

Amendment No. 636

Assembly Amendment to Senate Bill No. 378 (BDR 10-1059)

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.

SJQ/BAW



Date: 5/21/2023

S.B. No. 378—Revises provisions relating to common-interest communities.
(BDR 10-1059)



SENATE BILL NO. 378—SENATOR CANNIZZARO

MARCH 27, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-1059)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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 the type of documents that are required to be made available on the Internet website or within the electronic portal that is required to be established and maintained by certain unit-owners' associations; setting forth certain requirements for an Internet website or electronic portal that provides the ability for a unit's owner to make certain payments electronically; revising requirements concerning the provision of certain notices by an association; ~~authorizing an association to purchase a unit in a common interest community at a foreclosure sale;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires each association of a common-interest community that contains 150 or more units to establish and maintain a secure Internet website or electronic portal and make available on the website or within the electronic portal any documents relating to the association. Existing law also requires the Internet website or online portal to provide units' owners with the ability to pay assessments electronically. (NRS 116.31069) **Section 4** of this bill revises those requirements to: (1) require only certain specified documents concerning the association to be made available on the Internet website or within the electronic portal; and (2) eliminate the requirement that the Internet website or electronic portal provide units' owners the ability to pay assessments electronically. Instead, **section 1** of this bill authorizes such an Internet website or electronic portal to provide units' owners with the ability to pay obligations electronically if certain requirements are met, including, without limitation, the requirement that the association maintains certain insurance and that the executive board of the association makes a determination that providing units' owners the ability to make such payments is in the best interest of the association. **Section 2** of this bill makes a conforming change to indicate the proper placement of **section 1** in the Nevada Revised Statutes.

Existing law requires, in general, any notice required to be given to a units' owner by an association and any communication from or other information provided by the association to be delivered to the mailing or electronic mail address designated by the unit's owner, unless the unit's owner has opted out of receiving electronic communications or has not designated an electronic mail address. (NRS 116.31068) **Section 3** of this bill eliminates those requirements for notice with respect to communications from and other information provided by the association and instead requires, with certain exceptions, such notices to be delivered to

the electronic mail address that a unit's owner designates. **Section 3** sets forth the manner in which an association is required to deliver such notices to a unit's owner who has opted out of receiving electronic notices or who has not designated an electronic mail address at which to receive notices.

~~[Existing law provides that a unit owners' association has a lien on a unit in a common-interest community for certain assessments and charges imposed on the unit's owner from the time the assessment or charge becomes due and establishes the process for the foreclosure of such liens, including the sale of the unit. (NRS 116.310312, 116.3116-116.31168) Existing law prohibits various persons from purchasing the unit at the foreclosure sale, including the person conducting the sale and any person who was involved in the process of foreclosing the association's lien. (NRS 116.31164) Section 5 of this bill authorizes an association to purchase a unit at a sale for the foreclosure of its lien by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of the lien.]~~

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An Internet website or electronic portal established and maintained by an association pursuant to NRS 116.31069 may provide units' owners with the ability to pay obligations electronically only if:

(a) The association, or if the association has contracted with a payment processor, the payment processor, maintains a policy of cybersecurity insurance in a minimum aggregate amount of \$5,000,000 that provides coverage for potential losses associated with the unauthorized acquisition of personal information provided to process payments through the Internet website or electronic portal, including, without limitation, losses caused by identity theft.

(b) For an association that has contracted with a payment processor who maintains a policy of cybersecurity insurance described in paragraph (a), the association must maintain its own policy of cybersecurity insurance in a minimum aggregate amount of:

(1) For an association that contains 150 units or less, \$250,000;

(2) For an association that contains more than 150 units and not more than 250 units, \$500,000; and

(3) For an association that contains 250 units or more, \$1,000,000.

(c) The Internet website or electronic portal allows the association or payment processor to suspend the ability of a unit's owner to make a payment through the Internet website or electronic portal concerning any past due obligation that has been assigned to a third party for collection.

(d) The association or payment processor complies with the requirements of NRS 603A.010 to 603A.290, inclusive, with respect to any personal information collected through the Internet website or online portal.

(e) The executive board of the association has conducted an evaluation of the costs and benefits of providing units' owners the ability to pay obligations through the Internet website or electronic portal, including, without limitation, the cost of the cybersecurity insurance required by this section and the potential impact on units' owners in the association, and has determined that providing units' owners the ability to make such payments through the Internet website or electronic portal is in the best interest of the association.

2. *Nothing in this section requires a third party who has been assigned a past due obligation for collection to provide the debtor with the ability to pay the past due obligation through an Internet website or electronic portal.*

3. *As used in this section:*

(a) *"Cybersecurity insurance" means insurance that provides coverage for losses arising out of or relating to data breaches, unauthorized intrusions into an information system, computer viruses, ransomware, identity theft and similar exposures.*

(b) *"Obligation" has the meaning ascribed to it in NRS 116.310313.*

(c) *"Payment processor" means a person with whom an association has contracted to process payments made through an Internet website or electronic portal established and maintained by an association pursuant to NRS 116.31069 on behalf of the association.*

(d) *"Personal information" has the meaning ascribed to it in NRS 603A.040.*

Sec. 2. NRS 116.1203 is hereby amended to read as follows:

116.1203 1. Except as otherwise provided in subsections 2 and 3, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. The provisions of NRS 116.12065 and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that the definitions are necessary to construe any of those provisions, apply to a residential planned community containing more than 6 units.

3. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, the provisions of NRS 116.3101 to 116.350, inclusive, *and section 1 of this act* and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than 6 units.

Sec. 3. NRS 116.31068 is hereby amended to read as follows:

116.31068 1. Except as otherwise provided in ~~[subsection 3 and unless a unit's owner opts out of receiving electronic communications or has not designated an electronic mail address,]~~ *subsections 2, 3 and 6*, an association shall deliver any notice required to be given by the association under this chapter ~~[and any communication from or other information provided by the association]~~ to the ~~[mailing or]~~ electronic mail ~~[addresses]~~ *address* a unit's owner designates.

2. Except as otherwise provided in subsection ~~[3.]~~ *6*, if a unit's owner has opted out of receiving electronic ~~[communications, or has not designated an electronic mail address to which a notice, communication or other information can be delivered,]~~ *notices*, the association may deliver notices ~~[, communications and other information]~~ by:

(a) Hand delivery to each unit's owner;

(b) Hand delivery, United States mail, postage paid, or commercially reasonable delivery service to the mailing address of each unit; or

(c) Any other method reasonably calculated to provide notice to the unit's owner.

~~[2.]~~ *3. Except as otherwise provided in subsection 6, if a unit's owner has not opted out of receiving electronic notices, but has not designated an electronic mail address at which to receive notices pursuant to this section, the association may deliver any notice required to be given pursuant to this chapter by:*

(a) *Electronic means, including, without limitation, by electronic mail to an electronic mail address that a unit's owner has provided to the association but has not designated as the electronic mail address at which to receive notices pursuant to this section; or*

1 *(b) Any of the methods specified in subsection 2.*

2 *4. A unit's owner is entitled to designate only one electronic mail address at*
3 *which to receive notices pursuant to this section.*

4 *5. The ineffectiveness of a good faith effort to deliver notice by an authorized*
5 *means does not invalidate action taken at or without a meeting.*

6 ~~{3.}~~ 6. The provisions of this section do not apply:

7 (a) To a notice required to be given pursuant to NRS 116.3116 to 116.31168,
8 inclusive; or

9 (b) If any other provision of this chapter specifies the manner in which a notice
10 ~~{, communication or other information}~~ must be given by an association.

11 **Sec. 4.** NRS 116.31069 is hereby amended to read as follows:

12 116.31069 1. Each association of a common-interest community that
13 contains 150 or more units shall establish and maintain a secure Internet website or
14 electronic portal that may be accessed by any unit's owner. The association shall
15 make available on the website or within the electronic portal ~~{any}~~ *the following*
16 documents relating to the common-interest community or the association : ~~{~~
17 ~~including, without limitation:}~~

18 (a) The governing documents;

19 (b) ~~{The most recent copy of the declaration of covenants, conditions and~~
20 ~~restrictions;}~~

21 ~~—(c)—~~ The annual budget of the association and any proposed budgets; *and*

22 ~~{(d)}~~ (c) The notices and agendas for any upcoming meetings of the
23 association. ~~{, and~~

24 ~~—(e)—~~ ~~{Any other documents required to be posted by law or regulation.}~~

25 2. ~~{The Internet website or electronic portal established and maintained~~
26 ~~pursuant to subsection 1 must provide units' owners with the ability to pay~~
27 ~~assessments electronically.}~~

28 ~~—3.—~~ Each association of a common-interest community that contains fewer than
29 150 units may, and is encouraged to, establish and maintain a secure Internet
30 website or electronic portal pursuant to subsection 1.

31 **Sec. 5.** ~~{NRS 116.31164 is hereby amended to read as follows:}~~

32 ~~—116.31164 1. The sale must be conducted in accordance with the provisions~~
33 ~~of this section.~~

34 ~~—2. If the holder of the security interest described in paragraph (b) of~~
35 ~~subsection 2 of NRS 116.3116 satisfies the amount of the association's lien that is~~
36 ~~prior to its security interest not later than 5 days before the date of sale, the sale~~
37 ~~may not occur unless a record of such satisfaction is recorded in the office of the~~
38 ~~county recorder of the county in which the unit is located not later than 2 days~~
39 ~~before the date of sale.~~

40 ~~—3. The sale must be made between the hours of 9 a.m. and 5 p.m. and:~~

41 ~~—(a) If the unit is located in a county whose population is less than 100,000, at~~
42 ~~the courthouse in the county in which the unit is located.~~

43 ~~—(b) If the unit is located in a county whose population is 100,000 or more, at~~
44 ~~the public location in the county designated by the governing body of the county to~~
45 ~~conduct a sale of real property pursuant to NRS 107.080.~~

46 ~~—4. The sale may be conducted by the association, its agent or attorney, or a~~
47 ~~title insurance company or escrow agent licensed to do business in this State.~~

48 ~~—5. The association or other person conducting the sale may from time to time~~
49 ~~postpone the sale by such advertisement and notice as it considers reasonable or,~~
50 ~~without further advertisement or notice, by proclamation made to the persons~~
51 ~~assembled at the time and place previously set and advertised for the sale, except~~
52 ~~that:~~

~~— (a) If the sale is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location; and~~

~~— (b) If such a date has been postponed by oral proclamation three times, any new sale information must be provided by notice as provided in NRS 116.311635.~~

~~— 6. On the day of sale, at the time and place specified in the notice, the person conducting the sale:~~

~~— (a) Shall state to the persons assembled for the sale whether or not the holder of the security interest described in paragraph (b) of subsection 2 of NRS 116.3116 has satisfied the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116.~~

~~— (b) Except as otherwise provided in subsection 7, may sell the unit at public auction to the highest cash bidder.~~

~~— 7. [The] Except as otherwise provided in subsection 8, the following persons may not purchase the unit:~~

~~— (a) Any person who was involved in the process of foreclosing the association's lien pursuant to NRS 116.3116 to 116.31168, inclusive, including, without limitation:~~

~~— (1) Any person who exercised discretion in any decision relating to the foreclosure of the lien and any person employed by such a person;~~

~~— (2) A collection agency used by the association to collect an obligation relating to the unit;~~

~~— (3) A community manager of the association and any of his or her assistants;~~

~~— (4) A member of the executive board of the association; or~~

~~— (5) An attorney who provided representation to any of the parties with regard to the foreclosure of the lien;~~

~~— (b) Any person who is related by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity to a person set forth in paragraph (a); or~~

~~— (c) The person conducting the sale or any entity in which that person holds an interest.~~

~~— 8. Notwithstanding any provision of the governing documents or any agreement to the contrary, the association may purchase the unit and hold, lease, mortgage or convey it. The association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of the lien.~~

~~— 9. After the sale, the person conducting the sale shall:~~

~~— (a) Comply with the provisions of subsection 2 of NRS 116.31166; and~~

~~— (b) Apply the proceeds of the sale for the following purposes in the following order:~~

~~— (1) The reasonable expenses of sale;~~

~~— (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;~~

~~— (3) Satisfaction of the association's lien;~~

~~— (4) Satisfaction in the order of priority of any subordinate claim of record; and~~

~~— (5) Remittance of any excess to the unit's owner.] (Deleted by amendment.)~~

Sec. 6. This act becomes effective upon passage and approval.