

**Amendment No. 842**

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

**Proposed by:** Senate Committee on Judiciary

**Amends:** Summary: Yes Title: Yes 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: 5/17/2015

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]~~ Revises provisions relating to the solicitation of bids for a homeowners' association ~~+~~ project. (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 authorizing a homeowners' association to direct the removal of vehicles from property owned or leased by the association; 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, a homeowners' association is authorized, under certain circumstances, to direct the removal of a vehicle improperly parked on property owned or leased by the association. Unless a vehicle is blocking a certain area of the association property or the vehicle poses a threat to the health, safety or welfare of the units' owners or residents, an association must provide certain written or oral notice to the owner or operator of a vehicle at least 48 hours before the association may direct the removal of the vehicle. (NRS 116.3102) Section 1 of this bill removes these requirements. Existing law also provides that 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 116.31024) Section 1.5 of this bill additionally excludes a person, other than a person appointed by the declarant, from eligibility as a candidate for, or as a member of, the executive board or an officer of a homeowners' association if: (1) except under certain circumstances, 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 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. Additionally, section 1.5 provides that if a person is not eligible to be a candidate for, or a member of, an executive board or an officer of the association, the association: (1) must not place the name of the person on any ballot as a~~

candidate; and (2) must prohibit the person from serving as a member of the executive board or as an officer of the association.

Existing Under existing law, ~~also requires~~ a homeowners' association is required to open and consider bids for an association project at a meeting of its executive board. (NRS 116.31086) ~~Section 2 of this~~ This bill requires an association to solicit, whenever reasonably possible, at least three bids if the association project is expected to cost: (1) in a common-interest community that consists of less than 1,000 units, ~~(\$2,500)~~ 3 percent or more ~~11~~ of the annual budget of the association; or (2) in a common-interest community that consists of 1,000 or more units, ~~(\$5,000)~~ 1 percent or more ~~1~~ Section 2 of the annual budget of the association. This bill further specifies that the contents of bids which are opened at a meeting of the executive board must be read aloud.

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

**Section 1.** ~~NRS 116.3102 is hereby amended to read as follows:~~

~~116.3102. 1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:~~

~~(a) Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations;~~

~~(b) Shall adopt and may amend budgets in accordance with the requirements set forth in NRS 116.31151; may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395;~~

~~(c) May hire and discharge managing agents and other employees, agents and independent contractors;~~

~~(d) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common interest community;~~

~~(e) May make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract;~~

~~(f) May regulate the use, maintenance, repair, replacement and modification of common elements;~~

~~(g) May cause additional improvements to be made as a part of the common elements;~~

~~(h) May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:~~

~~(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and~~

~~(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112;~~

~~(i) May grant easements, leases, licenses and concessions through or over the common elements;~~

~~(j) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.3102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312;~~

~~(k) May impose charges for late payment of assessments pursuant to NRS 116.3115;~~

~~(l) May impose construction penalties when authorized pursuant to NRS 116.210305.~~

~~(m) May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.21021.~~

~~(n) May impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.~~

~~(o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.~~

~~(p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.~~

~~(q) May exercise any other powers conferred by the declaration or bylaws.~~

~~(r) May exercise all other powers that may be exercised in this State by legal entities of the same type as the association.~~

~~(s) May direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common interest community in violation of the governing documents. [In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:~~

~~(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or~~

~~(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common interest community.]~~

~~(t) May exercise any other powers necessary and proper for the governance and operation of the association.~~

~~2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.~~

~~3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:~~

~~(a) The association's legal position does not justify taking any or further enforcement action;~~

~~(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;~~

~~(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or~~

~~(d) It is not in the association's best interests to pursue an enforcement action.~~

~~4. The executive board's decision under subsection 3 not to pursue enforcement under one set of circumstances does not prevent the executive board~~

1 from taking enforcement action under another set of circumstances, but the  
2 executive board may not be arbitrary or capricious in taking enforcement action.

3 ~~5. Notwithstanding any provision of this chapter or the governing documents~~  
4 ~~to the contrary, an association may not impose any assessment pursuant to this~~  
5 ~~chapter or the governing documents on the owner of any property in the common~~  
6 ~~interest community that is exempt from taxation pursuant to NRS 361.125. For the~~  
7 ~~purposes of this subsection, "assessment" does not include any charge for any~~  
8 ~~utility services, including, without limitation, telecommunications, broadband~~  
9 ~~communications, cable television, electricity, natural gas, sewer services, garbage~~  
10 ~~collection, water or for any other service which is delivered to and used or~~  
11 ~~consumed directly by the property in the common interest community that is~~  
12 ~~exempt from taxation pursuant to NRS 361.125.~~ **(Deleted by amendment.)**

13 **Sec. 1.5. [NRS 116.31034 is hereby amended to read as follows:**

14 ~~116.31034 1. Except as otherwise provided in subsection 5 of NRS~~  
15 ~~116.212, not later than the termination of any period of declarant's control, the~~  
16 ~~units' owners shall elect an executive board of at least three members, all of whom~~  
17 ~~must be units' owners. The executive board shall elect the officers of the~~  
18 ~~association. Unless the governing documents provide otherwise, the officers of the~~  
19 ~~association are not required to be units' owners. The members of the executive~~  
20 ~~board and the officers of the association shall take office upon election.~~

21 ~~2. The term of office of a member of the executive board may not exceed 2~~  
22 ~~years, except for members who are appointed by the declarant. Unless the~~  
23 ~~governing documents provide otherwise, there is no limitation on the number of~~  
24 ~~terms that a person may serve as a member of the executive board.~~

25 ~~3. The governing documents of the association must provide for terms of~~  
26 ~~office that are staggered in such a manner that, to the extent possible, an equal~~  
27 ~~number of members of the executive board are elected at each election. The~~  
28 ~~provisions of this subsection do not apply to:~~

29 ~~(a) Members of the executive board who are appointed by the declarant; and~~

30 ~~(b) Members of the executive board who serve a term of 1 year or less.~~

31 ~~4. Not less than 30 days before the preparation of a ballot for the election of~~  
32 ~~members of the executive board, the secretary or other officer specified in the~~  
33 ~~bylaws of the association shall cause notice to be given to each unit's owner of the~~  
34 ~~unit's owner's eligibility to serve as a member of the executive board. Each unit's~~  
35 ~~owner who is qualified to serve as a member of the executive board may have his or~~  
36 ~~her name placed on the ballot along with the names of the nominees selected by the~~  
37 ~~members of the executive board or a nominating committee established by the~~  
38 ~~association.~~

39 ~~5. Before the secretary or other officer specified in the bylaws of the~~  
40 ~~association causes notice to be given to each unit's owner of his or her eligibility to~~  
41 ~~serve as a member of the executive board pursuant to subsection 4, the executive~~  
42 ~~board may determine that if, at the closing of the prescribed period for nominations~~  
43 ~~for membership on the executive board, the number of candidates nominated for~~  
44 ~~membership on the executive board is equal to or less than the number of members~~  
45 ~~to be elected to the executive board at the election, then the secretary or other~~  
46 ~~officer specified in the bylaws of the association will cause notice to be given to~~  
47 ~~each unit's owner informing each unit's owner that:~~

48 ~~(a) The association will not prepare or mail any ballots to units' owners~~  
49 ~~pursuant to this section and the nominated candidates shall be deemed to be duly~~  
50 ~~elected to the executive board unless:~~

51 ~~(1) A unit's owner who is qualified to serve on the executive board~~  
52 ~~nominates himself or herself for membership on the executive board by submitting~~

1 a nomination to the executive board within 30 days after the notice provided by this  
2 subsection; and

3 ~~(2) The number of units' owners who submit such a nomination causes the~~  
4 ~~number of candidates nominated for membership on the executive board to be~~  
5 ~~greater than the number of members to be elected to the executive board.~~

6 ~~(b) Each unit's owner who is qualified to serve as a member of the executive~~  
7 ~~board may nominate himself or herself for membership on the executive board by~~  
8 ~~submitting a nomination to the executive board within 30 days after the notice~~  
9 ~~provided by this subsection.~~

10 ~~6. If the notice described in subsection 5 is given and if, at the closing of the~~  
11 ~~prescribed period for nominations for membership on the executive board described~~  
12 ~~in subsection 5, the number of candidates nominated for membership on the~~  
13 ~~executive board is equal to or less than the number of members to be elected to the~~  
14 ~~executive board, then:~~

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

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

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

22 ~~7. If the notice described in subsection 5 is given and if, at the closing of the~~  
23 ~~prescribed period for nominations for membership on the executive board described~~  
24 ~~in subsection 5, the number of candidates nominated for membership on the~~  
25 ~~executive board is greater than the number of members to be elected to the~~  
26 ~~executive board, then the association shall:~~

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

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

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

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

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

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

48 ~~9. Unless a person is appointed by the declarant:~~

49 ~~(a) A person [may] is not eligible to be a candidate for, or a member of, the~~  
50 ~~executive board or an officer of the association if [the]:~~

51 ~~(1) Unless there is an insufficient number of candidates to fill one or~~  
52 ~~more vacancies as a member of the executive board or as an officer of the~~  
53 ~~association, 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~~

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

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

~~(1) That master association; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(a) Send before the date of the election and at the association's expense, to the 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 116.21105, 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 12.~~

~~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.

~~16. If a person is not eligible to be a candidate for, or a member of, an executive board or an officer of the association pursuant to this section or any other provision of this chapter, the association:~~

~~(a) Must not place the name of the person on any ballot as a candidate; and~~  
~~(b) Must prohibit the person from serving as a member of the executive board or as an officer of the association.~~ **(Deleted by amendment.)**

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

116.31086 1. If an association solicits bids for an association project ~~that~~:

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

(1) In a common-interest community that consists of less than 1,000 units, ~~\$2,500~~ 3 percent or more of the annual budget of the association; or

(2) In a common-interest community that consists of 1,000 or more units, ~~\$5,000~~ 1 percent or more of the annual budget of the association; and

(b) The bids must be opened and read aloud during a meeting of the executive board.

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

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