

Senate Bill No. 72–Committee on Judiciary

CHAPTER.....

AN ACT relating to common-interest communities; requiring a limited-purpose association to comply with certain requirements relating to the establishment and foreclosure of a lien for assessments; revising provisions relating to the imposition of fines that may be assessed for certain violations of the governing documents of a unit-owners' association; revising provisions relating to meetings of the executive board of a unit-owners' association; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a limited-purpose association, which includes an association created for the limited purpose of maintaining the landscape of the common elements, facilities for flood control or a rural agricultural residential common-interest community, is exempt from the requirements of most of the provisions of chapter 116 of NRS, the Uniform Common-Interest Ownership Act. (NRS 116.1201) **Section 1** of this bill requires a limited-purpose association to comply with the requirements of the Act pertaining to the establishment and foreclosure of a lien for assessments.

Existing law: (1) authorizes the executive board of a unit-owners' association to impose fines for violations of the governing documents of the association; and (2) provides that if the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. (NRS 116.31031) **Section 2** of this bill requires the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations establishing the criteria used in determining whether a violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the severity of such violations and limitations on the amounts of the fines. **Section 2** also provides that: (1) if the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents; and (2) if the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000 per hearing against each unit's owner or tenant or invitee of a unit's owner or tenant.

Existing law also provides that a fine may not be imposed against a unit's owner for a violation committed by an invitee of the unit's owner or the tenant unless the unit's owner: (1) participated in or authorized the violation; (2) had prior notice of the violation; or (3) had an opportunity to stop the violation and failed to do so. (NRS 116.31031) **Section 2** provides that such requirements: (1) apply also to fines imposed against a tenant; and (2) do not apply if the violation poses an



imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

Additionally, existing law provides that if a fine is imposed for a violation and the violation is not cured within 14 days or any longer period established by the executive board: (1) the violation is deemed a continuing violation; and (2) the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. (NRS 116.31031) **Section 2** provides that the amount of such an additional fine for a continuing violation must not exceed the amount of the original fine for the violation.

Existing law provides that an executive board may meet in executive session to consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion are protected by the attorney-client privilege. (NRS 116.31085) **Section 3** of this bill eliminates the requirement that such matters must relate to proposed or pending litigation for the executive board to meet in executive session and authorizes the executive board to meet in executive session if the contents of the discussion are protected by the attorney-client privilege.

Existing law also requires an executive board to meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board, in which case the person: (1) is entitled to attend all portions of the hearing related to the alleged violation; (2) is entitled to due process; and (3) is not entitled to attend the deliberations of the executive board. The executive board is required to maintain minutes of any decision made concerning an alleged violation and, upon request, to provide a copy of the decision to the person or the person's designated representative. (NRS 116.31085) **Section 3** provides that: (1) the person is entitled to receive written notice of the decision of the executive board regarding the alleged violation within a reasonable time after the decision is made; and (2) the period to cure a violation before it becomes a continuing violation is deemed not to commence until the date on which the notice of the decision of the executive board is provided to the person.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

Section 1. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

(a) A limited-purpose association, except that a limited-purpose association:

(1) Shall pay the fees required pursuant to NRS 116.31155, except that if the limited-purpose association is created for a rural agricultural residential common-interest community, the



limited-purpose association is not required to pay the fee unless the association intends to use the services of the Ombudsman;

(2) Shall register with the Ombudsman pursuant to NRS 116.31158;

(3) Shall comply with the provisions of:

(I) NRS 116.31038;

(II) NRS 116.31083 and 116.31152, unless the limited-purpose association is created for a rural agricultural residential common-interest community;

(III) NRS 116.31073, if the limited-purpose association is created for maintaining the landscape of the common elements of the common-interest community; ~~and~~

(IV) NRS 116.31075, if the limited-purpose association is created for a rural agricultural residential common-interest community; *and*

(V) NRS 116.3116 to 116.31168, inclusive.

(4) Shall comply with the provisions of NRS 116.4101 to 116.412, inclusive, as required by the regulations adopted by the Commission pursuant to paragraph (b) of subsection 5; and

(5) Shall not enforce any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(b) Common-interest communities or units located outside of this State, but NRS 116.4102 and 116.4103, and, to the extent applicable, NRS 116.41035 to 116.4107, inclusive, apply to a contract for the disposition of a unit in that common-interest community signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

(c) A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 55,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.

(d) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;



(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992;

(d) Except as otherwise provided in subsection 8 of NRS 116.31105, prohibit a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government, except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives;

(e) Prohibit a master association which governs a time-share plan created pursuant to chapter 119A of NRS from providing for a representative form of government for the time-share plan; or

(f) Prohibit a master association which governs a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted and which is exempt from the provisions of this chapter pursuant to subsection 2 of NRS 116.12077 from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. The Commission shall establish, by regulation:

(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and

(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.

6. As used in this section, "limited-purpose association" means an association that:

(a) Is created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community; and

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

Sec. 2. NRS 116.31031 is hereby amended to read as follows:

116.31031 1. Except as otherwise provided in this section, if a unit's owner or a tenant or an invitee of a unit's owner or a tenant



violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or the invitee of the unit's owner or the tenant from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or the invitee of the unit's owner or the tenant from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or the invitee of the unit's owner or the tenant for each violation, except that:

(1) A fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305; and

(2) A fine may not be imposed against a unit's owner or a tenant or invitee of a unit's owner or a tenant for a violation of the governing documents which involves a vehicle and which is committed by a person who is delivering goods to, or performing services for, the unit's owner or tenant or invitee of the unit's owner or the tenant.

➤ If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community ~~§~~ *as provided in the regulations adopted by the Commission*, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community ~~§~~ *as provided in the regulations adopted by the Commission*, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000 ~~§, whichever is less.~~ *per hearing against each unit's owner or tenant or invitee of the unit's owner or tenant.* The limitations on the amount of the fine do not apply to any charges or costs that may be collected by the association pursuant to this section if the fine becomes past due. *The Commission shall adopt regulations establishing the criteria used in determining whether a violation poses an imminent threat of causing a substantial*



adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the severity of such violations and limitations on the amounts of the fines.

(c) Send a written notice to cure an alleged violation, without the imposition of a fine, to the unit's owner and, if different, the person responsible for curing the alleged violation. Any such written notice must:

(1) Include an explanation of the applicable provisions of the governing documents that form the basis of the alleged violation;

(2) Specify in detail the alleged violation and the proposed action to cure the alleged violation;

(3) Provide a clear and detailed photograph of the alleged violation, if the alleged violation relates to the physical condition of the unit or the grounds of the unit or an act or a failure to act of which it is possible to obtain a photograph; and

(4) Provide the unit's owner or the tenant a reasonable opportunity to cure the alleged violation before the executive board may take additional actions, including, without limitation, other remedies available pursuant to this section.

2. ~~The~~ *Unless the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community as provided in the regulations adopted by the Commission, the* executive board may not impose a fine pursuant to subsection 1 against a unit's owner *or tenant* for a violation of any provision of the governing documents of an association committed by an invitee of the unit's owner or the tenant unless the unit's owner ~~is~~ *or tenant*:

(a) Participated in or authorized the violation;

(b) Had prior notice of the violation ~~is~~ *pursuant to paragraph (c) of subsection 1*; or

(c) Had an opportunity to stop the violation and failed to do so.

3. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall 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, a schedule of the fines that may be imposed for those violations.

4. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the alleged violation, the unit's owner and, if different, the person against whom the fine will be



imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the alleged violation; and

(b) Within a reasonable time after the discovery of the alleged violation, the unit's owner and, if different, the person against whom the fine will be imposed has been provided with:

(1) Written notice:

(I) Specifying in detail the alleged violation, the proposed action to cure the alleged violation, the amount of the fine, and the date, time and location for a hearing on the alleged violation; and

(II) Providing a clear and detailed photograph of the alleged violation, if the alleged violation relates to the physical condition of the unit or the grounds of the unit or an act or a failure to act of which it is possible to obtain a photograph; and

(2) A reasonable opportunity to cure the alleged violation or to contest the alleged violation at the hearing.

➤ For the purposes of this subsection, a unit's owner shall not be deemed to have received written notice unless written notice is mailed to the address of the unit and, if different, to a mailing address specified by the unit's owner.

5. The executive board must schedule the date, time and location for the hearing on the alleged violation so that the unit's owner and, if different, the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

6. The executive board must hold a hearing before it may impose the fine, unless the fine is paid before the hearing or unless the unit's owner and, if different, the person against whom the fine will be imposed:

(a) Executes a written waiver of the right to the hearing; or

(b) Fails to appear at the hearing after being provided with proper notice of the hearing.

7. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation, **in an amount that does not exceed the amount of the original fine**, for each 7-day period or portion thereof that the violation is not cured. Any additional fine ~~may~~:

(a) May be imposed without providing the opportunity to cure the violation and without the notice and an opportunity to be heard required by paragraph (b) of subsection 4 ~~is~~; **and**



(b) Is not subject to any limitation on the amount of fines set forth in subsection 1 or the regulations adopted pursuant thereto.

8. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on alleged violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

9. A member of the executive board shall not participate in any hearing or cast any vote relating to a fine imposed pursuant to subsection 1 if the member has not paid all assessments which are due to the association by the member. If a member of the executive board:

(a) Participates in a hearing in violation of this subsection, any action taken at the hearing is void.

(b) Casts a vote in violation of this subsection, the vote is void.

10. The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

11. Any past due fine must not bear interest, but may include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

12. If requested by a person upon whom a fine was imposed, not later than 60 days after receiving any payment of a fine, an association shall provide to the person upon whom the fine was imposed a statement of the remaining balance owed.

Sec. 3. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to open or consider bids for an association project as defined in NRS 116.31086, or to enter into, renew, modify, terminate or take any other action regarding a contract.

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association ~~for matters relating to proposed or pending litigation~~ if the contents of the



discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board ~~[If the]~~, *in which case the hearing must be held in a meeting of the executive board pursuant to NRS 116.31083.* The person who may be sanctioned for the alleged violation : ~~requests in writing that an open hearing be conducted, the person:]~~

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses;

(b) Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; ~~and]~~

(c) Is not entitled to attend the deliberations of the executive board ~~[; and]~~; *and*

(d) Is entitled to receive written notice of the decision of the executive board regarding the alleged violation within a reasonable time after the decision is made. The period to cure a violation before it becomes a continuing violation as provided in subsection 7 of NRS 116.31031 shall be deemed not to commence until the date on which the notice of the decision of the executive board is provided to the person sanctioned for the violation.

5. The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session



must be generally noted in the minutes of the meeting of the executive board. If the executive board holds a meeting limited exclusively to an executive session pursuant to paragraph (c) or (d) of subsection 3, at the next regularly scheduled meeting of the executive board, the executive board shall acknowledge that the executive board met in accordance with paragraph (c) or (d) of subsection 3, as applicable, and include such an acknowledgment in the minutes of the meeting at which the acknowledgment was made. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation . ~~and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to the person's designated representative.~~

7. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 4. This act becomes effective upon passage and approval.

