

Amendment No. 784

Assembly Amendment to Senate Bill No. 281 First Reprint (BDR 32-99)

Proposed by: Assembly Committee on Taxation

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.

BJF/BAW



Date: 5/21/2017

S.B. No. 281—Revises provisions relating to real property. (BDR 32-99)



SENATE BILL NO. 281—SENATOR MANENDO (BY REQUEST)

MARCH 16, 2017

Referred to Committee on Revenue and
Economic Development

SUMMARY—Revises provisions relating to real property. (BDR 32-99)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 real property; revising provisions relating to the disposition of excess proceeds received from the sale of real property by a county treasurer for delinquent taxes; revising provisions governing agreements to locate, deliver, recover or assist in the recovery of such excess proceeds; revising provisions governing the assessment of common expenses in a common-interest community; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a county tax receiver to execute and deliver a deed of a property in trust to the county treasurer under certain circumstances when the taxes on the property are delinquent. (NRS 361.585) After the deed has been delivered to the county treasurer, the county treasurer is authorized to make certain dispositions of the property, including, without limitation: (1) reconveying the property to certain persons upon payment of the amount of property taxes accrued, plus any costs, penalties and interest, if such payment is made within a certain time before the sale of the property by the county treasurer; or (2) selling the property to recover the delinquent taxes. (NRS 361.585, 361.595) If the county treasurer sells the property and excess proceeds remain after the county treasurer has applied the proceeds of the sale to the delinquent taxes and certain other payments, existing law provides for the distribution of the excess proceeds from the sale to certain persons holding securing interests in the order of priority of their recorded liens. (NRS 361.610)

Section 2 of this bill revises provisions relating to the distribution of excess proceeds from the sale of property to recover delinquent taxes. Section 2 authorizes the following persons to receive a distribution of excess proceeds from ~~that~~ such a sale: ~~for such property to recover delinquent taxes~~ (1) a person who has a lien on the property for certain waste management fees or charges; (2) the unit-owners' association of a common-interest community if the association has caused to be recorded a notice of default and election to sell a property to satisfy its lien on the property and that notice has not been rescinded; and ~~(2)~~ (3) the unit-owners' association of a condominium hotel or an owner of a unit of a condominium hotel if the association or owner has caused to be recorded a notice of default and election to sell a property to satisfy the association's or owner's lien on the property and that notice has not been rescinded. Under section 2, if a unit-owners' association of a common-interest community recovers excess proceeds from the sale of a residential unit in the common-interest community, the association may not collect any amount remaining due to the association from the owner of the residential unit after receiving

the excess proceeds. Finally, section 2 provides that the cap on the amount of the fee that may be charged by a person who assists another person in recovering excess proceeds from a sale of property for delinquent taxes applies only to a fee charged to a natural person who owned and occupied the property as his or her primary residence at the time of the sale.

Generally, existing law requires the expenses of a unit-owners' association to be paid by imposing assessments against the units that are part of the association. (NRS 116.019, 116.3115) However, under existing law, expenses benefitting fewer than all of the units' owners may be assessed only against the units or units' owners benefited by the expenses. (NRS 116.3115) **Section 2.5** of this bill specifies that if a unit-owners' association pays, on behalf of a unit's owner, delinquent property taxes or utility charges owed by the unit's owner, those expenses may be assessed against the unit or the unit's owner.

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

Section 1. (Deleted by amendment.)

Sec. 2. NRS 361.610 is hereby amended to read as follows:

361.610 1. Out of the sale price or rents of any property of which he or she is trustee, the county treasurer shall pay the costs due any officer for the enforcement of the tax upon the parcel of property and all taxes owing thereon, and upon the redemption of any property from the county treasurer as trustee, he or she shall pay the redemption money over to any officers having fees due from the parcels of property and pay the tax for which it was sold and pay the redemption percentage according to the proportion those fees respectively bear to the tax.

2. In no case may:

(a) Any service rendered by any officer under this chapter become or be allowed as a charge against the county; or

(b) The sale price or rent or redemption money of any one parcel of property be appropriated to pay any cost or tax upon any other parcel of property than that so sold, rented or redeemed.

3. After paying all the tax and costs upon any one parcel of property, the county treasurer shall pay into the general fund of the county, from the excess proceeds of the sale:

(a) The first \$300 of the excess proceeds; and

(b) Ten percent of the next \$10,000 of the excess proceeds.

4. The amount remaining after the county treasurer has paid the amounts required by subsection 3 must be deposited in an interest-bearing account maintained for the purpose of holding excess proceeds separate from other money of the county. If no claim is made for the excess proceeds within 1 year after the deed given by the county treasurer is recorded, the county treasurer shall pay the money into the general fund of the county, and it must not thereafter be refunded to the former property owner or his or her successors in interest. All interest paid on money deposited in the account required by this subsection is the property of the county.

5. If a person ~~who would have been entitled to receive reconveyance of the property pursuant to NRS 361.585~~ listed in subsection 6 makes a claim in writing for the excess proceeds within 1 year after the deed is recorded, the county treasurer shall pay the claim or the proper portion of the claim over to the person if the county treasurer is satisfied that the person is entitled to it.

6. A claim for excess proceeds must be paid out in the following order of priority to:

(a) The *following* persons ~~{specified in paragraphs (b), (c), (d), (g), (h) and (i) of subsection 4 of NRS 361.585}~~ in the order of priority of the ~~{recorded}~~ liens ~~{recorded or perfected before the sale}~~:

(1) A person holding a valid lien under subsection 3 of NRS 444.520;

(2) Persons specified in paragraphs (b), (c), (d), (g), (h) and (i) of subsection 4 of NRS 361.585;

~~{(2)}~~ *(3) An association, as defined in NRS 116.011, that has caused to be recorded a notice of default and election to sell the property pursuant to paragraph (b) of subsection 1 of NRS 116.31162 that has not been rescinded; and*

~~{(3)}~~ *(4) An association, as defined in NRS 116B.030, or a hotel unit owner, as defined in NRS 116B.125, that has caused to be recorded a notice of default and election to sell the property pursuant to paragraph (b) of subsection 1 of NRS 116B.635 that has not been rescinded; and*

(b) Any person specified in paragraphs (a), (e) and (f) of subsection 4 of NRS 361.585.

7. The county treasurer shall approve or deny a claim within 30 days after the period described in subsection 4 for filing a claim has expired. Any records or other documents concerning a claim shall be deemed the working papers of the county treasurer and are confidential. If more than one person files a claim, and the county treasurer is not able to determine who is entitled to the excess proceeds, the matter must be submitted to mediation.

8. If the mediation is not successful, the county treasurer shall:

(a) Conduct a hearing to determine who is entitled to the excess proceeds; or

(b) File an action for interpleader.

9. A person who is aggrieved by a determination of the county treasurer pursuant to this section may, within 90 days after the person receives notice of the determination, commence an action for judicial review of the determination in district court.

10. *If an association, as defined in NRS 116.011, recovers any amount of excess proceeds of a sale of a residential unit, as defined in NRS 116.332, the amount recovered by the association shall be deemed to have satisfied the debt owed by the owner of the residential unit to the association and the association may not recover in a civil action or otherwise collect any deficiency remaining due to the association from the owner.*

11. Any agreement to locate, deliver, recover or assist in the recovery of remaining excess proceeds of a sale which is entered into by a person ~~{who would have been entitled to receive reconveyance of the property pursuant to}~~ *listed in* subsection ~~{4 of NRS 361.585}~~ *6* must:

(a) Be in writing.

(b) Be signed by the person ~~{who would have been entitled to receive reconveyance.}~~ *listed in subsection 6.*

(c) ~~{Not}~~ *If the agreement is entered into by a natural person for assistance in the recovery of excess proceeds remaining from a sale of a residence that was occupied by that natural person as his or her primary residence at the time of the sale, not* provide for a fee of more than 10 percent of the total remaining excess proceeds of the sale due that person.

~~{11}~~ *12.* In addition to authorizing a person pursuant to an agreement described in subsection 10 to file a claim and collect from the county treasurer any property owed to the person, a person ~~{described}~~ *listed* in subsection ~~{4 of NRS 361.585}~~ *6* may authorize a person pursuant to a power of attorney, assignment or any other legal instrument to file a claim and collect from the county treasurer any property owed to him or her. The county is not liable for any losses resulting from

1 the approval of the claim if the claim is paid by the county treasurer in accordance
2 with the provisions of the legal instrument.

3 **Sec. 2.5.** NRS 116.3115 is hereby amended to read as follows:

4 116.3115 1. Until the association makes an assessment for common
5 expenses, the declarant shall pay all common expenses. After an assessment has
6 been made by the association, assessments must be made at least annually, based on
7 a budget adopted at least annually by the association in accordance with the
8 requirements set forth in NRS 116.31151. Unless the declaration imposes more
9 stringent standards, the budget must include a budget for the daily operation of the
10 association and a budget for the reserves required by paragraph (b) of subsection 2.

11 2. Except for assessments under subsections 4 to 7, inclusive, or as otherwise
12 provided in this chapter:

13 (a) All common expenses, including the reserves, must be assessed against all
14 the units in accordance with the allocations set forth in the declaration pursuant to
15 subsections 1 and 2 of NRS 116.2107.

16 (b) The association shall establish adequate reserves, funded on a reasonable
17 basis, for the repair, replacement and restoration of the major components of the
18 common elements and any other portion of the common-interest community that
19 the association is obligated to maintain, repair, replace or restore. The reserves may
20 be used only for those purposes, including, without limitation, repairing, replacing
21 and restoring roofs, roads and sidewalks, and must not be used for daily
22 maintenance. The association may comply with the provisions of this paragraph
23 through a funding plan that is designed to allocate the costs for the repair,
24 replacement and restoration of the major components of the common elements and
25 any other portion of the common-interest community that the association is
26 obligated to maintain, repair, replace or restore over a period of years if the funding
27 plan is designed in an actuarially sound manner which will ensure that sufficient
28 money is available when the repair, replacement and restoration of the major
29 components of the common elements or any other portion of the common-interest
30 community that the association is obligated to maintain, repair, replace or restore
31 are necessary. Notwithstanding any provision of the governing documents to the
32 contrary, to establish adequate reserves pursuant to this paragraph, including,
33 without limitation, to establish or carry out a funding plan, the executive board
34 may, without seeking or obtaining the approval of the units' owners, impose any
35 necessary and reasonable assessments against the units in the common-interest
36 community. Any such assessments imposed by the executive board must be based
37 on the study of the reserves of the association conducted pursuant to NRS
38 116.31152.

39 3. Any assessment for common expenses or installment thereof that is 60 days
40 or more past due bears interest at a rate equal to the prime rate at the largest bank in
41 Nevada as ascertained by the Commissioner of Financial Institutions on January 1
42 or July 1, as the case may be, immediately preceding the date the assessment
43 becomes past due, plus 2 percent. The rate must be adjusted accordingly on each
44 January 1 and July 1 thereafter until the balance is satisfied.

45 4. Except as otherwise provided in the governing documents:

46 (a) Any common expense associated with the maintenance, repair, restoration
47 or replacement of a limited common element must be assessed against the units to
48 which that limited common element is assigned, equally, or in any other proportion
49 the declaration provides;

50 (b) Any common expense benefiting fewer than all of the units or their owners
51 *, including, without limitation, common expenses consisting of the payment, on*
52 *behalf of a unit's owner, of delinquent property taxes or utility charges owed by*

1 *the unit's owner*, may be assessed exclusively against the units or units' owners
2 benefited; and

3 (c) The costs of insurance must be assessed in proportion to risk and the costs
4 of utilities must be assessed in proportion to usage.

5 5. Assessments to pay a judgment against the association may be made only
6 against the units in the common-interest community at the time the judgment was
7 entered, in proportion to their liabilities for common expenses.

8 6. If damage to a unit or other part of the common-interest community, or if
9 any other common expense is caused by the willful misconduct or gross negligence
10 of any unit's owner, tenant or invitee of a unit's owner or tenant, the association
11 may assess that expense exclusively against his or her unit, even if the association
12 maintains insurance with respect to that damage or common expense, unless the
13 damage or other common expense is caused by a vehicle and is committed by a
14 person who is delivering goods to, or performing services for, the unit's owner,
15 tenant or invitee of the unit's owner or tenant.

16 7. The association of a common-interest community created before January 1,
17 1992, is not required to make an assessment against a vacant lot located within the
18 community that is owned by the declarant.

19 8. If liabilities for common expenses are reallocated, assessments for common
20 expenses and any installment thereof not yet due must be recalculated in
21 accordance with the reallocated liabilities.

22 9. The association shall provide written notice to each unit's owner of a
23 meeting at which an assessment for a capital improvement is to be considered or
24 action is to be taken on such an assessment at least 21 calendar days before the date
25 of the meeting.

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