

ASSEMBLY BILL NO. 361—ASSEMBLYMAN MCARTHUR

MARCH 16, 2009

Referred to Committee on Judiciary

SUMMARY—Makes changes relating to the destruction or deterioration of foreclosed or vacant units in common-interest communities. (BDR 10-940)

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; providing that, under certain circumstances, a unit-owners’ association may, without liability for trespass, enter the grounds of a vacant unit or a unit in foreclosure to abate a public nuisance or maintain the exterior of the unit; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law assigns the responsibility for maintenance of a unit in a common-
2 interest community to the owner of the unit, and maintenance of a common element
3 in the community to the unit-owners’ association. (NRS 116.3107) Existing law
4 provides procedures for the executive board of the association to fine a unit’s owner
5 who fails to maintain his residence according to the governing documents.
6 (NRS 116.31031)

7 **Section 1** of this bill provides that the association may, without liability for
8 trespass, enter on the grounds of a unit that is vacant or that is in the foreclosure
9 process, whether vacant or not, to maintain the exterior of the unit or abate a public
10 nuisance on the exterior of the unit if the unit’s owner refuses or fails to do so.

11 **Section 1** also provides that: (1) any amount of the costs for such maintenance or
12 abatement which are not paid by the unit’s owner will be a lien against the unit; and
13 (2) the lien has priority over all other liens, claims, encumbrances and titles except
14 certain liens of assessments and general taxes.

15 **Section 2** of this bill specifically authorizes a unit-owners’ association to
16 charge a unit’s owner for the maintenance and abatement services provided
17 pursuant to **section 1** of the bill. **Section 3** of this bill further provides that a lien for
18 such maintenance and abatement services has priority over a first security interest
19 on the unit under certain circumstances.



* A B 3 6 1 *

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

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

3 1. *A lending institution which holds a security interest in a*
4 *unit must provide the association with the contact information of*
5 *the lending institution, including any department of the lending*
6 *institution which handles residential mortgages, as soon as*
7 *reasonably practicable after the lending institution is aware that:*

8 (a) *A person has filed an action for recovery of a debt secured*
9 *by the unit pursuant to NRS 40.430;*

10 (b) *A person has recorded a notice of a breach of obligation*
11 *secured by the unit and the election to sell or have the unit sold*
12 *pursuant to NRS 107.080; or*

13 (c) *The association or another authorized person has executed*
14 *and caused to be recorded a notice of default and election to sell*
15 *the unit pursuant to NRS 116.31162.*

16 2. *If an action or notice described in subsection 1 has been*
17 *filed or recorded regarding a unit and the association has provided*
18 *the unit's owner with notice and an opportunity for a hearing*
19 *in the manner provided in NRS 116.31031, the association may*
20 *enter the grounds of the unit, whether or not the unit is vacant,*
21 *to take any of the following actions if the unit's owner refuses or*
22 *fails to do so:*

23 (a) *Maintain the exterior of the unit in accordance with the*
24 *governing documents, including, without limitation, any*
25 *provisions governing landscaping, standing water or snow*
26 *removal.*

27 (b) *Remove or abate a public nuisance on the exterior of the*
28 *unit which:*

29 (1) *Is visible from any common area of the community;*

30 (2) *Threatens the health or safety of the residents of the*
31 *common-interest community;*

32 (3) *Results in blighting or deterioration of the unit or*
33 *surrounding area; and*

34 (4) *Adversely affects the use and enjoyment of nearby units.*

35 3. *If a unit is vacant and the association has provided the*
36 *unit's owner with notice and an opportunity for a hearing in the*
37 *manner provided in NRS 116.31031, the association may enter*
38 *the grounds of the unit to maintain the exterior of the unit or*
39 *abate a public nuisance as described in subsection 2 if the unit's*
40 *owner refuses or fails to do so.*

41 4. *The association may order that the costs of any*
42 *maintenance or abatement conducted pursuant to subsection 2*



1 *or 3, including, without limitation, any inspection fees,*
2 *notification and collection costs and interests, be charged against*
3 *the unit. The association has a lien on the unit for any unpaid*
4 *amount of the charges.*

5 *5. A lien described in subsection 4:*

6 *(a) Bears interest from the date that the charges become due at*
7 *a rate determined pursuant to NRS 17.130 until the charges and*
8 *all interest due is paid;*

9 *(b) Is coequal with the most recent lien on the unit which*
10 *secures the payment of any assessments and which has priority*
11 *over all security interests described in paragraph (b) of subsection*
12 *2 of NRS 116.3116;*

13 *(c) Is not subject to extinguishment by the sale of the unit*
14 *because of the nonpayment by the first lien holder; and*

15 *(d) Is prior and superior to all liens, claims, encumbrances*
16 *and titles other than the liens of assessments described in*
17 *paragraph (b) and general taxes.*

18 *6. A person who purchases or acquires the unit at a*
19 *foreclosure sale pursuant to NRS 40.430, a trustee's sale pursuant*
20 *to NRS 107.080 or a foreclosure sale pursuant to NRS 116.31162*
21 *to 116.31168, inclusive, shall maintain the exterior of the unit in*
22 *accordance with the governing documents of the association.*

23 *7. Notwithstanding any other provision of law, an*
24 *association, its directors or members of the executive board or*
25 *employees who enter the grounds of a unit pursuant to this section*
26 *are not liable for trespass.*

27 **Sec. 2.** NRS 116.3102 is hereby amended to read as follows:

28 116.3102 1. Except as otherwise provided in subsection 2,
29 and subject to the provisions of the declaration, the association may
30 do any or all of the following:

31 (a) Adopt and amend bylaws, rules and regulations.

32 (b) Adopt and amend budgets for revenues, expenditures and
33 reserves and collect assessments for common expenses from the
34 units' owners.

35 (c) Hire and discharge managing agents and other employees,
36 agents and independent contractors.

37 (d) Institute, defend or intervene in litigation or administrative
38 proceedings in its own name on behalf of itself or two or more units'
39 owners on matters affecting the common-interest community.

40 (e) Make contracts and incur liabilities.

41 (f) Regulate the use, maintenance, repair, replacement and
42 modification of common elements.

43 (g) Cause additional improvements to be made as a part of the
44 common elements.



1 (h) Acquire, hold, encumber and convey in its own name any
2 right, title or interest to real estate or personal property, but:

3 (1) Common elements in a condominium or planned
4 community may be conveyed or subjected to a security interest only
5 pursuant to NRS 116.3112; and

6 (2) Part of a cooperative may be conveyed, or all or part of a
7 cooperative may be subjected to a security interest, only pursuant to
8 NRS 116.3112.

9 (i) Grant easements, leases, licenses and concessions through or
10 over the common elements.

11 (j) Impose and receive any payments, fees or charges for the use,
12 rental or operation of the common elements, other than limited
13 common elements described in subsections 2 and 4 of NRS
14 116.2102, and for services provided to the units' owners **[H]** ,
15 *including, without limitation, any services provided pursuant to*
16 *section 1 of this act.*

17 (k) Impose charges for late payment of assessments.

18 (l) Impose construction penalties when authorized pursuant to
19 NRS 116.310305.

20 (m) Impose reasonable fines for violations of the governing
21 documents of the association only if the association complies with
22 the requirements set forth in NRS 116.31031.

23 (n) Impose reasonable charges for the preparation and
24 recodation of any amendments to the declaration or any statements
25 of unpaid assessments, and impose reasonable fees, not to exceed
26 the amounts authorized by NRS 116.4109, for preparing and
27 furnishing the documents and certificate required by that section.

28 (o) Provide for the indemnification of its officers and executive
29 board and maintain directors' and officers' liability insurance.

30 (p) Assign its right to future income, including the right to
31 receive assessments for common expenses, but only to the extent the
32 declaration expressly so provides.

33 (q) Exercise any other powers conferred by the declaration or
34 bylaws.

35 (r) Exercise all other powers that may be exercised in this State
36 by legal entities of the same type as the association.

37 (s) Direct the removal of vehicles improperly parked on property
38 owned or leased by the association, as authorized pursuant to NRS
39 487.038, or improperly parked on any road, street, alley or other
40 thoroughfare within the common-interest community in violation of
41 the governing documents. In addition to complying with the
42 requirements of NRS 487.038 and any requirements in the
43 governing documents, if a vehicle is improperly parked as described
44 in this paragraph, the association must post written notice in a
45 conspicuous place on the vehicle or provide oral or written notice to



1 the owner or operator of the vehicle at least 48 hours before the
2 association may direct the removal of the vehicle, unless the vehicle:

3 (1) Is blocking a fire hydrant, fire lane or parking space
4 designated for the handicapped; or

5 (2) Poses an imminent threat of causing a substantial adverse
6 effect on the health, safety or welfare of the units' owners or
7 residents of the common-interest community.

8 (t) Exercise any other powers necessary and proper for the
9 governance and operation of the association.

10 2. The declaration may not impose limitations on the power of
11 the association to deal with the declarant which are more restrictive
12 than the limitations imposed on the power of the association to deal
13 with other persons.

14 **Sec. 3.** NRS 116.3116 is hereby amended to read as follows:

15 116.3116 1. The association has a lien on a unit for any
16 construction penalty that is imposed against the unit's owner
17 pursuant to NRS 116.310305, any assessment levied against that
18 unit or any fines imposed against the unit's owner from the time the
19 construction penalty, assessment or fine becomes due. Unless the
20 declaration otherwise provides, any penalties, fees, charges, late
21 charges, fines and interest charged pursuant to paragraphs (j) to (n),
22 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
23 assessments under this section. If an assessment is payable in
24 installments, the full amount of the assessment is a lien from the
25 time the first installment thereof becomes due.

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

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

31 (b) A first security interest on the unit recorded before the date
32 on which the assessment sought to be enforced became delinquent
33 or, in a cooperative, the first security interest encumbering only the
34 unit's owner's interest and perfected before the date on which the
35 assessment sought to be enforced became delinquent; and

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

38 ➤ The lien is also prior to all security interests described in
39 paragraph (b) to the extent of *any charges incurred by the*
40 *association pursuant to section 1 of this act and to the extent of* the
41 assessments for common expenses based on the periodic budget
42 adopted by the association pursuant to NRS 116.3115 which would
43 have become due in the absence of acceleration during the 6 months
44 immediately preceding institution of an action to enforce the lien.
45 This subsection does not affect the priority of mechanics' or



1 materialmen's liens, or the priority of liens for other assessments
2 made by the association.

3 3. Unless the declaration otherwise provides, if two or more
4 associations have liens for assessments created at any time on the
5 same property, those liens have equal priority.

6 4. Recording of the declaration constitutes record notice and
7 perfection of the lien. No further recordation of any claim of lien for
8 assessment under this section is required.

9 5. A lien for unpaid assessments is extinguished unless
10 proceedings to enforce the lien are instituted within 3 years after the
11 full amount of the assessments becomes due.

12 6. This section does not prohibit actions to recover sums for
13 which subsection 1 creates a lien or prohibit an association from
14 taking a deed in lieu of foreclosure.

15 7. A judgment or decree in any action brought under this
16 section must include costs and reasonable attorney's fees for the
17 prevailing party.

18 8. The association, upon written request, shall furnish to a
19 unit's owner a statement setting forth the amount of unpaid
20 assessments against the unit. If the interest of the unit's owner is real
21 estate or if a lien for the unpaid assessments may be foreclosed
22 under NRS 116.31162 to 116.31168, inclusive, the statement must
23 be in recordable form. The statement must be furnished within 10
24 business days after receipt of the request and is binding on the
25 association, the executive board and every unit's owner.

26 9. In a cooperative, upon nonpayment of an assessment on a
27 unit, the unit's owner may be evicted in the same manner as
28 provided by law in the case of an unlawful holdover by a
29 commercial tenant, and:

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

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

35 (1) May be foreclosed as a security interest under NRS
36 104.9101 to 104.9709, inclusive; or

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

