

**Amendment No. 913**

Senate Amendment to Assembly Bill No. 240 First Reprint (BDR 10-821)

**Proposed by:** Senator Harris**Amendment Box:** Replaces Amendment No. 901.**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 240 R1 (§ 4.7).

| 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.

NCA/BAW



Date: 5/21/2015

A.B. No. 240—Revises provisions governing liens of a unit-owners' association.  
(BDR 10-821)



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;~~  
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 ~~(of this bill)~~ 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), 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.

1 ~~↳ ¶The~~ Unless payments for assessments described in subsection 3 are made  
2 timely to an escrow account, loan trust account or other impound account  
3 established pursuant to subsection 3, the lien is also prior to all security interests  
4 described in paragraph (b) to the extent of any charges incurred by the association  
5 on a unit pursuant to NRS 116.310312 and to the extent of the assessments for  
6 common expenses based on the periodic budget adopted by the association pursuant  
7 to NRS 116.3115 which would have become due in the absence of acceleration  
8 during the 9 months immediately preceding institution of an action to enforce the  
9 lien, unless federal regulations adopted by the Federal Home Loan Mortgage  
10 Corporation or the Federal National Mortgage Association require a shorter period  
11 of priority for the lien. If federal regulations adopted by the Federal Home Loan  
12 Mortgage Corporation or the Federal National Mortgage Association require a  
13 shorter period of priority for the lien, the period during which the lien is prior to all  
14 security interests described in paragraph (b) must be determined in accordance with  
15 those federal regulations, except that notwithstanding the provisions of the federal  
16 regulations, the period of priority for the lien must not be less than the 6 months  
17 immediately preceding institution of an action to enforce the lien. This subsection  
18 does not affect the priority of mechanics' or materialmen's liens, or the priority of  
19 liens for other assessments made by the association.

20 3. ~~¶The~~ Except as otherwise provided in subsection 4, if the holder of the  
21 security interest described in paragraph (b) of subsection 2 or the holder's  
22 authorized agent ~~may~~ has established an escrow account, loan trust account or  
23 other impound account for advance contributions for the payment of property  
24 taxes on the unit or premiums for insurance on the unit, the holder or his or her  
25 authorized agent shall also establish an escrow account, loan trust account or other  
26 impound account for advance contributions for the payment of ~~assessments~~ ;

27 (a) Assessments for common expenses based on the periodic budget adopted  
28 by the association pursuant to NRS 116.3115 ~~if the unit's owner and the holder of~~  
29 ~~that security interest consent to the establishment of such an account. If such an~~  
30 ~~account is established, payments~~ ;

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

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

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

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

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

42 ~~4.~~ ; or

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

48 6. If an escrow account, loan trust account or other impound account is  
49 established pursuant to subsection 3, not later than 30 days after a payment of an  
50 assessment described in subsection 3 is delinquent, the association must provide  
51 the holder of the security interest described in paragraph (b) of subsection 2 with  
52 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.

~~6+~~ 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.

~~7+~~ 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.

~~8+~~ 11. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~9+~~ 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.

~~10+~~ 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.

~~11+~~ 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 may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State, except that the sale may be made at the office of the association if the notice of the sale so provided, whether the unit is located within the same county as the office of the association or not. The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further

advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale.

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

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

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

~~—(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; and~~

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

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

(1) The reasonable expenses of sale;

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

(3) Satisfaction of the association's lien;

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

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

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

116.31166 1. *Every sale of a unit pursuant to NRS 116.31162 to 116.31168, inclusive, vests in the purchaser the title of the unit's owner subject to the right of redemption provided by this section.*

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

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

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

(2) *The price bid for the unit;*

(3) *The whole price paid; and*

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

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

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

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

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

3       (2) *The amount of any assessment, taxes or payments toward liens which*  
4 *were created before the purchase and which the purchaser may have paid*  
5 *thereon after the purchase, and interest on such amount;*

6       (3) *If the purchaser is also a creditor having a prior lien to that of the*  
7 *redemptioneer, other than the association's lien under which the purchase was*  
8 *made, the amount of such lien, and interest on such amount; and*

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

13       (b) *The association the amount of any assessments not paid to the*  
14 *association after the purchase and before the redemption.*

15       (c) *If the redemptioneer is the holder of a recorded security interest on the*  
16 *unit or the holder's successor in interest, the amount of any lien before his or her*  
17 *own lien, with interest, but the association's lien under which the unit was sold is*  
18 *not required to be so paid as a lien.*

19       4. *Notice of redemption must be served by the person redeeming the unit on*  
20 *the person who conducted the sale and on the person from whom the unit is*  
21 *redeemed, together with:*

22       (a) *If the person redeeming the unit is the unit's owner whose interest in the*  
23 *unit was extinguished by the sale or his or her successor in interest, a certified*  
24 *copy of the deed to the unit and, if the person redeeming the unit is the successor*  
25 *of that unit's owner, a copy of any document necessary to establish that the*  
26 *person is the successor of the unit's owner.*

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

29       (1) *An original or certified copy of the deed of trust securing the unit or a*  
30 *certified copy of any other recorded security interest of the holder.*

31       (2) *A copy of any assignment necessary to establish the claim of the*  
32 *person redeeming the unit, verified by the affidavit of that person, or that*  
33 *person's agent, or of a subscribing witness thereto.*

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

36       5. *If the unit's owner whose interest in the unit was extinguished by the sale*  
37 *redeems the property as provided in this section:*

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

41       (b) *The person to whom the redemption amount was paid must execute and*  
42 *deliver to the unit's owner a certificate of redemption, acknowledged or approved*  
43 *before a person authorized to take acknowledgments of conveyances of real*  
44 *property, and the certificate must be recorded in the office of the recorder of the*  
45 *county in which the unit or part of the unit is situated.*

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

49       (a) *Make, execute and, if the amount required to redeem the unit is paid to*  
50 *the person from whom the unit is redeemed, deliver to the person who redeemed*  
51 *the unit or his or her successor or assign, a deed without warranty which conveys*  
52 *to the person who redeemed the unit 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 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, including, without limitation, prescribing such forms and adopting such procedures as are necessary to carry out the provisions of this chapter.*

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

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

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

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



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

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

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

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

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

**Sec. 10. 1. This ~~act~~ section becomes effective upon passage and approval.**

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

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

**(b) On January 1, 2016, for all other purposes.**

**3. Sections 4.3, 4.7 and 8 of this act become effective** on July 1, 2015.