

Amendment No. 742

Assembly Amendment to Senate Bill No. 174 First Reprint	(BDR 10-617)
Proposed by: Assembly 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.

NCA/BAW



Date: 5/17/2015

S.B. No. 174—Revises provisions governing eligibility to be a member of the executive board or an officer of a unit-owners’ association.
(BDR 10-617)



SENATE BILL NO. 174—SENATOR HAMMOND

FEBRUARY 18, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing eligibility to be a **candidate for or** member of the executive board or an officer of a unit-owners' association. (BDR 10-617)

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 **candidate for or** member of the executive board or an officer of a unit-owners' association; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law 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 unit-owners' association if the person or certain other persons perform the duties of a community manager for that association. (NRS 116.31034) This bill additionally excludes a person, other than a person appointed by the declarant, from being a **candidate for or** member of the executive board or an officer of a unit-owners' association if: (1) the person resides with, is married to or domestic partners with or is related within the third degree of consanguinity to a member of the board or an officer of the association; **or** (2) the person stands to gain any personal profit or compensation from a matter before the board. ~~It or (2) the person owns more than one unit in the association.~~ The exclusion does not apply **: (1) to a person who owns 75 percent or more of the units in an association under certain circumstances** ~~It~~ **; or (2) to a candidate for the executive board if the number of candidates nominated for membership on the executive board is less than or equal to the number of members to be elected. Lastly, this bill provides that if a person is not eligible to be a candidate for or member of the executive board or an officer of an association, the association: (1) must not place the person's name on the ballot; and (2) must prohibit such a person from serving as a member of the executive board or an officer of the association.**

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

1 association. Unless the governing documents provide otherwise, the officers of the
2 association are not required to be units' owners. The members of the executive
3 board and the officers of the association shall take office upon election.

4 2. The term of office of a member of the executive board may not exceed 3
5 years, except for members who are appointed by the declarant. Unless the
6 governing documents provide otherwise, there is no limitation on the number of
7 terms that a person may serve as a member of the executive board.

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

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

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

14 4. Not less than 30 days before the preparation of a ballot for the election of
15 members of the executive board, the secretary or other officer specified in the
16 bylaws of the association shall cause notice to be given to each unit's owner of the
17 unit's owner's eligibility to serve as a member of the executive board. Each unit's
18 owner who is qualified to serve as a member of the executive board may have his or
19 her name placed on the ballot along with the names of the nominees selected by the
20 members of the executive board or a nominating committee established by the
21 association.

22 5. Before the secretary or other officer specified in the bylaws of the
23 association causes notice to be given to each unit's owner of his or her eligibility to
24 serve as a member of the executive board pursuant to subsection 4, the executive
25 board may determine that if, at the closing of the prescribed period for nominations
26 for membership on the executive board, the number of candidates nominated for
27 membership on the executive board is equal to or less than the number of members
28 to be elected to the executive board at the election, then the secretary or other
29 officer specified in the bylaws of the association will cause notice to be given to
30 each unit's owner informing each unit's owner that:

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

34 (1) A unit's owner who is qualified to serve on the executive board
35 nominates himself or herself for membership on the executive board by submitting
36 a nomination to the executive board within 30 days after the notice provided by this
37 subsection; and

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

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

45 6. If the notice described in subsection 5 is given and if, at the closing of the
46 prescribed period for nominations for membership on the executive board described
47 in subsection 5, the number of candidates nominated for membership on the
48 executive board is equal to or less than the number of members to be elected to the
49 executive board, then:

50 (a) The association will not prepare or mail any ballots to units' owners
51 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~~ *Except as otherwise provided in ~~subsection~~ subsections 10 and 11, unless* a person is appointed by the declarant:

(a) A person may not be a candidate for or member of the executive board or an officer of the association if ~~the~~ :

(1) The person resides in a unit with, is married to, is domestic partners with, or is related by blood, adoption or marriage within the third degree of consanguinity or affinity to another person who 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; or

(3) ~~The person owns more than one unit in the association; or~~

(4) ~~The~~ 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 candidate for or 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. *A person, other than a person appointed by the declarant, who owns 75 percent or more of the units in an association may:*

(a) *Be a candidate for or member of the executive board or an officer of the association; and*

(b) *Reside in a unit with, be married to, be domestic partners with, or be related by blood, adoption or marriage within the third degree of consanguinity or affinity to another person who is also a member of the executive board or is an officer of the association,*

↪ unless the person owning 75 percent or more of the units in the association and the other person would constitute a majority of the total number of seats on the executive board.

11. A person, other than a person appointed by the declarant, may:

(a) Be a candidate for or member of the executive board; and

(b) Reside in a unit with, be married to, be domestic partners with, or be related by blood, adoption or marriage within the third degree of consanguinity or affinity to another person who is also a member of the executive board or is an officer of the association,

↪ if the number of candidates nominated for membership on the executive board is less than or equal to the number of members to be elected to the executive board.

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

(a) Must not place his or her name on the ballot; and

(b) Must prohibit such a person from serving as a member of the executive board or an officer of the association.

13. 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. 12.~~ 14. 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.

~~H2-13~~ 15. 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.

~~H3-14~~ 16. 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 ~~H3-14~~ 14 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. 15.~~ 17. 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. 14.~~ 16.

18. 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.