

ASSEMBLY BILL NO. 394—ASSEMBLYMAN OHRENSCHALL

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-346)

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 governing the collection of past due financial obligations in common-interest communities; establishing limits on the amount which may be charged to a unit's owner to cover the costs of collecting a past due financial obligation; revising provisions governing an association's lien for assessments; revising provisions governing the foreclosure of an association's lien by sale; revising provisions governing the manner of collecting debts owed to an association; establishing a limit on the amount of the fee which may be charged to a unit's owner to record a transfer of the unit in the records of the association; revising various provisions relating to common-interest communities; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law establishes certain restrictions on the actions of an association of a
2 common-interest community with respect to regulating the use of a unit by a unit's
3 owner. (NRS 116.2111) **Section 3** of this bill prohibits an association from
4 prohibiting or unreasonably restricting a unit's owner from installing and using a
5 clothesline within the boundaries of his or her unit.
6 Existing law requires the Commission for Common-Interest Communities and
7 Condominium Hotels to adopt regulations establishing the amount of the fees that
8 may be charged to a unit's owner to cover the costs of collecting a past due
9 financial obligation owed to an association of a common-interest community. (NRS
10 116.310313) **Section 1** of this bill revises the definition of "costs of collecting" so
11 that: (1) attorney's fees incurred by an association because a unit's owner has filed
12 a bankruptcy petition are not subject to the restrictions on fees to cover the costs of



13 collecting a past due obligation; and (2) other attorney's fees incurred by an
14 association in collecting a past due obligation are subject to those restrictions.
15 **Section 5** of this bill prohibits the association from charging a unit's owner the
16 costs of collecting a past due obligation unless a majority of the units' owners who
17 cast votes approve a collection policy for the association. **Section 5** also: (1)
18 requires the collection policy to include a list or schedule of the maximum amount
19 of each fee, cost, charge or other amount which may be charged to a unit's owner to
20 cover the costs of collecting a past due obligation; and (2) establishes limits on the
21 fees charged to a unit's owner to cover the costs of collecting such obligations. In
22 addition, **section 5**: (1) prohibits an association from transferring to another person,
23 other than an officer or employee of the association or its community manager, the
24 collection activity with respect to a fine for a violation of the governing documents;
25 and (2) establishes limits on the amount of the fee charged to a unit's owner to
26 transfer an account for collection and to change the name of the unit's owner on
27 such an account.

28 Under existing law, the association has a lien for certain amounts due the
29 association. This lien is prior to the lien of a first security interest on the unit to the
30 extent of charges incurred by the association to maintain certain units which are
31 being foreclosed and to the extent of a specified number of months of assessments.
32 (NRS 116.3116) **Section 8** of this bill provides that if the title to the unit is acquired
33 at a foreclosure sale or trustee's sale and the mortgage on the unit was insured by
34 the Federal Home Loan Mortgage Corporation or the Federal National Mortgage
35 Association, the amount secured by the lien given priority must not exceed the
36 amount of common expenses and assessments authorized to be given such priority
37 by the federal regulations or underwriting guidelines of the federal entity which
38 insured the debt.

39 Existing law authorizes the association to foreclose its lien by sale of the unit
40 and prescribes the procedures for such a foreclosure. (NRS 116.31162-116.31168)
41 **Section 9** of this bill revises provisions governing such foreclosures by prohibiting
42 the association from: (1) foreclosing its lien by sale based on delinquent
43 assessments unless the amount of delinquent assessments exceeds a certain amount;
44 and (2) foreclosing its lien by sale unless the executive board of the association
45 votes to authorize the foreclosure.

46 Existing law requires the association to provide a statement of any transfer fees,
47 transaction fees or any other fees associated with the resale of a unit in the resale
48 package which is provided to a potential purchaser of a unit. (NRS 116.4109)
49 **Section 11** of this bill establishes a limit of not more than \$50 on a fee charged to a
50 unit's owner to record the transfer of a unit in the records of the association or its
51 community manager.

52 Existing law provides that a collection agency which violates the federal Fair
53 Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., or any regulation adopted
54 pursuant thereto violates the provisions in existing state law relating to collection
55 agencies. (NRS 649.370) Because the Fair Debt Collection Practices Act applies to
56 consumer debts owed by natural persons, it does not apply when a collection
57 agency collects any debt owed by an entity. (15 U.S.C. §§ 1692 et seq.) **Section 12**
58 of this bill provides that a collection agency which violates the federal Fair Debt
59 Collection Practices Act with respect to any debt owed to an association by a unit's
60 owner is deemed to violate existing state law relating to collection agencies.



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 *“Costs of collecting” includes any fee, charge or cost, by*
4 *whatever name, including, without limitation, any collection fee,*
5 *filing fee, recording fee, fee related to the preparation, recording*
6 *or delivery of a notice of default and election to sell or notice of*
7 *foreclosure sale or a rescission thereof, title search lien fee,*
8 *bankruptcy search fee, referral fee, fee for postage or delivery and*
9 *any other fee or cost that an association incurs for the*
10 *investigation, enforcement or collection of a past due obligation.*
11 *The term does not include attorney’s fees incurred by an*
12 *association because the unit’s owner has filed a bankruptcy*
13 *petition pursuant to Title 11 of the United States Code.*

14 **Sec. 2.** NRS 116.003 is hereby amended to read as follows:

15 116.003 As used in this chapter and in the declaration and
16 bylaws of an association, unless the context otherwise requires, the
17 words and terms defined in NRS 116.005 to 116.095, inclusive, *and*
18 *section 1 of this act* have the meanings ascribed to them in those
19 sections.

20 **Sec. 3.** NRS 116.2111 is hereby amended to read as follows:

21 116.2111 1. Except as otherwise provided in this section and
22 subject to the provisions of the declaration and other provisions of
23 law, a unit’s owner:

24 (a) May make any improvements or alterations to his or her unit
25 that do not impair the structural integrity or mechanical systems or
26 lessen the support of any portion of the common-interest
27 community;

28 (b) May not change the appearance of the common elements, or
29 the exterior appearance of a unit or any other portion of the
30 common-interest community, without permission of the association;
31 and

32 (c) After acquiring an adjoining unit or an adjoining part of an
33 adjoining unit, may remove or alter any intervening partition or
34 create apertures therein, even if the partition in whole or in part is a
35 common element, if those acts do not impair the structural integrity
36 or mechanical systems or lessen the support of any portion of the
37 common-interest community. Removal of partitions or creation of
38 apertures under this paragraph is not an alteration of boundaries.

39 2. An association may not:

40 (a) Unreasonably restrict, prohibit or otherwise impede the
41 lawful rights of a unit’s owner to have reasonable access to his or
42 her unit.



1 (b) Charge any fee for a person to enter the common-interest
2 community to provide services to a unit, a unit's owner or a tenant
3 of a unit's owner or for any visitor to the common-interest
4 community or invitee of a unit's owner or a tenant of a unit's owner
5 to enter the common-interest community.

6 (c) Unreasonably restrict, prohibit or withhold approval for a
7 unit's owner to add to a unit:

8 (1) Improvements such as ramps, railings or elevators that
9 are necessary to improve access to the unit for any occupant of the
10 unit who has a disability;

11 (2) Additional locks to improve the security of the unit;

12 (3) Shutters to improve the security of the unit or to reduce
13 the costs of energy for the unit; or

14 (4) A system that uses wind energy to reduce the costs of
15 energy for the unit if the boundaries of the unit encompass 2 acres or
16 more within the common-interest community.

17 (d) With regard to approving or disapproving any improvement
18 or alteration made to a unit, act in violation of any state or federal
19 law.

20 *(e) Prohibit or unreasonably restrict a unit's owner from*
21 *installing and using a clothesline within the boundaries of his or*
22 *her unit.*

23 3. Any improvement or alteration made pursuant to subsection
24 2 that is visible from any other portion of the common-interest
25 community must be installed, constructed or added in accordance
26 with the procedures set forth in the governing documents of the
27 association and must be selected or designed to the maximum extent
28 practicable to be compatible with the style of the common-interest
29 community.

30 4. An association may not unreasonably restrict, prohibit or
31 withhold approval for a unit's owner to add shutters to improve the
32 security of the unit or to reduce the costs of energy for the unit,
33 including, without limitation, rolling shutters, that are attached to a
34 portion of an interior or exterior window, interior or exterior door or
35 interior or exterior wall which is not part of the unit and which is a
36 common element or limited common element if:

37 (a) The portion of the window, door or wall to which the
38 shutters are attached is adjoining the unit; and

39 (b) The shutters must necessarily be attached to that portion of
40 the window, door or wall during installation to achieve the
41 maximum benefit in improving the security of the unit or reducing
42 the costs of energy for the unit.

43 5. If a unit's owner adds shutters pursuant to subsection 4, the
44 unit's owner is responsible for the maintenance of the shutters.



1 6. For the purposes of subsection 4, a covenant, restriction or
2 condition which does not unreasonably restrict the addition of
3 shutters and which is contained in the governing documents of a
4 common-interest community or a policy established by a common-
5 interest community is enforceable so long as the covenant,
6 restriction or condition was:

7 (a) In existence on July 1, 2009; or

8 (b) Contained in the governing documents in effect on the close
9 of escrow of the first sale of a unit in the common-interest
10 community.

11 7. A unit's owner may not add to the unit a system that uses
12 wind energy as described in subparagraph (4) of paragraph (c) of
13 subsection 2 unless the unit's owner first obtains the written consent
14 of each owner of property within 300 feet of any boundary of the
15 unit.

16 **Sec. 4.** NRS 116.310312 is hereby amended to read as
17 follows:

18 116.310312 1. A person who holds a security interest in a
19 unit must provide the association with the person's contact
20 information as soon as reasonably practicable, but not later than 30
21 days after the person:

22 (a) Files an action for recovery of a debt or enforcement of any
23 right secured by the unit pursuant to NRS 40.430; or

24 (b) Records or has recorded on his or her behalf a notice of a
25 breach of obligation secured by the unit and the election to sell or
26 have the unit sold pursuant to NRS 107.080.

27 2. If an action or notice described in subsection 1 has been
28 filed or recorded regarding a unit and the association has provided
29 the unit's owner with notice and an opportunity for a hearing in the
30 manner provided in NRS 116.31031, the association, including its
31 employees, agents and community manager, may, but is not
32 required to, enter the grounds of the unit, whether or not the unit is
33 vacant, to take any of the following actions if the unit's owner
34 refuses or fails to take any action or comply with any requirement
35 imposed on the unit's owner within the time specified by the
36 association as a result of the hearing:

37 (a) Maintain the exterior of the unit in accordance with the
38 standards set forth in the governing documents, including, without
39 limitation, any provisions governing maintenance, standing water or
40 snow removal.

41 (b) Remove or abate a public nuisance on the exterior of the unit
42 which:

43 (1) Is visible from any common area of the community or
44 public streets;



1 (2) Threatens the health or safety of the residents of the
2 common-interest community;

3 (3) Results in blighting or deterioration of the unit or
4 surrounding area; and

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

6 3. If a unit is vacant and the association has provided the unit's
7 owner with notice and an opportunity for a hearing in the manner
8 provided in NRS 116.31031, the association, including its
9 employees, agents and community manager, may enter the grounds
10 of the unit to maintain the exterior of the unit or abate a public
11 nuisance as described in subsection 2 if the unit's owner refuses or
12 fails to do so.

13 4. The association may order that the costs of any maintenance
14 or abatement conducted pursuant to subsection 2 or 3, including,
15 without limitation, reasonable inspection fees, notification and
16 collection costs and interest, be charged against the unit. The
17 association shall keep a record of such costs and interest charged
18 against the unit and has a lien on the unit for any unpaid amount of
19 the charges. The lien may be foreclosed under NRS 116.31162 to
20 116.31168, inclusive.

21 5. A lien described in subsection 4 bears interest from the date
22 that the charges become due at a rate determined pursuant to NRS
23 17.130 until the charges, including all interest due, are paid.

24 6. ~~[Except as otherwise provided in this subsection,]~~ *Subject to*
25 *the limitations provided in NRS 116.3116*, a lien described in
26 subsection 4 is prior and superior to all liens, claims, encumbrances
27 and titles other than the liens described in paragraphs (a) and (c) of
28 subsection 2 of NRS 116.3116. ~~[If the federal regulations of the~~
29 ~~Federal Home Loan Mortgage Corporation or the Federal National~~
30 ~~Mortgage Association require a shorter period of priority for the~~
31 ~~lien, the period during which the lien is prior and superior to other~~
32 ~~security interests shall be determined in accordance with those~~
33 ~~federal regulations. Notwithstanding the federal regulations, the~~
34 ~~period of priority of the lien must not be less than the 6 months~~
35 ~~immediately preceding the institution of an action to enforce the~~
36 ~~lien.]~~

37 7. A person who purchases or acquires a unit at a foreclosure
38 sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS
39 107.080 is bound by the governing documents of the association and
40 shall maintain the exterior of the unit in accordance with the
41 governing documents of the association. Such a unit may only be
42 removed from a common-interest community in accordance with the
43 governing documents pursuant to this chapter.

44 8. Notwithstanding any other provision of law, an association,
45 its directors or members of the executive board, employees, agents



1 or community manager who enter the grounds of a unit pursuant to
2 this section are not liable for trespass.

3 9. As used in this section:

4 (a) "Exterior of the unit" includes, without limitation, all
5 landscaping outside of a unit and the exterior of all property
6 exclusively owned by the unit owner.

7 (b) "Vacant" means a unit:

8 (1) Which reasonably appears to be unoccupied;

9 (2) On which the owner has failed to maintain the exterior to
10 the standards set forth in the governing documents the association;
11 and

12 (3) On which the owner has failed to pay assessments for
13 more than 60 days.

14 **Sec. 5.** NRS 116.310313 is hereby amended to read as
15 follows:

16 116.310313 1. An association may *not* charge a unit's owner
17 ~~[reasonable fees to cover]~~ the costs of collecting any past due
18 obligation ~~[- The Commission shall adopt regulations establishing~~
19 ~~the amount of the fees that an association may charge pursuant to~~
20 ~~this section.~~

21 ~~—2. The provisions of this section apply to any costs of~~
22 ~~collecting a past due obligation charged to a unit's owner, regardless~~
23 ~~of whether the past due obligation is collected by the association~~
24 ~~itself or by any person acting on behalf of the association, including,~~
25 ~~without limitation, an officer or employee of the association, a~~
26 ~~community manager or a collection agency.~~

27 ~~—3.] unless:~~

28 (a) *The executive board proposes a collection policy which*
29 *includes, without limitation:*

30 (1) *The responsibility of the unit's owner to pay an*
31 *obligation in a timely manner;*

32 (2) *The association's rights concerning the collection of an*
33 *obligation if the unit's owner fails to pay the obligation in a timely*
34 *manner; and*

35 (3) *A list or schedule of the maximum amount of each fee,*
36 *cost, charge or other amount which may be charged to a unit's*
37 *owner to cover the costs of collecting a past due obligation;*

38 (b) *Units' owners constituting a majority of the votes cast*
39 *approve the collection policy proposed by the executive board; and*

40 (c) *The collection service for which the cost is incurred has*
41 *been performed, except that the fees and costs associated with a*
42 *release of a delinquent assessment lien may be charged to the*
43 *unit's owner at the time of the recording of the notice of a*
44 *delinquent assessment lien.*



1 2. *Except as otherwise provided in subsection 3, an*
2 *association may not charge a unit's owner fees to cover the costs*
3 *of collecting the past due obligation which exceed a total of*
4 *\$1,475. In addition to the amount set forth in this subsection, if an*
5 *association is attempting to collect a past due obligation from a*
6 *unit's owner, the association may charge the unit's owner:*

7 (a) *A reasonable management company fee which may not*
8 *exceed a total of \$50; and*

9 (b) *Costs and reasonable attorney's fees if such costs and fees*
10 *are awarded pursuant to subsection 9 of NRS 116.3116.*

11 3. *An association may not charge a unit's owner fees to cover*
12 *the costs of collecting a past due fine for a violation of the*
13 *governing documents which exceed a total of \$225 plus any costs*
14 *authorized to be charged to a unit's owner pursuant to subsection*
15 *5. In attempting to collect a past due fine for a violation of the*
16 *governing documents, the association shall:*

17 (a) *Provide any requested payoff demand statement within 10*
18 *days after receipt of a request for such a statement.*

19 (b) *Provide information concerning the fine to a person who*
20 *presents evidence that the person has a protectable interest in the*
21 *unit, including, without limitation, a receipt for a purchase as a*
22 *trustee's sale, a deed of trust secured by the unit, a deed to the unit*
23 *or any other legitimate evidence of a protectable interest in the*
24 *unit.*

25 (c) *Execute and record in the office of the county recorder of*
26 *the county in which the unit is located within 30 days after full*
27 *payment of the amount due notice of the release of the lien.*

28 4. *An association may not charge fees to cover the costs of*
29 *collecting a past due obligation which exceed the following*
30 *amounts:*

31 (a) *For a letter stating the intent of the association to record a*
32 *notice of delinquent assessment, \$50.*

33 (b) *For a letter stating the intent of the association to record a*
34 *notice of default and election to sell, \$50.*

35 (c) *For a letter stating the intent of the association to record a*
36 *notice of sale, \$50.*

37 (d) *For the preparation and recordation of a notice of*
38 *delinquent assessment lien, \$125.*

39 (e) *For the preparation and recordation of a notice of default*
40 *and election to sell, \$125.*

41 (f) *For the preparation and recordation of a notice of sale,*
42 *\$125.*

43 (g) *For the postponement of a foreclosure sale, \$50.*

44 (h) *For the preparation and recordation of a transfer deed,*
45 *\$125.*



1 (i) For the preparation and recordation of a release of the
2 notice of delinquent assessment, \$50.

3 (j) For the preparation and recordation of a notice of
4 rescission, \$50.

5 (k) For the preparation and recordation of an escrow payoff
6 demand, \$50.

7 (l) For the preparation and administration of a payment plan
8 agreement, \$50.

9 (m) For the preparation of a super-priority demand letter, \$75.

10 ↪ The association may not charge the fee described in paragraph
11 (b), (e) or (f) unless, at the time the applicable notice is prepared,
12 the association intends to complete the sale of the unit pursuant to
13 NRS 116.31162 to 116.31168, inclusive, if the unit's owner fails to
14 pay the amount of the lien. The association may not charge the fee
15 described in paragraph (a) or (d) unless the governing documents
16 authorize the recording of the applicable document.

17 5. In addition to the amount of a fee charged to a unit's
18 owner to cover the costs of collecting a past due obligation
19 pursuant to subsection 4, if:

20 (a) An association incurs any costs in connection with an
21 activity described in subsection 3, including, without limitation,
22 the cost of a trustee's sale guarantee and other title costs,
23 recording costs, posting and publishing costs, sale costs, mailing
24 costs, express delivery costs and skip trace fees; and

25 (b) Those costs are not charged by an officer, director or
26 employee of the association, an agent or attorney of the
27 association, a community manager of the association or a
28 collection agency retained by the association or an affiliate or
29 related party thereof,

30 ↪ the association may recover from the unit's owner the actual
31 costs incurred without any increase or markup. The total amount
32 of costs charged to a unit's owner pursuant to this subsection must
33 not exceed \$500.

34 6. An association or a community manager may not charge a
35 unit's owner, or require a unit's owner to pay, a fee of more than:

36 (a) Fifty dollars for transferring an account for the collection
37 of a past due obligation to another person; and

38 (b) Twenty-five dollars for changing the name of the unit's
39 owner on the account for the collection of a past due obligation.

40 7. An association may not transfer an account for the
41 collection of a past due fine for a violation of the governing
42 documents to any person other than an officer or employee of the
43 association or the community manager. If an association transfers
44 an account for the collection of a past due fine for a violation of
45 the governing documents to the community manager of the



1 *association, the community manager may not transfer the account*
2 *to any person other than an officer or employee of the community*
3 *manager.*

4 *8. Each written attempt to collect from a unit's owner a past*
5 *due obligation which is more than 60 days past due in which the*
6 *association or its authorized agent expresses an intent to engage in*
7 *further collection activity if the unit's owner fails to pay the total*
8 *amount due must include:*

9 *(a) A statement of the current amount due; and*

10 *(b) A schedule of the amount of the fees, costs, charges or*
11 *other amounts which may be charged to the unit's owner if the*
12 *unit's owner fails to pay the total amount due.*

13 *↳ For the purposes of this subsection, providing a standard*
14 *monthly statement or a coupon book is not an attempt to collect a*
15 *past due obligation.*

16 *9. For a one-time period of 30 days immediately following*
17 *receipt of a payoff demand from the unit's owner or a person with*
18 *a protectable interest in the unit, no fee to cover the costs of*
19 *collecting a past due obligation, other than the fee described in*
20 *paragraph (k) of subsection 4 and any fee to cover any cost of*
21 *collecting a past due obligation which is imposed because of an*
22 *action required by statute to be taken during the 30-day period,*
23 *may be charged to the unit's owner.*

24 *10. For a period of 30 days immediately following the date on*
25 *which:*

26 *(a) A person who holds a security interest in a unit provides*
27 *the association with the person's contact information pursuant to*
28 *subsection 1 of NRS 116.310312; and*

29 *(b) A unit is sold pursuant to a trustee's sale under NRS*
30 *107.080 or a foreclosure sale under NRS 40.430 by, or on behalf*
31 *of, a person who holds a first securing interest on the unit,*

32 *↳ no fee to cover the cost of collecting a past due obligation, other*
33 *than a fee to cover any costs of collecting a past due obligation*
34 *which is imposed because of an action required by statute to be*
35 *taken during the 30-day period, may be charged to the unit's*
36 *owner.*

37 *11. The provisions of this section apply to any costs of*
38 *collecting a past due obligation charged to a unit's owner,*
39 *regardless of whether the past due obligation is collected by the*
40 *association itself or by any person acting on behalf of the*
41 *association, including, without limitation, an officer or employee*
42 *of the association, a community manager or a collection agency.*

43 *12. As used in this section ~~£~~*

44 ~~*(a) "Costs of collecting" includes any fee, charge or cost, by*~~
45 ~~*whatever name, including, without limitation, any collection fee,*~~



~~filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.~~

~~—(b) “Obligation”]~~ **“obligation”** means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

Sec. 6. NRS 116.31085 is hereby amended to read as follows:

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

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

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

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

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

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

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

(e) Discuss an authorization to foreclose the association's lien by sale pursuant to paragraph (b) of subsection 1 of NRS 116.31162. The vote of each member of the executive board concerning whether to authorize the foreclosure of the association's lien by sale must be recorded in the minutes of the meeting.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests



1 in writing that an open hearing be conducted by the executive board.
2 If the person who may be sanctioned for the alleged violation
3 requests in writing that an open hearing be conducted, the person:

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

7 (b) Is entitled to due process, as set forth in the standards
8 adopted by regulation by the Commission, which must include,
9 without limitation, the right to counsel, the right to present witnesses
10 and the right to present information relating to any conflict of
11 interest of any member of the hearing panel; and

12 (c) Is not entitled to attend the deliberations of the executive
13 board.

14 5. The provisions of subsection 4 establish the minimum
15 protections that the executive board must provide before it may
16 make a decision. The provisions of subsection 4 do not preempt any
17 provisions of the governing documents that provide greater
18 protections.

19 6. Except as otherwise provided in this subsection, any matter
20 discussed by the executive board when it meets in executive session
21 must be generally noted in the minutes of the meeting of the
22 executive board. The executive board shall maintain minutes of any
23 decision made pursuant to subsection 4 concerning an alleged
24 violation and, upon request, provide a copy of the decision to the
25 person who was subject to being sanctioned at the hearing or to the
26 person's designated representative.

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

30 **Sec. 7.** NRS 116.31151 is hereby amended to read as follows:

31 116.31151 1. Except as otherwise provided in subsection 2
32 and unless the declaration of a common-interest community imposes
33 more stringent standards, the executive board shall, not less than 30
34 days or more than 60 days before the beginning of the fiscal year of
35 the association, prepare and distribute to each unit's owner a copy
36 of:

37 (a) The budget for the daily operation of the association. The
38 budget must include, without limitation, the estimated annual
39 revenue and expenditures of the association and any contributions to
40 be made to the reserve account of the association.

41 (b) The budget to provide adequate funding for the reserves
42 required by paragraph (b) of subsection 2 of NRS 116.3115. The
43 budget must include, without limitation:

44 (1) The current estimated replacement cost, estimated
45 remaining life and estimated useful life of each major component of



1 the common elements and any other portion of the common-interest
2 community that the association is obligated to maintain, repair,
3 replace or restore;

4 (2) As of the end of the fiscal year for which the budget is
5 prepared, the current estimate of the amount of cash reserves that
6 are necessary, and the current amount of accumulated cash reserves
7 that are set aside, to repair, replace or restore the major components
8 of the common elements and any other portion of the common-
9 interest community that the association is obligated to maintain,
10 repair, replace or restore;

11 (3) A statement as to whether the executive board has
12 determined or anticipates that the levy of one or more special
13 assessments will be necessary to repair, replace or restore any major
14 component of the common elements or any other portion of the
15 common-interest community that the association is obligated to
16 maintain, repair, replace or restore or to provide adequate funding
17 for the reserves designated for that purpose; and

18 (4) A general statement describing the procedures used for
19 the estimation and accumulation of cash reserves pursuant to
20 subparagraph (2), including, without limitation, the qualifications of
21 the person responsible for the preparation of the study of the
22 reserves required by NRS 116.31152.

23 2. In lieu of distributing copies of the budgets of the
24 association required by subsection 1, the executive board may
25 distribute to each unit's owner a summary of those budgets,
26 accompanied by a written notice that:

27 (a) The budgets are available for review at the business office of
28 the association or some other suitable location within the county
29 where the common-interest community is situated or, if it is situated
30 in more than one county, within one of those counties but not to
31 exceed 60 miles from the physical location of the common-interest
32 community; and

33 (b) Copies of the budgets will be provided upon request.

34 3. Within 60 days after adoption of any proposed budget for
35 the common-interest community, the executive board shall provide a
36 summary of the proposed budget to each unit's owner and shall set a
37 date for a meeting of the units' owners to consider ratification of the
38 proposed budget not less than 14 days or more than 30 days after the
39 mailing of the summaries. Unless at that meeting a majority of all
40 units' owners, or any larger vote specified in the declaration, reject
41 the proposed budget, the proposed budget is ratified, whether or not
42 a quorum is present. If the proposed budget is rejected, the periodic
43 budget last ratified by the units' owners must be continued until
44 such time as the units' owners ratify a subsequent budget proposed
45 by the executive board.



1 4. The executive board shall, at the same time and in the same
2 manner that the executive board makes the budget available to a
3 unit's owner pursuant to this section, make available to each unit's
4 owner the *collection* policy ~~[established]~~ for the association
5 ~~[concerning the collection of any fees, fines, assessments or costs~~
6 ~~imposed against a unit's owner pursuant to this chapter. The policy~~
7 ~~must include, without limitation:~~

8 ~~—(a) The responsibility of the unit's owner to pay any such fees,~~
9 ~~fines, assessments or costs in a timely manner; and~~

10 ~~—(b) The association's rights concerning the collection of such~~
11 ~~fees, fines, assessments or costs if the unit's owner fails to pay the~~
12 ~~fees, fines, assessments or costs in a timely manner.] *adopted*~~
13 *pursuant to NRS 116.310313.*

14 **Sec. 8.** 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 ~~{→}~~

39 3. The lien *under this section* is also prior to all security
40 interests described in paragraph (b) *of subsection 2* to the extent of
41 any charges incurred by the association on a unit pursuant to NRS
42 116.310312 and to the extent of the assessments for common
43 expenses based on the periodic budget adopted by the association
44 pursuant to NRS 116.3115 which would have become due in the
45 absence of acceleration during the 9 months immediately preceding



1 institution of an action to enforce the lien, unless federal regulations
2 *or underwriting guidelines* adopted by the Federal Home Loan
3 Mortgage Corporation or the Federal National Mortgage
4 Association require a shorter period of priority for the lien. If federal
5 regulations *or underwriting guidelines* adopted by the Federal
6 Home Loan Mortgage Corporation or the Federal National
7 Mortgage Association require a shorter period of priority for the
8 lien, the period ~~[during which the lien is prior to all security interests~~
9 ~~described in paragraph (b)] of priority~~ must be determined in
10 accordance with those federal regulations ~~[.]~~ *or underwriting*
11 *guidelines*, except that notwithstanding the provisions of the federal
12 regulations ~~[.]~~ *or underwriting guidelines*, the period of priority for
13 the lien must not be less than the 6 months immediately preceding
14 institution of an action to enforce the lien. ~~[This subsection does]~~ *If*
15 *title to a unit is acquired by a sale conducted pursuant to NRS*
16 *40.430 or 107.080 to obtain payment of a debt secured by a*
17 *security interest described in paragraph (b) of subsection 2 and*
18 *that debt was insured by the Federal Home Loan Mortgage*
19 *Corporation or the Federal National Mortgage Association, the*
20 *amount secured by the lien given priority over the security*
21 *interests described in paragraph (b) of subsection 2 must not*
22 *exceed the amount of common expenses and assessments*
23 *authorized to be given such priority by the federal regulations or*
24 *underwriting guidelines adopted by the entity which insured the*
25 *debt.*

26 **4.** *The provisions of subsections 2 and 3 do* not affect the
27 priority of mechanics' or materialmen's liens, or the priority of liens
28 for other assessments made by the association.

29 ~~[3.]~~ **5.** Unless the declaration otherwise provides, if two or
30 more associations have liens for assessments created at any time on
31 the same property, those liens have equal priority.

32 ~~[4.]~~ **6.** Recording of the declaration constitutes record notice
33 and perfection of the lien. No further recordation of any claim of
34 lien for assessment under this section is required.

35 ~~[5.]~~ **7.** A lien for unpaid assessments is extinguished unless
36 proceedings to enforce the lien are instituted within 3 years after the
37 full amount of the assessments becomes due.

38 ~~[6.]~~ **8.** This section does not prohibit actions to recover sums
39 for which subsection 1 creates a lien or prohibit an association from
40 taking a deed in lieu of foreclosure.

41 ~~[7.]~~ **9.** A judgment or decree in any action brought under this
42 section must include costs and reasonable attorney's fees for the
43 prevailing party.

44 ~~[8.]~~ **10.** The association, upon written request, shall furnish to
45 a unit's owner a statement setting forth the amount of unpaid



1 assessments against the unit. If the interest of the unit's owner is real
2 estate or if a lien for the unpaid assessments may be foreclosed
3 under NRS 116.31162 to 116.31168, inclusive, the statement must
4 be in recordable form. The statement must be furnished within 10
5 business days after receipt of the request and is binding on the
6 association, the executive board and every unit's owner.

7 ~~9-]~~ **11.** In a cooperative, upon nonpayment of an assessment
8 on a unit, the unit's owner may be evicted in the same manner as
9 provided by law in the case of an unlawful holdover by a
10 commercial tenant, and:

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

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

16 (1) May be foreclosed as a security interest under NRS
17 104.9101 to 104.9709, inclusive; or

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

20 **Sec. 9.** NRS 116.31162 is hereby amended to read as follows:

21 116.31162 1. Except as otherwise provided in ~~[subsection]~~
22 *subsections 4 ~~]~~ and 5*, in a condominium, in a planned community,
23 in a cooperative where the owner's interest in a unit is real estate
24 under NRS 116.1105, or in a cooperative where the owner's interest
25 in a unit is personal property under NRS 116.1105 and the
26 declaration provides that a lien may be foreclosed under NRS
27 116.31162 to 116.31168, inclusive, the association may foreclose its
28 lien by sale after all of the following occur:

29 (a) The association has mailed by certified or registered mail,
30 return receipt requested, to the unit's owner or his or her successor
31 in interest, at his or her address, if known, and at the address of the
32 unit, a notice of delinquent assessment which states the amount of
33 the assessments and other sums which are due in accordance with
34 subsection 1 of NRS 116.3116, a description of the unit against
35 which the lien is imposed and the name of the record owner of the
36 unit.

37 (b) *Before the association records the notice of default and*
38 *election to sell in the manner required by paragraph (c), the*
39 *executive board authorizes the foreclosure of the association's lien*
40 *by sale by a majority vote of the members of the executive board*
41 *which is recorded in the minutes of the meeting at which such*
42 *action is taken.*

43 (c) Not less than 30 days after mailing the notice of delinquent
44 assessment pursuant to paragraph (a), the association or other person
45 conducting the sale has executed and caused to be recorded, with the



1 county recorder of the county in which the common-interest
2 community or any part of it is situated, a notice of default and
3 election to sell the unit to satisfy the lien which must contain the
4 same information as the notice of delinquent assessment and which
5 must also comply with the following:

- 6 (1) Describe the deficiency in payment.
- 7 (2) State the name and address of the person authorized by
8 the association to enforce the lien by sale.
- 9 (3) Contain, in 14-point bold type, the following warning:

10
11 **WARNING! IF YOU FAIL TO PAY THE AMOUNT**
12 **SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR**
13 **HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**
14

15 ~~(c)~~ (d) The unit's owner or his or her successor in interest has
16 failed to pay the amount of the lien, including costs, fees and
17 expenses incident to its enforcement, for 90 days following the
18 recording of the notice of default and election to sell.

19 2. The notice of default and election to sell must be signed by
20 the person designated in the declaration or by the association for that
21 purpose or, if no one is designated, by the president of the
22 association.

23 3. The period of 90 days begins on the first day following:

- 24 (a) The date on which the notice of default is recorded; or
- 25 (b) The date on which a copy of the notice of default is mailed
26 by certified or registered mail, return receipt requested, to the unit's
27 owner or his or her successor in interest at his or her address, if
28 known, and at the address of the unit,
29 ↪ whichever date occurs later.

30 4. The association may not foreclose a lien by sale based on a
31 fine or penalty for a violation of the governing documents of the
32 association unless:

- 33 (a) The violation poses an imminent threat of causing a
34 substantial adverse effect on the health, safety or welfare of the
35 units' owners or residents of the common-interest community; or
- 36 (b) The penalty is imposed for failure to adhere to a schedule
37 required pursuant to NRS 116.310305.

38 ***5. The association may not foreclose a lien by sale based on a***
39 ***delinquent assessment unless the amount of the delinquent***
40 ***assessment, excluding acceleration and any interest, charges for***
41 ***late payment, fines or costs of collecting the assessment:***

- 42 (a) ***Is more than \$1,800; or***
- 43 (b) ***Is equal to or greater than the assessments for common***
44 ***expenses based on the periodic budget adopted by the association***



1 *pursuant to NRS 116.3115 which became due during the 12*
2 *months immediately preceding institution of the foreclosure.*

3 **Sec. 10.** (Deleted by amendment.)

4 **Sec. 11.** NRS 116.4109 is hereby amended to read as follows:

5 116.4109 1. Except in the case of a sale in which delivery of
6 a public offering statement is required, or unless exempt under
7 subsection 2 of NRS 116.4101, a unit's owner or his or her
8 authorized agent shall, at the expense of the unit's owner, furnish to
9 a purchaser a resale package containing all of the following:

10 (a) A copy of the declaration, other than any plats, the bylaws,
11 the rules or regulations of the association and the information
12 statement required by NRS 116.41095;

13 (b) A statement setting forth the amount of the monthly
14 assessment for common expenses and any unpaid assessment of any
15 kind currently due from the selling unit's owner;

16 (c) A copy of the current operating budget of the association and
17 current year-to-date financial statement for the association, which
18 must include a summary of the reserves of the association required
19 by NRS 116.31152 and which must include, without limitation, a
20 summary of the information described in paragraphs (a) to (e),
21 inclusive, of subsection 3 of NRS 116.31152;

22 (d) A statement of any unsatisfied judgments or pending legal
23 actions against the association and the status of any pending legal
24 actions relating to the common-interest community of which the
25 unit's owner has actual knowledge;

26 (e) A statement of any transfer fees, transaction fees or any other
27 fees associated with the resale of a unit; and

28 (f) In addition to any other document, a statement describing all
29 current and expected fees or charges for each unit, including,
30 without limitation, association fees, fines, assessments, late charges
31 or penalties, interest rates on delinquent assessments, additional
32 costs for collecting past due fines and charges for opening or closing
33 any file for each unit.

34 2. The purchaser may, by written notice, cancel the contract of
35 purchase until midnight of the fifth calendar day following the date
36 of receipt of the resale package described in subsection 1, and the
37 contract for purchase must contain a provision to that effect. If
38 the purchaser elects to cancel a contract pursuant to this subsection,
39 the purchaser must hand deliver the notice of cancellation to the
40 unit's owner or his or her authorized agent or mail the notice of
41 cancellation by prepaid United States mail to the unit's owner or his
42 or her authorized agent. Cancellation is without penalty, and all
43 payments made by the purchaser before cancellation must be
44 refunded promptly. If the purchaser has accepted a conveyance of
45 the unit, the purchaser is not entitled to:



* A B 3 9 4 R 1 *

1 (a) Cancel the contract pursuant to this subsection; or
2 (b) Damages, rescission or other relief based solely on the
3 ground that the unit's owner or his or her authorized agent failed to
4 furnish the resale package, or any portion thereof, as required by this
5 section.

6 3. Within 10 days after receipt of a written request by a unit's
7 owner or his or her authorized agent, the association shall furnish all
8 of the following to the unit's owner or his or her authorized agent
9 for inclusion in the resale package:

10 (a) Copies of the documents required pursuant to paragraphs (a)
11 and (c) of subsection 1; and

12 (b) A certificate containing the information necessary to enable
13 the unit's owner to comply with paragraphs (b), (d) and (e) of
14 subsection 1.

15 4. If the association furnishes the documents and certificate
16 pursuant to subsection 3:

17 (a) The unit's owner or his or her authorized agent shall include
18 the documents and certificate in the resale package provided to the
19 purchaser, and neither the unit's owner nor his or her authorized
20 agent is liable to the purchaser for any erroneous information
21 provided by the association and included in the documents and
22 certificate.

23 (b) The association may charge the unit's owner a reasonable
24 fee to cover the cost of preparing the certificate furnished pursuant
25 to subsection 3. Such a fee must be based on the actual cost the
26 association incurs to fulfill the requirements of this section in
27 preparing the certificate. The Commission shall adopt regulations
28 establishing the maximum amount of the fee that an association may
29 charge for preparing the certificate.

30 (c) The association may charge the unit's owner a reasonable
31 fee, not to exceed 25 cents per page, to cover the cost of copying the
32 other documents furnished pursuant to subsection 3.

33 (d) Except for the fees allowed pursuant to paragraphs (b) and
34 (c), the association may not charge the unit's owner any other fees
35 for preparing or furnishing the documents and certificate pursuant to
36 subsection 3.

37 5. Neither a purchaser nor the purchaser's interest in a unit is
38 liable for any unpaid assessment or fee greater than the amount set
39 forth in the documents and certificate prepared by the association. If
40 the association fails to furnish the documents and certificate within
41 the 10 days allowed by this section, the seller is not liable for the
42 delinquent assessment.

43 6. Upon the request of a unit's owner or his or her authorized
44 agent, or upon the request of a purchaser to whom the unit's owner
45 has provided a resale package pursuant to this section or his or her



1 authorized agent, the association shall make the entire study of the
2 reserves of the association which is required by NRS 116.31152
3 reasonably available for the unit's owner, purchaser or authorized
4 agent to inspect, examine, photocopy and audit. The study must be
5 made available at the business office of the association or some
6 other suitable location within the county where the common-interest
7 community is situated or, if it is situated in more than one county,
8 within one of those counties.

9 *7. An association or a community manager may not charge a*
10 *unit's owner, and may not require a unit's owner to pay, a fee of*
11 *more than \$50 to cover the cost of recording in the books and*
12 *records of the association or community manager the transfer of*
13 *the ownership of the unit.*

14 **Sec. 12.** NRS 649.370 is hereby amended to read as follows:

15 649.370 *1.* A violation of any provision of the federal Fair
16 Debt Collection Practices Act, 15 U.S.C. §§ ~~1682~~ 1692 et seq., or
17 any regulation adopted pursuant thereto, shall be deemed to be a
18 violation of this chapter.

19 *2. Even if a claim is not governed by the federal Fair Debt*
20 *Collection Practices Act, 15 U.S.C. §§ 1692 et seq., a violation of*
21 *any provision of that Act, or any regulation adopted pursuant*
22 *thereto, with respect to collecting or attempting to collect a claim*
23 *owed to a unit-owners' association by a unit's owner shall be*
24 *deemed to be a violation of this chapter.*

25 **Sec. 13.** The amendatory provisions of section 9 of this act
26 apply only if a notice of default and election to sell is recorded
27 pursuant to NRS 116.31162 on or after July 1, 2011.

28 **Sec. 14.** This act becomes effective on July 1, 2011.

