

SENATE BILL NO. 239—SENATOR HARRIS

MARCH 7, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-471)

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 authorizing an employee, agent or community manager of a unit-owner's association to enter the grounds of certain units under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law assigns the responsibility for the maintenance, repair and replacement of a unit in a common-interest community to the owner of the unit and the maintenance, repair and replacement of a common element in the community to the unit-owners' association. (NRS 116.3107) Existing law further provides that the association may, without liability for trespass, enter on the grounds of a unit that is vacant or in the foreclosure process, whether vacant or not, to maintain the exterior of the unit or abate a public nuisance on the exterior of the unit if, after notice and a hearing, the unit's owner refuses or fails to do so. (NRS 116.310312) Under existing law, the association is authorized to charge the unit's owner for the costs of such maintenance or abatement services and any such costs which are not paid by the unit's owner are a lien against the unit. (NRS 116.3102, 116.310312, 116.3116)

This bill revises the definition of "exterior of the unit" for the purpose of determining the areas of a unit that may be maintained by a unit-owners' association that enters the grounds of a unit in accordance with existing law. Under the revised definition, the "exterior of the unit" would include the exterior of any property that a unit owner is obligated to maintain pursuant to the declaration under which the common-interest community was created. Thus, under this bill, an association would be authorized to enter the grounds of a unit to maintain such areas of the unit if the conditions specified in existing law were satisfied.

In addition, this bill sets forth additional circumstances under which a unit-owners' association may, without liability for trespass, enter on the grounds of a unit that is located in a building that contains units divided by horizontal boundaries or vertical boundaries comprised of common walls between units. Under this bill, the association may enter on the grounds of such a unit that is vacant or in the



foreclosure process, whether vacant or not, to abate a water or sewage leak in the unit that is causing damage or, if not immediately abated, may cause damage to the common elements or another unit and to remediate or remove any water or mold damage resulting from the leak if, after notice but before a hearing, the unit's owner refuses or fails to do so.

Under this bill, if the association or its employee, agent or community manager enter on the grounds of a unit to remediate or remove any water or mold damage resulting from a water or sewage leak, the water or mold damage may be remediated or removed only to the extent reasonably necessary because the water or mold damage: (1) threatens the health or safety of the residents of the common-interest community; (2) results in blighting or deterioration of the unit or the surrounding area; or (3) adversely affects the use and enjoyment of nearby units. In addition, if the unit is in the foreclosure process, the association or its employees, agents or community manager are not authorized to remediate or remove such damage unless: (1) the association notifies each holder of a recorded security interest of its intent to remediate the damage; and (2) within 14 days after the mailing of that notice, each holder of a recorded security interest to whom the notice is mailed notifies the association that the holder does not intend to remediate the damage or fails to remediate the damage.

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

Section 1. NRS 116.310312 is hereby amended to read as follows:

116.310312 1. A person who holds a security interest in a unit must provide the association with the person's contact information as soon as reasonably practicable, but not later than 30 days after the person:

(a) Files an action for recovery of a debt or enforcement of any right secured by the unit pursuant to NRS 40.430; or

(b) Records or has recorded on his or her behalf a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to NRS 107.080.

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.



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(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community or public streets;

(2) Threatens the health or safety of the residents of the common-interest community;

(3) Results in blighting or deterioration of the unit or surrounding area; and

(4) Adversely affects the use and enjoyment of nearby units.

(c) If the unit is in a building that contains units divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units:

(1) Abate any water or sewage leak in the unit that is causing damage or, if not immediately abated, may cause damage to the common elements or another unit.

(2) Remediate or remove any water or mold damage resulting from the water or sewage leak to the extent such remediation or removal is reasonably necessary because the water or mold damage threatens the health or safety of the residents of the common-interest community, results in blighting or deterioration of the unit or the surrounding area or adversely affects the use and enjoyment of nearby units. An association, including its employees, agents and community manager, may not enter the grounds of the unit or incur any expense to remediate water or mold damage pursuant to this subparagraph unless:

(I) The association or its employee, agent or community manager mails a notice of the intent of the association, including its employees, agents and community manager, to remediate water or mold damage pursuant to this subparagraph by certified mail to each holder of a recorded security interest encumbering the interest of the unit's owner, at the address of the holder that is provided pursuant to NRS 657.110 on the Internet website maintained by the Division of Financial Institutions of the Department of Business and Industry; and

(II) Within 14 days after the mailing of such notice, each holder of a recorded security interest to whom a notice is sent pursuant to sub-subparagraph (I) has notified the association or its employee, agent or community manager that the holder does not intend to remediate the water or mold damage or has failed to remediate such water or mold damage.

3. If a unit is vacant and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public



1 nuisance , as described in *paragraphs (a) and (b) of subsection 2* , if
2 the unit's owner refuses or fails to do so.

3 4. *If a unit is in a building that contains units divided by*
4 *horizontal boundaries described in the declaration, or vertical*
5 *boundaries that comprise common walls between units, and the*
6 *unit is vacant, the association, including its employees, agents and*
7 *community manager, may, after providing the unit's owner notice*
8 *but before a hearing, enter the grounds of the unit to:*

9 (a) *Abate a water or sewage leak in the unit that is causing*
10 *damage or, if not immediately abated, may cause damage to the*
11 *common elements or another unit if the unit's owner refuses or*
12 *fails to abate the water or sewage leak.*

13 (b) *Remediate or remove any water or mold damage resulting*
14 *from the water or sewage leak to the extent such remediation or*
15 *removal is reasonably necessary because the water or mold*
16 *damage threatens the health or safety of the residents of the*
17 *common-interest community, results in blighting or deterioration*
18 *of the unit or the surrounding area, or adversely affects the use*
19 *and enjoyment of nearby units, if the unit's owner refuses or fails*
20 *to remediate or remove the water or mold damage. An association,*
21 *including its employees, agents and community manager, may not*
22 *enter the ground of the unit or incur any expense to remediate*
23 *water or mold damage pursuant to this subparagraph unless:*

24 (1) *The association or its employee, agent or community*
25 *manager mails a notice of the intent of the association, including*
26 *its employees, agents and community manager, to remediate water*
27 *or mold damage pursuant to this subparagraph by certified mail to*
28 *each holder of a recorded security interest encumbering the*
29 *interest of the unit's owner, at the address of the holder that is*
30 *provided pursuant to NRS 657.110 on the Internet website*
31 *maintained by the Division of Financial Institutions of the*
32 *Department of Business and Industry; and*

33 (2) *Within 14 days after the mailing of such notice, each*
34 *holder of a recorded security interest to whom a notice is sent*
35 *pursuant to subparagraph (1) has notified the association or its*
36 *employee, agent or community manager that the holder does not*
37 *intend to remediate the water or mold damage or has failed to*
38 *remediate such water or mold damage.*

39 5. The association may order that the costs of any maintenance
40 , ~~for~~ abatement , *remediation or removal* conducted pursuant to
41 subsection 2 , ~~for~~ 3 ~~or~~ 4, including, without limitation,
42 reasonable inspection fees, notification and collection costs and
43 interest, be charged against the unit. The association shall keep a
44 record of such costs and interest charged against the unit and has a



1 lien on the unit for any unpaid amount of the charges. The lien may
2 be foreclosed under NRS 116.31162 to 116.31168, inclusive.

3 ~~15-1~~ 6. A lien described in subsection ~~14-1~~ 5 bears interest from
4 the date that the charges become due at a rate determined pursuant
5 to NRS 17.130 until the charges, including all interest due, are paid.

6 ~~16-1~~ 7. Except as otherwise provided in this subsection, a lien
7 described in subsection ~~14-1~~ 5 is prior and superior to all liens,
8 claims, encumbrances and titles other than the liens described in
9 paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the
10 federal regulations of the Federal Home Loan Mortgage Corporation
11 or the Federal National Mortgage Association require a shorter
12 period of priority for the lien, the period during which the lien is
13 prior and superior to other security interests shall be determined in
14 accordance with those federal regulations. Notwithstanding the
15 federal regulations, the period of priority of the lien must not be less
16 than the 6 months immediately preceding the institution of an action
17 to enforce the lien.

18 ~~17-1~~ 8. A person who purchases or acquires a unit at a
19 foreclosure sale pursuant to NRS 40.430 or a trustee's sale pursuant
20 to NRS 107.080 is bound by the governing documents of the
21 association and shall maintain the exterior of the unit in accordance
22 with the governing documents of the association. Such a unit may
23 only be removed from a common-interest community in accordance
24 with the governing documents pursuant to this chapter.

25 ~~18-1~~ 9. Notwithstanding any other provision of law, an
26 association, its directors or members of the executive board,
27 employees, agents or community manager who enter the grounds of
28 a unit pursuant to this section are not liable for trespass.

29 ~~19-1~~ 10. As used in this section:

30 (a) "Exterior of the unit" includes, without limitation, all
31 landscaping outside of a unit , ~~1and1~~ the exterior of all property
32 exclusively owned by the unit owner ~~11-1~~ and the exterior of all
33 *property that the unit owner is obligated to maintain pursuant to*
34 *the declaration.*

35 (b) "Vacant" means a unit:

- 36 (1) Which reasonably appears to be unoccupied;
37 (2) On which the owner has failed to maintain the exterior to
38 the standards set forth in the governing documents of the
39 association; and
40 (3) On which the owner has failed to pay assessments for
41 more than 60 days.

