

SENATE BILL NO. 72—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE REAL ESTATE DIVISION OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to common-interest communities. (BDR 10-318)

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; 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:

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

9 Existing law: (1) authorizes the executive board of a unit-owners' association to
10 impose fines for violations of the governing documents of the association; and (2)
11 provides that if the violation does not pose an imminent threat of causing a
12 substantial adverse effect on the health, safety or welfare of the units' owners or
13 residents of the common-interest community, the amount of the fine must be
14 commensurate with the severity of the violation and must be determined by the
15 executive board in accordance with the governing documents, but the amount of the
16 fine must not exceed \$100 for each violation or a total amount of \$1,000,



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

32 Existing law also provides that a fine may not be imposed against a unit's
33 owner for a violation committed by an invitee of the unit's owner or the tenant
34 unless the unit's owner: (1) participated in or authorized the violation; (2) had prior
35 notice of the violation; or (3) had an opportunity to stop the violation and failed to
36 do so. (NRS 116.31031) **Section 2** provides that such requirements: (1) apply also
37 to fines imposed against a tenant; and (2) do not apply if the violation poses an
38 imminent threat of causing a substantial adverse effect on the health, safety or
39 welfare of the units' owners or residents of the common-interest community.

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

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

55 Existing law also requires an executive board to meet in executive session to
56 hold a hearing on an alleged violation of the governing documents unless the
57 person who may be sanctioned for the alleged violation requests in writing that an
58 open hearing be conducted by the executive board, in which case the person: (1) is
59 entitled to attend all portions of the hearing related to the alleged violation; (2) is
60 entitled to due process; and (3) is not entitled to attend the deliberations of the
61 executive board. The executive board is required to maintain minutes of any
62 decision made concerning an alleged violation and, upon request, to provide a copy
63 of the decision to the person or the person's designated representative. (NRS
64 116.31085) **Section 3** provides that: (1) the person is entitled to receive written
65 notice of the decision of the executive board regarding the alleged violation within
66 a reasonable time after the decision is made; and (2) the period to cure a violation
67 before it becomes a continuing violation is deemed not to commence until the date
68 on which the notice of the decision of the executive board is provided to the person.



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

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

3 116.1201 1. Except as otherwise provided in this section and
4 NRS 116.1203, this chapter applies to all common-interest
5 communities created within this State.

6 2. This chapter does not apply to:

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

9 (1) Shall pay the fees required pursuant to NRS 116.31155,
10 except that if the limited-purpose association is created for a rural
11 agricultural residential common-interest community, the limited-
12 purpose association is not required to pay the fee unless the
13 association intends to use the services of the Ombudsman;

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

16 (3) Shall comply with the provisions of:

17 (I) NRS 116.31038;

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

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

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

27 (V) *NRS 116.3116 to 116.31168, inclusive.*

28 (4) Shall comply with the provisions of NRS 116.4101 to
29 116.412, inclusive, as required by the regulations adopted by the
30 Commission pursuant to paragraph (b) of subsection 5; and

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

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

41 (c) A common-interest community that was created before
42 January 1, 1992, is located in a county whose population is less than



1 55,000, and has less than 50 percent of the units within the
2 community put to residential use, unless a majority of the units'
3 owners otherwise elect in writing.

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

6 3. The provisions of this chapter do not:

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

10 (b) Require a common-interest community created before
11 January 1, 1992, to comply with the provisions of NRS 116.2101 to
12 116.2122, inclusive;

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

16 (d) Except as otherwise provided in subsection 8 of NRS
17 116.31105, prohibit a common-interest community created before
18 January 1, 1992, or a common-interest community described in NRS
19 116.31105 from providing for a representative form of government,
20 except that, in the election or removal of a member of the executive
21 board, the voting rights of the units' owners may not be exercised by
22 delegates or representatives;

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

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

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

34 5. The Commission shall establish, by regulation:

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

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

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


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

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



- 1 (2) Facilities for flood control; or
- 2 (3) A rural agricultural residential common-interest
- 3 community; and

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

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

9 116.31031. 1. Except as otherwise provided in this section, if
10 a unit's owner or a tenant or an invitee of a unit's owner or a tenant
11 violates any provision of the governing documents of an association,
12 the executive board may, if the governing documents so provide:

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

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

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

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

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

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

32 ↪ If the violation poses an imminent threat of causing a substantial
33 adverse effect on the health, safety or welfare of the units' owners or
34 residents of the common-interest community ***as provided in the***
35 ***regulations adopted by the Commission***, the amount of the fine
36 must be commensurate with the severity of the violation and must
37 be determined by the executive board in accordance with the
38 governing documents. If the violation does not pose an imminent
39 threat of causing a substantial adverse effect on the health, safety or
40 welfare of the units' owners or residents of the common-interest
41 community ***as provided in the regulations adopted by the***
42 ***Commission***, the amount of the fine must be commensurate with the
43 severity of the violation and must be determined by the executive
44 board in accordance with the governing documents, but the amount
45



1 of the fine must not exceed \$100 for each violation or a total amount
2 of \$1,000 ~~[, whichever is less.]~~ *per hearing against each unit's*
3 *owner or tenant or invitee of the unit's owner or tenant.* The
4 limitations on the amount of the fine do not apply to any charges or
5 costs that may be collected by the association pursuant to this
6 section if the fine becomes past due. *The Commission shall adopt*
7 *regulations establishing the criteria used in determining whether a*
8 *violation poses an imminent threat of causing a substantial*
9 *adverse effect on the health, safety or welfare of the units' owners*
10 *or residents of the common-interest community, the severity of*
11 *such violations and limitations on the amounts of the fines.*

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

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

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

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

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

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

37 (a) Participated in or authorized the violation;

38 (b) Had prior notice of the violation ~~[:]~~ *pursuant to paragraph*
39 *(c) of subsection 1;* or

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

41 3. If the association adopts a policy imposing fines for any
42 violations of the governing documents of the association, the
43 secretary or other officer specified in the bylaws shall prepare and
44 cause to be hand-delivered or sent prepaid by United States mail to
45 the mailing address of each unit or to any other mailing address



1 designated in writing by the unit's owner, a schedule of the fines
2 that may be imposed for those violations.

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

5 (a) Not less than 30 days before the alleged violation, the unit's
6 owner and, if different, the person against whom the fine will be
7 imposed had been provided with written notice of the applicable
8 provisions of the governing documents that form the basis of the
9 alleged violation; and

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

13 (1) Written notice:

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

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

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

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

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

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

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

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

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



1 period or portion thereof that the violation is not cured. Any
2 additional fine ~~may~~ :

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

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

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

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

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


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

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

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

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

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

36 116.31085  1. Except as otherwise provided in this section, a
37 unit's owner may attend any meeting of the units' owners or of the
38 executive board and speak at any such meeting. The executive board
39 may establish reasonable limitations on the time a unit's owner may
40 speak at such a meeting.

41 2. An executive board may not meet in executive session to
42 open or consider bids for an association project as defined in NRS
43 116.31086, or to enter into, renew, modify, terminate or take any
44 other action regarding a contract.

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



1 (a) Consult with the attorney for the association ~~[on matters~~
2 ~~relating to proposed or pending litigation]~~ if the contents of the
3 discussion would otherwise be governed by the privilege set forth in
4 NRS 49.035 to 49.115, inclusive.

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

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

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

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

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

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

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

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

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

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



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

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

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

