

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 or interior 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 the grounds and interior of such a



unit that is vacant 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 remove any water or sewage from the unit that is causing damage if the unit's owner refuses or fails to do so. After notice but before a hearing, the association may enter the grounds and interior of such a unit that is vacant to remove damaged components of the unit and to remediate or remove any water or mold damage resulting from a water or sewage leak if the unit's owner refuses or fails to do so.

Under this bill, if the association or its employee, agent or community manager enter the grounds or interior of a unit to remove damaged components or to remediate or remove any water or mold damage resulting from a water or sewage leak, the damaged components may be removed and 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; and (3) adversely affects the use and enjoyment of nearby units.

This bill also provides that if a unit is vacant and not in the foreclosure process, the association or its employees, agents or community manager are not authorized to maintain the exterior of the unit or abate a public nuisance unless the association notifies each holder of a recorded security interest of its intent to maintain the exterior of the unit or abate a public nuisance.

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.

(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.

3. If ~~that~~:

(a) A unit is vacant ~~and the~~;

(b) The association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031 ~~to~~; and

(c) *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 maintain the exterior of the unit or abate a public nuisance, as described in subsection 2, 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,*

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 nuisance, as described in subsection 2, if the unit's owner refuses or fails to do so.

4. ~~The~~ *If a 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, and the unit is vacant, the association, including its employees, agents and community manager, may enter the grounds and interior of the unit to:*

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

(b) *After providing the unit's owner with notice but before a hearing in accordance with the provisions of NRS 116.31031:*



1 (1) Remove any furniture, fixtures, appliances and
2 components of the unit, including, without limitation, flooring,
3 baseboards and drywall, that were damaged as a result of water or
4 mold damage resulting from a water or sewage leak to the extent
5 such removal is reasonably necessary because water or mold
6 damage threatens the health or safety of the residents of the
7 common-interest community, results in blighting or deterioration
8 of the unit or the surrounding area and adversely affects the use
9 and enjoyment of nearby units, if the unit's owner refuses or fails
10 to remediate or remove the water or mold damage.

11 (2) Remediate or remove any water or mold damage in the
12 unit resulting from the water or sewage leak to the extent such
13 remediation or removal is reasonably necessary because the water
14 or mold damage threatens the health or safety of the residents of
15 the common-interest community, results in blighting or
16 deterioration of the unit or the surrounding area and adversely
17 affects the use and enjoyment of nearby units, if the unit's owner
18 refuses or fails to remediate or remove the water or mold damage.

19 5. After the association has provided the unit's owner with
20 notice and an opportunity for a hearing in the manner provided in
21 NRS 116.31031, the association may order that the costs of any
22 maintenance or abatement *or the reasonable costs of remediation*
23 *or removal* conducted pursuant to subsection 2 , ~~for~~ 3 ~~or~~ 4,
24 including, without limitation, reasonable inspection fees,
25 notification and collection costs and interest, be charged against the
26 unit. The association shall keep a record of such costs and interest
27 charged against the unit and has a lien on the unit for any unpaid
28 amount of the charges. The lien may be foreclosed under NRS
29 116.31162 to 116.31168, inclusive.

30 ~~15-1~~ 6. A lien described in subsection ~~14-1~~ 5 bears interest from
31 the date that the charges become due at a rate determined pursuant
32 to NRS 17.130 until the charges, including all interest due, are paid.

33 ~~16-1~~ 7. Except as otherwise provided in this subsection, a lien
34 described in subsection ~~14-1~~ 5 is prior and superior to all liens,
35 claims, encumbrances and titles other than the liens described in
36 paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the
37 federal regulations of the Federal Home Loan Mortgage Corporation
38 or the Federal National Mortgage Association require a shorter
39 period of priority for the lien, the period during which the lien is
40 prior and superior to other security interests shall be determined in
41 accordance with those federal regulations. Notwithstanding the
42 federal regulations, the period of priority of the lien must not be less
43 than the 6 months immediately preceding the institution of an action
44 to enforce the lien.



~~7-7~~ 8. A person who purchases or acquires a unit at a foreclosure sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS 107.080 is bound by the governing documents of the association and shall maintain the exterior of the unit in accordance with the governing documents of the association. Such a unit may only be removed from a common-interest community in accordance with the governing documents pursuant to this chapter.

~~8-8~~ 9. Notwithstanding any other provision of law, an association, its directors or members of the executive board, employees, agents or community manager who enter the grounds *or interior* of a unit pursuant to this section are not liable for trespass.

~~9-9~~ 10. As used in this section:

(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit , ~~land~~ the exterior of all property exclusively owned by the unit owner ~~and~~ *and the exterior of all property that the unit owner is obligated to maintain pursuant to the declaration.*

(b) *"Remediation" does not include restoration.*

(c) "Vacant" means a unit:

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

