

Amendment No. 683

Assembly Amendment to Senate Bill No. 255 First Reprint (BDR 10-789)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No 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.

DP/BAW



Date: 5/15/2017

S.B. No. 255—Revises provisions relating to common-interest communities.
(BDR 10-789)



SENATE BILL NO. 255—SENATOR DENIS

MARCH 10, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities.
(BDR 10-789)

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; ~~revises~~ revising the manner in which an association is required to provide notice of a change in the governing documents of the association; revising provisions governing the cancellation of a resale of a home or unit in a common-interest community; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prescribes the manner in which a unit-owners' association must generally provide certain notices to a unit's owner when the manner of notice is not otherwise specified by another particular statutory provision. (NRS 116.31068) Existing law further sets forth specific methods which are required for delivery of a copy of a change to the governing documents of an association. (NRS 116.12065) Section 1 of this bill eliminates the specific methods of delivery in this provision, thus providing for the delivery of a copy of a change to the governing documents of an association in the manner generally required under other provisions of law. (NRS 116.31068)

Existing law requires an owner of a home or unit in a common-interest community or his or her authorized agent to furnish a purchaser of the home or unit in a resale transaction with certain information, included in a resale package. Existing law also requires a purchaser of a home or unit in a common-interest community to hand-deliver or mail to the unit's owner or his or her authorized agent a notice of cancellation of the contract of purchase. (NRS 116.4109) **Section 1.5** of this bill authorizes the purchaser to deliver a notice of cancellation by electronic transmission.

Section 2 of this bill amends existing law to add to the information statement provided as part of a purchase of a unit in a common-interest community a statement relating to a purchaser's option to deliver a notice of cancellation of a contract of purchase by electronic transmission. (NRS 116.41095)

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

Section 1. NRS 116.12065 is hereby amended to read as follows:

116.12065 If any change is made to the governing documents of an association, the secretary or other officer specified in the bylaws of the association shall, within 30 days after the change is made, prepare and cause to be ~~hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner,~~ **delivered** a copy of the change that was made.

~~Section 1.1~~ **Sec. 1.5.** NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his or her authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095.

(b) A statement from the association setting forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner.

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152.

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.

(f) In addition to any other document, a statement describing all current and expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, the purchaser must hand deliver the notice of cancellation to the unit's owner or his or her authorized agent, ~~or~~ mail the notice of cancellation by prepaid United States mail to the unit's owner or his or her authorized agent **or deliver the notice of cancellation by electronic transmission to the unit's owner or his or her authorized agent.** Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his or her authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his or her authorized agent, the association shall furnish all of the following to the unit's owner or his or her authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b), (d), (e) and (f) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his or her authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his or her authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The other documents furnished pursuant to subsection 3 must be provided in electronic format to the unit's owner. The association may charge the unit's owner a fee, not to exceed \$20, to provide such documents in electronic format. If the association is unable to provide such documents in electronic format, the association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter, to cover the cost of copying.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the purchaser is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his or her authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his or her authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

7. A unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit may request a statement of demand from the association. Not later than 10 days after receipt of a written request from the unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit for a statement of demand, the association shall furnish a statement of demand to the person who requested the statement. The association may charge a

1 fee of not more than \$150 to prepare and furnish a statement of demand pursuant to
2 this subsection and an additional fee of not more than \$100 to furnish a statement of
3 demand within 3 days after receipt of a written request for a statement of demand.
4 The statement of demand:

5 (a) Must set forth the amount of the monthly assessment for common expenses
6 and any unpaid obligation of any kind, including, without limitation, management
7 fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and
8 attorney's fees currently due from the selling unit's owner; and

9 (b) Remains effective for the period specified in the statement of demand,
10 which must not be less than 15 business days after the date of delivery by the
11 association to the unit's owner, the authorized agent of the unit's owner or the
12 holder of a security interest on the unit, whichever is applicable.

13 8. If the association becomes aware of an error in a statement of demand
14 furnished pursuant to subsection 7 during the period in which the statement of
15 demand is effective but before the consummation of a resale for which a resale
16 package was furnished pursuant to subsection 1, the association must deliver a
17 replacement statement of demand to the person who requested the statement of
18 demand. Unless the person who requested the statement of demand receives a
19 replacement statement of demand, the person may rely upon the accuracy of the
20 information set forth in the statement of demand provided by the association for the
21 resale. Payment of the amount set forth in the statement of demand constitutes full
22 payment of the amount due from the selling unit's owner.

23 **Sec. 2.** NRS 116.41095 is hereby amended to read as follows:

24 116.41095 The information statement required by NRS 116.4103 and
25 116.4109 must be in substantially the following form:

26
27 **BEFORE YOU PURCHASE PROPERTY IN A**
28 **COMMON-INTEREST COMMUNITY**
29 **DID YOU KNOW . . .**

30 **1. YOU GENERALLY HAVE 5 DAYS TO CANCEL THE**
31 **PURCHASE AGREEMENT?**

32 When you enter into a purchase agreement to buy a home or unit in a
33 common-interest community, in most cases you should receive either a
34 public offering statement, if you are the original purchaser of the home or
35 unit, or a resale package, if you are not the original purchaser. The law
36 generally provides for a 5-day period in which you have the right to cancel
37 the purchase agreement. The 5-day period begins on different starting dates,
38 depending on whether you receive a public offering statement or a resale
39 package. Upon receiving a public offering statement or a resale package,
40 you should make sure you are informed of the deadline for exercising your
41 right to cancel. In order to exercise your right to cancel, the law generally
42 requires that you hand deliver the notice of cancellation to the seller within
43 the 5-day period, or mail the notice of cancellation to the seller by prepaid
44 United States mail within the 5-day period. *Alternatively, if you are not the*
45 *original purchaser and received a resale package, you may deliver the*
46 *notice of cancellation by electronic transmission to the seller within the 5-*
47 *day period in order to exercise your right to cancel.* For more information
48 regarding your right to cancel, see Nevada Revised Statutes 116.4108, if
49 you received a public offering statement, or Nevada Revised Statutes
50 116.4109, if you received a resale package.

51 **2. YOU ARE AGREEING TO RESTRICTIONS ON HOW YOU**
52 **CAN USE YOUR PROPERTY?**

1 These restrictions are contained in a document known as the Declaration of
2 Covenants, Conditions and Restrictions. The CC&Rs become a part of the
3 title to your property. They bind you and every future owner of the property
4 whether or not you have read them or had them explained to you. The
5 CC&Rs, together with other "governing documents" (such as association
6 bylaws and rules and regulations), are intended to preserve the character
7 and value of properties in the community, but may also restrict what you
8 can do to improve or change your property and limit how you use and enjoy
9 your property. By purchasing a property encumbered by CC&Rs, you are
10 agreeing to limitations that could affect your lifestyle and freedom of
11 choice. You should review the CC&Rs, and other governing documents
12 before purchasing to make sure that these limitations and controls are
13 acceptable to you. Certain provisions in the CC&Rs and other governing
14 documents may be superseded by contrary provisions of chapter 116 of the
15 Nevada Revised Statutes. The Nevada Revised Statutes are available at the
16 Internet address <http://www.leg.state.nv.us/nrs/>.

17 3. YOU WILL HAVE TO PAY OWNERS' ASSESSMENTS FOR
18 AS LONG AS YOU OWN YOUR PROPERTY?

19 As an owner in a common-interest community, you are responsible for
20 paying your share of expenses relating to the common elements, such as
21 landscaping, shared amenities and the operation of any homeowners'
22 association. The obligation to pay these assessments binds you and every
23 future owner of the property. Owners' fees are usually assessed by the
24 homeowners' association and due monthly. You have to pay dues whether
25 or not you agree with the way the association is managing the property or
26 spending the assessments. The executive board of the association may have
27 the power to change and increase the amount of the assessment and to levy
28 special assessments against your property to meet extraordinary expenses.
29 In some communities, major components of the common elements of the
30 community such as roofs and private roads must be maintained and
31 replaced by the association. If the association is not well managed or fails
32 to provide adequate funding for reserves to repair, replace and restore
33 common elements, you may be required to pay large, special assessments to
34 accomplish these tasks.

35 4. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU
36 COULD LOSE YOUR HOME?

37 If you do not pay these assessments when due, the association usually has
38 the power to collect them by selling your property in a nonjudicial
39 foreclosure sale. If fees become delinquent, you may also be required to
40 pay penalties and the association's costs and attorney's fees to become
41 current. If you dispute the obligation or its amount, your only remedy to
42 avoid the loss of your home may be to file a lawsuit and ask a court to
43 intervene in the dispute.

44 5. YOU MAY BECOME A MEMBER OF A HOMEOWNERS'
45 ASSOCIATION THAT HAS THE POWER TO AFFECT HOW YOU
46 USE AND ENJOY YOUR PROPERTY?

47 Many common-interest communities have a homeowners' association. In a
48 new development, the association will usually be controlled by the
49 developer until a certain number of units have been sold. After the period of
50 developer control, the association may be controlled by property owners
51 like yourself who are elected by homeowners to sit on an executive board
52 and other boards and committees formed by the association. The
53 association, and its executive board, are responsible for assessing

homeowners for the cost of operating the association and the common or shared elements of the community and for the day to day operation and management of the community. Because homeowners sitting on the executive board and other boards and committees of the association may not have the experience or professional background required to understand and carry out the responsibilities of the association properly, the association may hire professional community managers to carry out these responsibilities.

Homeowners' associations operate on democratic principles. Some decisions require all homeowners to vote, some decisions are made by the executive board or other boards or committees established by the association or governing documents. Although the actions of the association and its executive board are governed by state laws, the CC&Rs and other documents that govern the common-interest community, decisions made by these persons will affect your use and enjoyment of your property, your lifestyle and freedom of choice, and your cost of living in the community. You may not agree with decisions made by the association or its governing bodies even though the decisions are ones which the association is authorized to make. Decisions may be made by a few persons on the executive board or governing bodies that do not necessarily reflect the view of the majority of homeowners in the community. If you do not agree with decisions made by the association, its executive board or other governing bodies, your remedy is typically to attempt to use the democratic processes of the association to seek the election of members of the executive board or other governing bodies that are more responsive to your needs. If you have a dispute with the association, its executive board or other governing bodies, you may be able to resolve the dispute through the complaint, investigation and intervention process administered by the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, the Nevada Real Estate Division and the Commission for Common-Interest Communities and Condominium Hotels. However, to resolve some disputes, you may have to mediate or arbitrate the dispute and, if mediation or arbitration is unsuccessful, you may have to file a lawsuit and ask a court to resolve the dispute. In addition to your personal cost in mediation or arbitration, or to prosecute a lawsuit, you may be responsible for paying your share of the association's cost in defending against your claim.

6. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE PURCHASERS OF YOUR PROPERTY WITH INFORMATION ABOUT LIVING IN YOUR COMMON-INTEREST COMMUNITY?

The law requires you to provide a prospective purchaser of your property with a copy of the community's governing documents, including the CC&Rs, association bylaws, and rules and regulations, as well as a copy of this document. You are also required to provide a copy of the association's current year-to-date financial statement, including, without limitation, the most recent audited or reviewed financial statement, a copy of the association's operating budget and information regarding the amount of the monthly assessment for common expenses, including the amount set aside as reserves for the repair, replacement and restoration of common elements. You are also required to inform prospective purchasers of any outstanding judgments or lawsuits pending against the association of which you are aware. For more information regarding these requirements, see Nevada Revised Statutes 116.4109.

7. YOU HAVE CERTAIN RIGHTS REGARDING OWNERSHIP
IN A COMMON-INTEREST COMMUNITY THAT ARE
GUARANTEED YOU BY THE STATE?

Pursuant to provisions of chapter 116 of Nevada Revised Statutes, you have
the right:

(a) To be notified of all meetings of the association and its executive
board, except in cases of emergency.

(b) To attend and speak at all meetings of the association and its
executive board, except in some cases where the executive board is
authorized to meet in closed, executive session.

(c) To request a special meeting of the association upon petition of at
least 10 percent of the homeowners.

(d) To inspect, examine, photocopy and audit financial and other
records of the association.

(e) To be notified of all changes in the community's rules and
regulations and other actions by the association or board that affect you.

8. QUESTIONS?

Although they may be voluminous, you should take the time to read and
understand the documents that will control your ownership of a property in
a common-interest community. You may wish to ask your real estate
professional, lawyer or other person with experience to explain anything
you do not understand. You may also request assistance from the Office of
the Ombudsman for Owners in Common-Interest Communities and
Condominium Hotels, Nevada Real Estate Division, at (telephone number).

Buyer or prospective buyer's initials: _____

Date: _____

Sec. 3. This act becomes effective on July 1, 2017.