

Amendment No. 702

Assembly Amendment to Senate Bill No. 417 First Reprint (BDR 10-970)

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.

BAW



Date: 5/21/2023

S.B. No. 417—Revises provisions governing common-interest communities.
(BDR 10-970)



SENATE BILL NO. 417—COMMITTEE ON JUDICIARY

MARCH 27, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing common-interest communities. (BDR 10-970)

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 provisions relating to the requirement that the executive board of a unit-owners' association make certain records available for review at a designated location; ~~requiring a unit's owner to pay the actual costs incurred by the association in providing such records under certain circumstances; prohibiting certain persons from taking retaliatory action against a unit-owners' association or certain other persons associated with the association; prohibiting certain persons within a common interest community from bullying another person within that same common interest community; revising the definition of the term violation relating to violations of the laws governing common interest communities;~~ authorizing the Commission for Common-Interest Communities and Condominium Hotels **or a hearing panel** to impose certain sanctions on a person who files certain affidavits with the Real Estate Division of the Department of Business and Industry; ~~requiring the Division to take certain actions before referring an affidavit relating to a violation to the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[Existing law requires the executive board of a unit-owners' association of a common interest community to make certain financial records available for review at the business office of the association or some other nearby location including, among other records, certain personnel records of the employees of the association relating to the number of hours worked and the salaries and benefits of those employees. (NRS 116.31175) Section 1 of this bill excludes from the records the executive board must make available any personnel records of the employees of the association, including, without limitation, employment contracts, information regarding the salaries and benefits of employees and any other information concerning the employees of the association.]~~

—Existing law requires the executive board to provide, upon request: (1) a copy of such records to the unit's owner or the Ombudsman for Owners in Common-Interest Communities

and Condominium Hotels; (2) a copy in electronic format at no charge to the unit's owner or the Ombudsman; or (3) if the board is unable to provide a copy in electronic format, a copy in paper format at a cost not to exceed a certain amount per page of the record.] Existing law prohibits the executive board of a unit-owners' association of a common-interest community from requiring a unit's owner to pay an amount in excess of \$10 per hour to review any books, records, contracts or other papers of the association. (NRS 116.31175) **Section 1** [revises this prohibition and instead authorizes the executive board to require a unit's owner or Ombudsman to pay the actual costs incurred by the association for the unit's owner to review any such record:

— Existing law provides that if a unit's owner is the subject of a retaliatory action based on certain complaints or requests, the unit's owner may bring an action to recover compensatory damages and attorney's fees and costs. (NRS 116.31183) Section 2 of this bill prohibits a unit's owner, tenant or guest or invitee of a unit's owner or tenant to take, or direct or encourage another person to take, any retaliatory action against the executive board, a member of the executive board, a community manager or an officer, employee or agent of the association based on certain actions taken by the executive board, member, community manager or officer, employee or agent. Section 2 also provides that the executive board, member, community manager or officer, employee or agent may bring an action to recover compensatory damages and attorney's fees and costs from the person who took such a retaliatory action.

— Existing law prohibits certain persons within a common interest community from threatening, harassing or otherwise engaging in certain courses of conduct against another person within that same common interest community. (NRS 116.31184) Section 2.5 of this bill additionally prohibits certain persons within a common interest community from bullying another person within that same common interest community.

— Section 3 of this bill revises the definition of the term "violation" for the purposes of existing law relating to violations of the laws governing common interest communities to include a violation of the provision of law that prohibits a person from threatening, harassing or otherwise engaging in bullying or a course of conduct against certain persons in a unit-owners' association which: (1) causes harm or serious emotional distress, or the reasonable apprehension thereof to that person; or (2) creates a hostile environment for that person. (NRS 116.31184, 116.745) increases the maximum hourly amount the executive board may require a unit's owner to pay to review any books, records, contracts or other papers of the association to \$25 per hour.

Existing law authorizes a person who is aggrieved by an alleged violation to file with the Real Estate Division of the Department of Business and Industry a written affidavit which includes certain information. Existing law authorizes the Commission for Common-Interest Communities and Condominium Hotels or a hearing panel to impose ~~certaint~~ an administrative ~~finest~~ fine of not more than \$1,000 against ~~ta~~ any person who knowingly files a false or fraudulent affidavit with the Division. (NRS 116.760) **Section 4** of this bill : (1) increases the maximum amount of the administrative fine to not more than \$10,000; and (2) additionally authorizes the Commission or hearing panel to impose sanctions that disqualify a person from serving as a member of the executive board for a period of not more than 10 years against any person who knowingly files a vexatious, misleading, retaliatory, frivolous, false or fraudulent affidavit with the Division.

[Existing law provides that upon receipt of such an affidavit, the Division must refer the affidavit to the Ombudsman. (NRS 116.765) Section 5 of this bill requires the Division to determine whether the alleged violation, if assumed to be true, would constitute a violation before referring the affidavit to the Ombudsman.]

Section 4 also authorizes the Commission or a hearing panel to designate a person as a vexatious affiant if the Commission or hearing panel has imposed an administrative fine or sanctions against the person for knowingly filing a false or fraudulent affidavit with the Division on two or more occasions. Under section 4, if the Commission or a hearing panel has designated a person as a vexatious affiant, then: (1) the Commission or hearing panel is required to transmit a copy of the order designating the person as a vexatious affiant to the Division; and (2) the Division shall not thereafter accept an affidavit filed by the person unless the person first submits a copy of the affidavit to the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels

and, after reviewing the affidavit, the Ombudsman grants leave for the person to file the affidavit with the Division.

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

Section 1. NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in subsection 4, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review at the business office of the association or a designated business location not to exceed 60 miles from the physical location of the common-interest community and during the regular working hours of the association, including, without limitation:

(a) The financial statement of the association;

(b) The budgets of the association required to be prepared pursuant to NRS 116.31151;

(c) The study of the reserves of the association required to be conducted pursuant to NRS 116.31152; and

(d) All contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party.

2. The executive board shall provide a copy of any of the records described in paragraphs (a), (b) and (c) of subsection 1 to a unit's owner or the Ombudsman within 21 days after receiving a written request therefor. Such records must be provided in electronic format at no charge to the unit's owner or, if the association is unable to provide the records in electronic format, the executive board may charge a fee to cover the actual costs of preparing a copy, but the fee may not exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

3. If the executive board fails to provide a copy of any of the records pursuant to subsection 2 within 21 days, the executive board must pay a penalty of \$25 for each day the executive board fails to provide the records.

4. The provisions of subsection 1 do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees; [including, without limitation, employment contracts, information regarding the salaries and benefits of employees and any other information concerning the employees of the association;]

(b) The records of the association relating to another unit's owner, including, without limitation, any architectural plan or specification submitted by a unit's owner to the association during an approval process required by the governing documents, except for those records described in subsection 5; and

(c) Any document, including, without limitation, minutes of an executive board meeting, a reserve study and a budget, if the document:

(1) Is in the process of being developed for final consideration by the executive board; and

(2) Has not been placed on an agenda for final approval by the executive board.

5. The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:

(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

(c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner to search and review the general records concerning violations of the governing documents.

6. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and

(b) If the Ombudsman is denied access to the books, records or other papers, request the Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production.

7. The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108; or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

8. The executive board ~~shall not [may]~~ require a unit's owner to pay an amount in excess of \$101 \$25 per hour ~~[the actual costs incurred by the association for the unit's owner]~~ to review any books, records, contracts or other papers of the association pursuant to the provisions of subsection 1.

~~[9. As used in this section, "actual costs" includes, without limitation:~~
~~(a) The cost of gathering, preparing, copying or providing records, regardless of format;~~

~~(b) The cost of retrieving records from storage; and~~

~~(c) Any other related cost incurred by the association in allowing a unit's owner to review any books, records, contracts or other papers of the association.]~~

Sec. 2. ~~[NRS 116.31183 is hereby amended to read as follows:~~

~~116.31183 1. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:~~

~~(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;~~

~~(b) Recommended the selection or replacement of an attorney, community manager or vendor; or~~

~~(c) Requested in good faith to review the books, records or other papers of the association.~~

~~2. A unit's owner, a tenant or a guest or invitee of a unit's owner or tenant shall not take, or direct or encourage another person to take, any retaliatory action against the executive board, a member of the executive board, a community manager or an officer, employee or agent of the association because the executive board, member of the executive board, community manager or officer, employee or agent of the association has:~~

~~1 (a) In good faith, provided a unit's owner or, if different, the person against~~
~~2 whom a fine will be imposed, with a notice of the applicable provisions of law or~~
~~3 governing documents of the association that form the basis of an alleged~~
~~4 violation;~~

~~5 (b) Failed in good faith to respond to a request or demand within the~~
~~6 prescribed period pursuant to the governing documents of the association or this~~
~~7 chapter; or~~

~~8 (c) Refused in good faith to provide confidential information of the~~
~~9 association upon request or to otherwise engage in an unlawful activity.~~

~~10 3. In addition to any other remedy provided by law, upon a violation of this~~
~~11 section, a unit's owner, member of the executive board, community manager or~~
~~12 officer, employee or agent of an association may bring a separate action to~~
~~13 recover:~~

~~14 (a) Compensatory damages; and~~

~~15 (b) Attorney's fees and costs of bringing the separate action.~~

~~16 4. As used in this section:~~

~~17 (a) "Retaliatory action" includes, without limitation, making defamatory~~
~~18 statements on social media or another similar online forum.~~

~~19 (b) "Social media" has the meaning ascribed to it in NRS 232.003.] (Deleted~~
~~20 by amendment.)~~

Sec. 2.5. ~~21 NRS 116.31184 is hereby amended to read as follows:~~

~~22 116.31184 1. A community manager, an agent or employee of the~~
~~23 community manager, a member of the executive board, an officer, employee or~~
~~24 agent of an association, a unit's owner or a guest or tenant of a unit's owner shall~~
~~25 not willfully and without legal authority threaten, harass or otherwise engage in~~
~~26 bullying or a course of conduct against any other person who is the community~~
~~27 manager of his or her common interest community or an agent or employee of that~~
~~28 community manager, a member of the executive board of his or her association, an~~
~~29 officer, employee or agent of his or her association, another unit's owner in his or~~
~~30 her common interest community or a guest or tenant of a unit's owner in his or her~~
~~31 common interest community which:~~

~~32 (a) Causes harm or serious emotional distress, or the reasonable apprehension~~
~~33 thereof, to that person; or~~

~~34 (b) Creates a hostile environment for that person.~~

~~35 2. A person who violates the provisions of subsection 1 is guilty of a~~
~~36 misdemeanor.~~

~~37 3. As used in this section, "bullying:"~~

~~38 (a) Means written, verbal or electronic expressions or physical acts or~~
~~39 gestures, or any combination thereof, that are directed at a person or group of~~
~~40 persons, or a single severe and willful act or expression that is directed at a~~
~~41 person or group of persons, and:~~

~~42 (1) Have the effect of:~~

~~43 (I) Damaging the property of a person; or~~

~~44 (II) Placing a person in reasonable fear of damage to the property of~~
~~45 the person;~~

~~46 (2) Interfere with the rights of a person by:~~

~~47 (I) Creating an intimidating or hostile environment for the person; or~~

~~48 (II) Substantially interfering with the ability of the person to~~
~~49 participate in or benefit from services, activities or privileges provided by a~~
~~50 common interest community; or~~

~~51 (3) Are acts or conduct described in subparagraph (1) or (2) and are~~
~~52 based upon the:~~

~~(I) Actual or perceived race, color, national origin, ancestry, religion, gender identity or expression, sexual orientation, physical or mental disability of a person, sex or any other distinguishing characteristics or background of a person; or~~

~~(II) Association of a person with another person having one or more of those actual or perceived characteristics;~~

~~(b) Includes, without limitation:~~

~~(1) Repeated or pervasive taunting, name-calling, belittling, mocking or use of put-downs or demeaning humor regarding the actual or perceived race, color, national origin, ancestry, religion, gender identity or expression, sexual orientation, physical or mental disability of a person, sex or any other distinguishing characteristic or background of a person;~~

~~(2) Behavior that is intended to harm another person by damaging or manipulating his or her relationships with others by conduct that includes, without limitation, spreading false rumors;~~

~~(3) Repeated or pervasive intimidation such as the use of aggressive, menacing or disrespectful gestures;~~

~~(4) Threats of harm to the possessions of a person, whether such threats are transmitted verbally, electronically or in writing;~~

~~(5) Blackmail, extortion or demands for protection money or involuntary loans or donations;~~

~~(6) Except as otherwise provided in NRS 116.345, blocking access to any property or facility of a common interest community;~~

~~(7) Stalking; and~~

~~(8) Physically harmful contact with or injury to another person or his or her property.] (Deleted by amendment.)~~

Sec. 3. ~~[NRS 116.745 is hereby amended to read as follows:~~

~~116.745 As used in NRS 116.745 to 116.795, inclusive, unless the context otherwise requires, "violation" means a violation of:~~

~~1. Any provision of this chapter; [except NRS 116.31184;]~~

~~2. Any regulation adopted pursuant to this chapter; or~~

~~3. Any order of the Commission or a hearing panel.] (Deleted by amendment.)~~

Sec. 4. NRS 116.760 is hereby amended to read as follows:

116.760 1. Except as otherwise provided in this section, a person who is aggrieved by an alleged violation may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file with the Division a written affidavit that sets forth the facts constituting the alleged violation. The affidavit may allege any actual damages suffered by the aggrieved person as a result of the alleged violation.

2. An aggrieved person may not file such an affidavit unless the aggrieved person has provided the respondent by certified mail, return receipt requested, with written notice of the alleged violation set forth in the affidavit. The notice must:

(a) Be mailed to the respondent's last known address.

(b) Specify, in reasonable detail, the alleged violation, any actual damages suffered by the aggrieved person as a result of the alleged violation, and any corrective action proposed by the aggrieved person.

3. A written affidavit filed with the Division pursuant to this section must be:

(a) On a form prescribed by the Division.

(b) Accompanied by evidence that:

(1) The respondent has been given a reasonable opportunity after receiving the written notice to correct the alleged violation; and

(2) Reasonable efforts to resolve the alleged violation have failed.

4. The Commission or a hearing panel may impose ~~an~~ *either or both of the following:*

(a) An administrative fine of not more than ~~[\$1,000 against,] \$10,000; or~~

(b) *Sanctions disqualifying a person from serving as a member of the executive board for a period of not more than 10 years,*

↪ against any person who knowingly files a ~~vexatious, misleading, retaliatory, frivolous,~~ false or fraudulent affidavit with the Division.

5. The Commission or a hearing panel may designate a person as a vexatious affiant if the Commission or a hearing panel has imposed an administrative fine or sanctions against the person pursuant to subsection 4 for knowingly filing a false or fraudulent affidavit with the Division on two or more occasions. If the Commission or a hearing panel has designated a person as a vexatious affiant pursuant to this subsection, the Commission or hearing panel shall transmit a copy of the order designating the person as a vexatious affiant to the Division and the Division shall not thereafter accept an affidavit filed by the person unless:

(a) The person first submits a copy of the affidavit to the Ombudsman; and

(b) After reviewing the affidavit, the Ombudsman grants leave for the person to file the affidavit with the Division.

Sec. 5. [NRS 116.765 is hereby amended to read as follows:

~~116.765 1. Upon receipt of an affidavit that complies with the provisions of NRS 116.760, if the Division determines that the alleged violation, if assumed to be true, would constitute a violation of this chapter, the Division shall refer the affidavit to the Ombudsman.~~

~~2. The Ombudsman shall give such guidance to the parties as the Ombudsman deems necessary to assist the parties to resolve the alleged violation.~~

~~3. If the parties are unable to resolve the alleged violation with the assistance of the Ombudsman, the Ombudsman shall provide to the Division a report concerning the alleged violation and any information collected by the Ombudsman during his or her efforts to assist the parties to resolve the alleged violation.~~

~~4. Upon receipt of the report from the Ombudsman, the Division shall conduct an investigation to determine whether good cause exists to proceed with a hearing on the alleged violation.~~

~~5. If, after investigating the alleged violation, the Division determines that the allegations in the affidavit are not frivolous, false or fraudulent and that good cause exists to proceed with a hearing on the alleged violation, the Administrator shall file a formal complaint with the Commission and schedule a hearing on the complaint before the Commission or a hearing panel.] (Deleted by amendment.)~~