

SENATE BILL NO. 174—SENATORS HAMMOND, NEAL,
GOICOECHEA; AND OHRENSCHALL

FEBRUARY 16, 2023

JOINT SPONSOR: ASSEMBLYMAN GURR

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing common-interest communities. (BDR 10-610)

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 relating to the exemption from licensure as a collection agency for community managers of common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law requires, with certain exceptions, a collection agency to be
2 licensed by the Commissioner of Financial Institutions. (NRS 649.075) A
3 collection agency is defined to include a community manager that, while engaged
4 in the management of a common-interest community, performs any act associated
5 with the foreclosure of a lien. (NRS 649.020) However, existing law further
6 exempts a community manager from the requirement to be licensed as a collection
7 agency if the community manager collects debts, or contracts with a collection
8 agency to collect debts, included in the association's lien. (NRS 116.3116) This bill
9 eliminates this exemption to require that such a community manager be licensed as
10 a collection agency.



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

Section 1. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (o), inclusive, of subsection 1 of NRS 116.3102 and any costs of collecting a past due obligation charged pursuant to NRS 116.310313 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, except that a lien under this section is prior to a security interest described in this paragraph to the extent set forth in subsection 3;

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative; and

(d) Liens for any fee or charge levied pursuant to subsection 1 of NRS 444.520.

3. A lien under this section is prior to all security interests described in paragraph (b) of subsection 2 to the extent of:

(a) Any charges incurred by the association on a unit pursuant to NRS 116.310312;

(b) The unpaid amount of assessments, not to exceed an amount equal to assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding the date on which the notice of default and election to sell is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162; and



(c) The costs incurred by the association to enforce the lien in an amount not to exceed the amounts set forth in subsection 5, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) of subsection 2 must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding the recording of a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162 or the institution of a judicial action to enforce the lien.

4. This section does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

5. The amount of the costs of enforcing the association's lien that are prior to the security interest described in paragraph (b) of subsection 2 must not exceed the actual costs incurred by the association, must not include more than one trustee's sale guaranty and must not exceed:

(a) For a demand or intent to lien letter, \$165.

(b) For a notice of delinquent assessment, \$325.

(c) For an intent to record a notice of default letter, \$90.

(d) For a notice of default, \$400.

(e) For a trustee's sale guaranty, \$400.

No costs of enforcing the association's lien, other than the costs described in this subsection, and no amount of attorney's fees may be included in the amount of the association's lien that is prior to the security interest described in paragraph (b) of subsection 2.

6. Notwithstanding any other provision of law, an association, ~~for~~ a member of the executive board, or an officer, employee or unit's owner of the association ~~is~~ acting under the authority of this chapter or the governing documents of the association ~~is, or the community manager of the association, or any employee, agent or affiliate of the community manager, while engaged in the management of the common interest community governed by the association,~~ is not required to be licensed as a collection agency pursuant to chapter 649 of NRS or hire or contract with a collection agency licensed pursuant to chapter 649 of NRS to collect amounts due to the association in accordance with subsection 1 before the



1 recording of a notice of default and election to sell pursuant to
2 paragraph (b) of subsection 1 of NRS 116.31162.

3 7. The holder of the security interest described in paragraph (b)
4 of subsection 2 or the holder's authorized agent may establish an
5 escrow account, loan trust account or other impound account for
6 advance contributions for the payment of assessments for common
7 expenses based on the periodic budget adopted by the association
8 pursuant to NRS 116.3115 if the unit's owner and the holder of that
9 security interest consent to the establishment of such an account. If
10 such an account is established, payments from the account for
11 assessments for common expenses must be made in accordance with
12 the same due dates as apply to payments of such assessments by a
13 unit's owner.

14 8. Unless the declaration otherwise provides, if two or more
15 associations have liens for assessments created at any time on the
16 same property, those liens have equal priority.

17 9. Recording of the declaration constitutes record notice and
18 perfection of the lien. No further recordation of any claim of lien for
19 assessment under this section is required.

20 10. A lien for unpaid assessments is extinguished unless a
21 notice of default and election to sell is recorded as required by
22 paragraph (b) of subsection 1 of NRS 116.31162, or judicial
23 proceedings to enforce the lien are instituted, within 3 years after the
24 full amount of the assessments becomes due.

25 11. This section does not prohibit actions to recover sums for
26 which subsection 1 creates a lien or prohibit an association from
27 taking a deed in lieu of foreclosure.

28 12. A judgment or decree in any action brought under this
29 section must include costs and reasonable attorney's fees for the
30 prevailing party.

31 13. The association, upon written request, shall furnish to a
32 unit's owner a statement setting forth the amount of unpaid
33 assessments against the unit. If the interest of the unit's owner is real
34 estate or if a lien for the unpaid assessments may be foreclosed
35 under NRS 116.31162 to 116.31168, inclusive, the statement must
36 be in recordable form. The statement must be furnished within 10
37 business days after receipt of the request and is binding on the
38 association, the executive board and every unit's owner.

39 14. In a cooperative, upon nonpayment of an assessment on a
40 unit, the unit's owner may be evicted in the same manner as
41 provided by law in the case of an unlawful holdover by a
42 commercial tenant, and:

43 (a) In a cooperative where the owner's interest in a unit is real
44 estate under NRS 116.1105, the association's lien may be foreclosed
45 under NRS 116.31162 to 116.31168, inclusive.



(b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien:

(1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or

(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

15. In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

16. Notwithstanding any other provision of law, any payment of an amount due to an association in accordance with subsection 1 by the holder of any lien or encumbrance on a unit that is subordinate to the association's lien under this section becomes a debt due from the unit's owner to the holder of the lien or encumbrance.

