of an assessment for the maintenance of common open space provided in NRS 116.3116 ~~to 116.31168, inclusive,~~ are also available to any organization for the ownership and maintenance of common open space established other than under this chapter or chapter 116 of NRS and entitled to receive payments from owners of property for such maintenance under a recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude which provides that any reasonable and ratable assessment thereon for the organization's costs of maintaining the common open space constitutes a lien or encumbrance upon the property.

Sec. 7. NRS 649.020 is hereby amended to read as follows:

649.020 1. "Collection agency" means all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another.

2. "Collection agency" does not include any of the following unless they are conducting collection agencies:

(a) Individuals regularly employed on a regular wage or salary, in the capacity of credit men or in other similar capacity upon the staff of employees of any person not engaged in the business of a collection agency or making or attempting to make collections as an incident to the usual practices of their primary business or profession.

(b) Banks.

(c) Nonprofit cooperative associations.

(d) Unit-owners' associations and the board members, officers, employees and units' owners of those associations when acting under the authority of and in accordance with chapter 116 or 116B of NRS and the governing documents of the association, except for those community managers included within the term "collection agency" pursuant to subsection 3.

(e) Abstract companies doing an escrow business.

(f) Duly licensed real estate brokers, except for those real estate brokers who are community managers included within the term "collection agency" pursuant to subsection 3.

(g) Attorneys and counselors at law licensed to practice in this State, so long as they are retained by their clients to collect or to solicit or obtain payment of such clients' claims in the usual course of the practice of their profession.



3. "Collection agency":

(a) Includes a community manager while engaged in the management of a common-interest community or the management of an association of a condominium hotel if the community manager, or any employee, agent or affiliate of the community manager, performs or offers to perform any act associated with the ~~foreclosure~~ enforcement of a lien pursuant to NRS ~~116.31162 to 116.31168, inclusive,~~ 116.3116 or the foreclosure of a lien pursuant to NRS 116B.635 to 116B.660, inclusive; and

(b) Does not include any other community manager while engaged in the management of a common-interest community or the management of an association of a condominium hotel.

4. As used in this section:

(a) "Community manager" has the meaning ascribed to it in NRS 116.023 or 116B.050.

(b) "Unit-owners' association" has the meaning ascribed to it in NRS 116.011 or 116B.030.

Sec. 8. The provisions of NRS 116.3116, as amended by section 4 of this act, apply to the enforcement of a lien of a unit-owner's association pursuant to that section unless the association has foreclosed its lien by sale on or before June 30, 2015.

Sec. 9. NRS 116.31162, 116.31163, 116.311635, 116.31164, 116.31166 and 116.31168 are hereby repealed.

Sec. 10. This act becomes effective on July 1, 2015.

LEADLINES OF REPEALED SECTIONS

116.31162 Foreclosure of liens: Mailing of notice of delinquent assessment; recording of notice of default and election to sell; period during which unit's owner may pay lien to avoid foreclosure; limitations on type of lien that may be foreclosed.

116.31163 Foreclosure of liens: Mailing of notice of default and election to sell to certain interested persons.

116.311635 Foreclosure of liens: Providing notice of time and place of sale; service of notice of sale; contents of notice of sale; proof of service.

116.31164 Foreclosure of liens: Procedure for conducting sale; purchase of unit by association; execution and delivery of deed; use of proceeds of sale.

116.31166 Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper application of purchase



money; title vested in purchaser without equity or right of redemption.

116.31168 Foreclosure of liens: Requests by interested persons for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclose.

