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FIRST REPRINT

S.B. 260

SENATE BILL NO. 260—SENATORS HARRIS, HAMMOND,
FARLEY, HARDY; AND KIHUEN

MARCH 12, 2015

JOINT SPONSOR: ASSEMBLYWOMAN SEAMAN

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing common-interest communities. (BDR 10-726)

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; 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 governing liens of a unit-owners' association; 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 and may foreclose its lien through a nonjudicial foreclosure sale. (NRS 116.3116-116.31168) Generally, the association's lien is not prior to a first security interest on the unit recorded before the date on which the amount sought to be enforced became delinquent. 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 on the unit is commonly referred to as the "super-priority lien."

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



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to the establishment of such an account. (NRS 116.3116) **Section 1** of this bill provides that if the holder of the first security interest has obtained the consent of the unit's owner for the establishment of such account and there is an impound account established for the payment of property taxes or insurance premiums, the holder of the first security interest is required to establish such an impound account for advance contributions for the payment of certain assessments. **Section 1** 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 1**, 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 1** 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 1.3 of this bill authorizes the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations to carry out the provisions of **section 1** relating to impound accounts, including, without limitation, requirements for bonding, servicing costs and conflicts of interest for entities servicing such accounts.

Section 2 of this bill provides that the requirement to establish an impound account and to make payments of assessments for common expenses from the impound account becomes effective on January 1, 2016. **Section 1.7** of this bill provides that 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.

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

Section 1. 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.

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

3. ~~{The}~~ *If the* holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent ~~{may}~~ *has obtained the consent of a unit's owner and there is an escrow account, loan trust account or other impound account established for advance contributions for the payment of property taxes on the unit or premiums for insurance on the unit, the holder or his or her authorized agent shall* establish an escrow account, loan trust account or other impound account for advance contributions for the payment of ~~{assessments}~~ :

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



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

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

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

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

~~—4.1~~ ; or

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

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

6. 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.

~~15.1~~ 7. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

~~16.1~~ 8. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

~~17.1~~ 9. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

~~18.1~~ 10. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~19.1~~ 11. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed



under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

~~110.1~~ 12. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

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

(1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or

(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

~~111.1~~ 13. 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. 1.3. 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 ~~the~~:

(a) The provisions of subsections 3 and 4 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. 1.7. The amendatory provisions of section 1 of this act apply to a security interest described in paragraph (b) of subsection 2 of NRS 116.3116, as amended by section 1 of this act, that is recorded on or after January 1, 2016.

Sec. 2. This act becomes effective:

1. Upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out this act; and

2. On January 1, 2016, for all other purposes.

