

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 common-interest communities. (BDR 10-821)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to common-interest communities; requiring the establishment of an impound account for the payment of certain assessments under certain circumstances; providing for the payment of assessments for common expenses from the impound account; revising provisions relating to the nonjudicial foreclosure of a unit-owners’ association’s lien; authorizing a right of redemption after the foreclosure of an association’s lien by sale under certain circumstances; authorizing the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations to carry out the requirement for impound accounts; 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)

Under existing law, the holder of the first security interest on the unit may establish an impound account for advance contributions for the payment of



assessments, if the unit's owner and the holder of the first security interest consent to the establishment of such an account. (NRS 116.3116) **Section 3.5** of this bill provides that if there is an impound account established for the payment of property taxes or insurance premiums, the holder of the first security interest, if other than a credit union, is required to establish such an impound account for advance contributions for the payment of certain assessments. **Section 3.5** requires payments to be made from the account for assessments for common expenses in accordance with the same due dates as apply to the payment of assessments by a unit's owner or in quarterly installments that are due on the first day of each calendar quarter. Under **section 3.5**, if the assessments for common expenses are paid in quarterly installments from the impound account, the due date of the assessments is deemed to be the first day of the calendar quarter. **Section 3.5** provides that: (1) if payments for assessments are timely made to an impound account, the super-priority lien does not arise; and (2) if an impound account is established, the association must provide notice of delinquency in the payment of assessments to the holder of the first security interest.

Section 4.7 of this bill provides that after a sale of a unit to enforce the association's lien, the unit's owner or a holder of a security interest on the unit may redeem the unit by paying certain amounts to the purchaser within 60 days after the sale. If the unit's owner redeems the unit, the unit's owner is restored to his or her ownership of the unit. If a holder of a security interest on the unit redeems the unit, that holder is entitled to a deed without warranty which conveys to the holder all title of the unit's owner to the unit. **Section 4.7** further provides that upon expiration of the redemption period, any failure to comply with the requirements of existing law for the foreclosure of the association's lien does not affect the rights of a bona fide purchaser or encumbrancer for value.

Section 7.5 of this bill authorizes the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations to carry out the provisions of **section 3.5** relating to impound accounts, including, without limitation, requirements for bonding, servicing costs and conflicts of interest for entities servicing such accounts.

Section 8 of this bill provides that: (1) the requirement to establish an impound account applies only to a holder of a first security interest on a unit that is recorded on or after January 1, 2016; and (2) the amendatory provisions related to the right of redemption apply only to a sale to enforce an association's lien that occurs on or after July 1, 2015.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 3.5. 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),



1 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
2 assessments under this section. If an assessment is payable in
3 installments, the full amount of the assessment is a lien from the
4 time the first installment thereof becomes due.

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

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

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

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

17 ➔ ~~[The]~~ *Unless payments for assessments described in subsection*
18 *3 are made timely to an escrow account, loan trust account or*
19 *other impound account established pursuant to subsection 3, the*
20 *lien is also prior to all security interests described in paragraph (b)*
21 *to the extent of any charges incurred by the association on a unit*
22 *pursuant to NRS 116.310312 and to the extent of the assessments*
23 *for common expenses based on the periodic budget adopted by the*
24 *association pursuant to NRS 116.3115 which would have become*
25 *due in the absence of acceleration during the 9 months immediately*
26 *preceding institution of an action to enforce the lien, unless federal*
27 *regulations adopted by the Federal Home Loan Mortgage*
28 *Corporation or the Federal National Mortgage Association require a*
29 *shorter period of priority for the lien. If federal regulations adopted*
30 *by the Federal Home Loan Mortgage Corporation or the Federal*
31 *National Mortgage Association require a shorter period of priority*
32 *for the lien, the period during which the lien is prior to all security*
33 *interests described in paragraph (b) must be determined in*
34 *accordance with those federal regulations, except that*
35 *notwithstanding the provisions of the federal regulations, the period*
36 *of priority for the lien must not be less than the 6 months*
37 *immediately preceding institution of an action to enforce the lien.*
38 *This subsection does not affect the priority of mechanics' or*
39 *materialmen's liens, or the priority of liens for other assessments*
40 *made by the association.*

41 3. ~~[The]~~ *Except as otherwise provided in subsection 4, if the*
42 *holder of the security interest described in paragraph (b) of*
43 *subsection 2 or the holder's authorized agent ~~[may]~~ has established*
44 *an escrow account, loan trust account or other impound account*
45 *for advance contributions for the payment of property taxes on the*



unit or premiums for insurance on the unit, the holder or his or her authorized agent shall also establish an escrow account, loan trust account or other impound account for advance contributions for the payment of ~~assessments~~ :

(a) 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~~ ;

(b) Special assessments to establish adequate reserves for the association pursuant to paragraph (b) of subsection 2 of NRS 116.3115; and

(c) Assessments for capital expenditures based on the periodic budget adopted by the association pursuant to NRS 116.3115.

4. The provisions of subsection 3 do not apply to a security interest held by a credit union as defined in NRS 678.070.

5. Payments from ~~the~~ an escrow account, loan trust account or impound account for assessments ~~for common expenses~~ described in subsection 3 must be made in ~~accordance~~ :

(a) Accordance with the same due dates as apply to payments of such assessments by a unit's owner ~~;~~

~~—4.;~~ ; or

(b) Quarterly installments that are due the first day of each calendar quarter. Notwithstanding any other provision of law or the governing documents to the contrary, if assessments for common expenses are paid in quarterly installments pursuant to this paragraph, the due date of the assessments is deemed to be the first day of each calendar quarter.

6. If an escrow account, loan trust account or other impound account is established pursuant to subsection 3, not later than 30 days after a payment of an assessment described in subsection 3 is delinquent, the association must provide the holder of the security interest described in paragraph (b) of subsection 2 with a notice of delinquent assessment which states the amount of the assessments which are due, a description of the unit against which the assessment is imposed and the name of the record owner of the unit.

7. 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.~~ *8. 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.*



~~16.1~~ 9. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

~~17.1~~ 10. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

~~18.1~~ 11. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~19.1~~ 12. 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 or 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.

~~110.1~~ 13. 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.

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

(1) 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.

~~111.1~~ 14. In an action by an association to collect assessments or to foreclose 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. 4. (Deleted by amendment.)

Sec. 4.3. NRS 116.31164 is hereby amended to read as follows:

116.31164 1. The sale must be conducted in the county in which the common-interest community or part of it is situated, and



* A B 2 4 0 R 2 *

1 may be conducted by the association, its agent or attorney, or a title
2 insurance company or escrow agent licensed to do business in this
3 State, except that the sale may be made at the office of the
4 association if the notice of the sale so provided, whether the unit is
5 located within the same county as the office of the association or
6 not. The association or other person conducting the sale may from
7 time to time postpone the sale by such advertisement and notice as it
8 considers reasonable or, without further advertisement or notice, by
9 proclamation made to the persons assembled at the time and place
10 previously set and advertised for the sale.

11 2. On the day of sale originally advertised or to which the sale
12 is postponed, at the time and place specified in the notice or
13 postponement, the person conducting the sale may sell the unit at
14 public auction to the highest cash bidder. Unless otherwise provided
15 in the declaration or by agreement, the association may purchase the
16 unit and hold, lease, mortgage or convey it. The association may
17 purchase by a credit bid up to the amount of the unpaid assessments
18 and any permitted costs, fees and expenses incident to the
19 enforcement of its lien.

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

21 (a) ~~[Make, execute and, after payment is made, deliver to the~~
22 ~~purchaser, or his or her successor or assign, a deed without warranty~~
23 ~~which conveys to the grantee all title of the unit's owner to the unit;~~
24 ~~—(b) Deliver a copy of the deed to the Ombudsman within 30~~
25 ~~days after the deed is delivered to the purchaser, or his or her~~
26 ~~successor or assign; and~~

27 ~~—(c)] Comply with the provisions of subsection 2 of NRS~~
28 ~~116.31166; and~~

29 (b) Apply the proceeds of the sale for the following purposes in
30 the following order:

31 (1) The reasonable expenses of sale;

32 (2) The reasonable expenses of securing possession before
33 sale, holding, maintaining, and preparing the unit for sale, including
34 payment of taxes and other governmental charges, premiums on
35 hazard and liability insurance, and, to the extent provided for by the
36 declaration, reasonable attorney's fees and other legal expenses
37 incurred by the association;

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

39 (4) Satisfaction in the order of priority of any subordinate
40 claim of record; and

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

42 **Sec. 4.7.** NRS 116.31166 is hereby amended to read as
43 follows:

44 116.31166 1. *Every sale of a unit pursuant to NRS*
45 *116.31162 to 116.31168, inclusive, vests in the purchaser the title*



1 of the unit's owner subject to the right of redemption provided by
2 this section.

3 2. After the sale conducted pursuant to NRS 116.31164, the
4 person conducting the sale shall:

5 (a) Give to the purchaser a certificate of the sale containing:

6 (1) A particular description of the unit sold;

7 (2) The price bid for the unit;

8 (3) The whole price paid; and

9 (4) A statement that the unit is subject to redemption; and

10 (b) Record a copy of the certificate in the office of the county
11 recorder of the county in which the unit or part of it is located.

12 3. A unit sold pursuant to NRS 116.31162 to 116.31168,
13 inclusive, may be redeemed by the unit's owner whose interest in
14 the unit was extinguished by the sale, or his or her successor in
15 interest, or any holder of a recorded security interest that is
16 subordinate to the lien on which the unit was sold, or that holder's
17 successor in interest. The unit's owner whose interest in the unit
18 was extinguished, the holder of the recorded security interest on
19 the unit or a successor in interest of those persons may redeem the
20 property at any time within 60 days after the sale by paying:

21 (a) The purchaser the amount of his or her purchase price,
22 with interest at the rate of 1 percent per month thereon in
23 addition, to the time of redemption, plus:

24 (1) The amount of any assessment paid to the association
25 by the purchaser before the redemption;

26 (2) The amount of any assessment, taxes or payments
27 toward liens which were created before the purchase and which
28 the purchaser may have paid thereon after the purchase, and
29 interest on such amount;

30 (3) If the purchaser is also a creditor having a prior lien to
31 that of the redemptioner, other than the association's lien under
32 which the purchase was made, the amount of such lien, and
33 interest on such amount; and

34 (4) Any reasonable amount expended by the purchaser
35 which is reasonably necessary to maintain and repair the unit in
36 accordance with the standards set forth in the governing
37 documents, including, without limitation, any provisions
38 governing maintenance, standing water or snow removal.

39 (b) The association the amount of any assessments not paid to
40 the association after the purchase and before the redemption.

41 (c) If the redemptioner is the holder of a recorded security
42 interest on the unit or the holder's successor in interest, the
43 amount of any lien before his or her own lien, with interest, but
44 the association's lien under which the unit was sold is not
45 required to be so paid as a lien.



1 4. Notice of redemption must be served by the person
2 redeeming the unit on the person who conducted the sale and on
3 the person from whom the unit is redeemed, together with:

4 (a) If the person redeeming the unit is the unit's owner whose
5 interest in the unit was extinguished by the sale or his or her
6 successor in interest, a certified copy of the deed to the unit and, if
7 the person redeeming the unit is the successor of that unit's
8 owner, a copy of any document necessary to establish that the
9 person is the successor of the unit's owner.

10 (b) If the person redeeming the unit is the holder of a recorded
11 security interest on the unit or the holder's successor in interest:

12 (1) An original or certified copy of the deed of trust
13 securing the unit or a certified copy of any other recorded security
14 interest of the holder.

15 (2) A copy of any assignment necessary to establish the
16 claim of the person redeeming the unit, verified by the affidavit of
17 that person, or that person's agent, or of a subscribing witness
18 thereto.

19 (3) An affidavit by the person redeeming the unit, or
20 that person's agent, showing the amount then actually due on the
21 lien.

22 5. If the unit's owner whose interest in the unit was
23 extinguished by the sale redeems the property as provided in this
24 section:

25 (a) The effect of the sale is terminated, and the unit's owner is
26 restored to his or her interest in the unit, subject to any security
27 interest on the unit that existed at the time of sale; and

28 (b) The person to whom the redemption amount was paid must
29 execute and deliver to the unit's owner a certificate of redemption,
30 acknowledged or approved before a person authorized to take
31 acknowledgments of conveyances of real property, and the
32 certificate must be recorded in the office of the recorder of the
33 county in which the unit or part of the unit is situated.

34 6. If the holder of a recorded security interest redeems the
35 unit as provided in this section and the period for a redemption set
36 forth in subsection 3 has expired, the person conducting the sale
37 shall:

38 (a) Make, execute and, if the amount required to redeem the
39 unit is paid to the person from whom the unit is redeemed,
40 deliver to the person who redeemed the unit or his or her
41 successor or assign, a deed without warranty which conveys to the
42 person who redeemed the unit all title of the unit's owner to the
43 unit; and



(b) *Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the person who redeemed the unit, or his or her successor or assign.*

7. *If no redemption is made within 60 days after the date of sale, the person conducting the sale shall:*

(a) *Make, execute and, if payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the purchaser all title of the unit's owner to the unit; and*

(b) *Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his or her successor or assign.*

8. The recitals in a deed made pursuant to ~~[NRS 116.31164]~~ *subsection 6 or 7 of:*

(a) Default, the mailing of the notice of delinquent assessment, and the *mailing and* recording of the notice of default and election to sell;

(b) The elapsing of the ~~[90 days:]~~ *90-day period set forth in paragraph (c) of subsection 1 of NRS 116.31162;* and

(c) The giving of notice of sale,
→ are conclusive proof of the matters recited.

~~[2.—Such a]~~

9. A deed containing ~~[those]~~ *the* recitals *set forth in subsection 8* is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.

~~[3.—The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption.]~~

10. *Upon the expiration of the redemption period set forth in subsection 3, any failure to comply with the provisions of NRS 116.3116 to 116.31168, inclusive, does not affect the rights of a bona fide purchaser or bona fide encumbrancer for value.*

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 7.5. NRS 116.615 is hereby amended to read as follows:

116.615 1. The provisions of this chapter must be administered by the Division, subject to the administrative supervision of the Director of the Department of Business and Industry.

2. The Commission and the Division may do all things necessary and convenient to carry out the provisions of this chapter,



1 including, without limitation, prescribing such forms and adopting
2 such procedures as are necessary to carry out the provisions of this
3 chapter.

4 3. The Commission, or the Administrator with the approval of
5 the Commission, may adopt such regulations as are necessary to
6 carry out ~~the~~:

7 *(a) The provisions of subsections 3 and 5 of NRS 116.3116*
8 *relating to escrow accounts, loan trust accounts or other impound*
9 *accounts, including, without limitation, regulations relating to*
10 *bonding of entities servicing such accounts, the cost of servicing*
11 *such accounts and conflicts of interest for entities servicing such*
12 *accounts; and*

13 *(b) Any other* provisions of this chapter.

14 4. The Commission may by regulation delegate any authority
15 conferred upon it by the provisions of this chapter to the
16 Administrator to be exercised pursuant to the regulations adopted by
17 the Commission.

18 5. When regulations are proposed by the Administrator, in
19 addition to other notices required by law, the Administrator shall
20 provide copies of the proposed regulations to the Commission not
21 later than 30 days before the next meeting of the Commission. The
22 Commission shall approve, amend or disapprove any proposed
23 regulations at that meeting.

24 6. All regulations adopted by the Commission, or adopted by
25 the Administrator with the approval of the Commission, must be
26 published by the Division, posted on its website and offered for sale
27 at a reasonable fee.

28 **Sec. 8.** 1. The amendatory provisions of NRS 116.3116, as
29 amended by section 3.5 of this act, apply to a security interest
30 described in paragraph (b) of subsection 2 of that section that is
31 recorded on or after January 1, 2016.

32 2. The amendatory provisions of NRS 116.31164 and
33 116.31166, as amended by sections 4.3 and 4.7 of this act, apply
34 only to a sale of a unit pursuant to NRS 116.3116 to 116.31168,
35 inclusive, as amended by sections 4.3 and 4.7 of this act, that occurs
36 on or after July 1, 2015.

37 **Sec. 9.** (Deleted by amendment.)

38 **Sec. 10.** 1. This section becomes effective upon passage and
39 approval.

40 2. Sections 3.5 and 7.5 of this act become effective:

41 (a) Upon passage and approval for the purpose of adopting
42 regulations and performing any other preparatory administrative
43 tasks that are necessary to carry out the provisions of those sections;
44 and



- 1 (b) On January 1, 2016, for all other purposes.
2 3. Sections 4.3, 4.7 and 8 of this act become effective on
3 July 1, 2015.



* A B 2 4 0 R 2 *