

**Amendment No. 540**

Assembly Amendment to Assembly Bill No. 238 (BDR 10-808)

**Proposed by:** Assembly Committee on Judiciary

**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

| ASSEMBLY ACTION |                          |      |                          | Initial and Date | SENATE ACTION |                          |      |                          | Initial and Date |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------------------|------|--------------------------|------------------|
| Adopted         | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____            | Adopted       | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____            |
| Concurred In    | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            | Concurred In  | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            |
| Receded         | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            | Receded       | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

DY/BAW



Date: 4/14/2015

A.B. No. 238—Makes various changes to provisions relating to a homeowners' association. (BDR 10-808)



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:**

Existing law establishes the Uniform Common-Interest Ownership Act, which governs common-interest communities. (Chapter 116 of NRS) Under existing law, unless a person is appointed by the declarant, a person may not be a member of the executive board or an officer of a homeowners' association if the person or certain other persons perform the duties of a community manager for that association. (NRS 116.31034) **Section 1** of this bill additionally excludes a person, other than a person appointed by the declarant, from being a member of the executive board or an officer of a homeowners' association if: (1) the person resides with, is married to or is related within the third degree of consanguinity to a member of the board or an officer of the association; (2) the person stands to gain any personal profit or compensation from a matter before the board; or (3) the person ~~owns more than one unit in the~~ 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.

Existing law also requires a homeowners' association to open and consider bids for an association project at a meeting of its executive board. (NRS 116.31086) **Section 2** of this bill requires an association to solicit, whenever reasonably possible, at least three bids if the association project is expected to cost ~~(\$500)~~ ;(1) in a 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 (also) 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 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 ~~that~~:

*(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 ~~owns more than one unit in the~~ 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 child, by  
2 blood, marriage or adoption, performs the duties of a community manager for that  
3 association.

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

8           (1) That master association; or

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

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

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

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

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

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

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

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

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

37           (e) The secret written ballots must be opened and counted at a meeting of the  
38 association. A quorum is not required to be present when the secret written ballots  
39 are opened and counted at the meeting.

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

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

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

52           (a) Send before the date of the election and at the association's expense, to the  
53 mailing address of each unit within the common-interest community or to any other

mailing address designated in writing by the unit's owner a candidate informational statement. The candidate informational statement:

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

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

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

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

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

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

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

(II) The voting rights of those owners are not exercised by delegates or representatives, the mailing address of the association established pursuant to NRS 119A.520. If the mailing address of the association is provided to the candidate pursuant to this sub-subparagraph, the association must send to each owner of a time share within the time share plan the campaign material provided by the candidate. If the campaign material will be sent by mail, the candidate who provides the campaign material must provide to the association a separate copy of the campaign material for each owner and must pay the actual costs of mailing before the campaign material is mailed. If the campaign material will be sent by electronic transmission, the candidate must provide to the association one copy of the campaign material in an electronic format.

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

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

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

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

116.31086 1. If an association solicits bids for an association project ~~to the~~

*(a) The association must, whenever reasonably possible, solicit at least three bids if the association project is expected to cost ~~to \$500~~ ;*

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

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

3 (b) The bids must be opened and the contents of each bid, including, without  
4 limitation, the titles of the project, the scope of each work and the bid amounts,  
5 must be read aloud in summary form during a meeting of the executive board ~~and~~ ;

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

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

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

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