
ASSEMBLY BILL NO. 85—ASSEMBLYMAN SEGERBLOM

PREFILED JANUARY 7, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing common-interest communities. (BDR 10-512)

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 concerning litigation instituted by an association in a common-interest community on behalf of two or more units' owners; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides that, subject to the provisions of the declaration, an
2 association in a common-interest community may institute litigation on behalf of
3 two or more units' owners on matters affecting the common-interest community.
4 (NRS 116.3102) In *D.R. Horton, Inc. v. Eighth Judicial District Court*, 125 Nev.
5 Adv. Op. 35, 215 P.3d 697 (2009), the Nevada Supreme Court held that: (1) an
6 association in a common-interest community has standing to pursue constructional
7 defect claims on behalf of units' owners with respect to constructional defects in
8 individual units; and (2) an association that pursues a constructional defect claim on
9 behalf of units' owners with respect to constructional defects in individual units
10 must satisfy the requirements for class actions set forth in Rule 23 of the Nevada
11 Rules of Civil Procedure.

12 This bill provides that if an association pursues a claim for damages on behalf
13 of units' owners with respect to individual units, the association is not required to
14 satisfy the requirements for class actions set forth in Rule 23 of the Nevada Rules
15 of Civil Procedure. In addition, this bill authorizes an association to institute,
16 defend or intervene in litigation or administrative proceedings regardless of
17 whether the declaration specifically authorizes such action.



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

1 **Section 1.** NRS 116.3102 is hereby amended to read as
2 follows:

3 116.3102 1. Except as otherwise provided in this section, and
4 subject to the provisions of the declaration, the association may do
5 any or all of the following:

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

7 (b) Adopt and amend budgets for revenues, expenditures and
8 reserves and collect assessments for common expenses from the
9 units' owners.

10 (c) Hire and discharge managing agents and other employees,
11 agents and independent contractors.

12 (d) Institute, defend or intervene in litigation or administrative
13 proceedings in its own name on behalf of itself or two or more units'
14 owners on matters affecting the common-interest community **[H]**,
15 *regardless of whether the claims involved in the litigation or*
16 *administrative proceeding relate to individual units and regardless*
17 *of whether the declaration provides specific authorization for such*
18 *action. An association is not required to satisfy the requirements*
19 *of Rule 23 of the Nevada Rules of Civil Procedure to commence or*
20 *maintain a civil action for damages on behalf of two or more*
21 *units' owners on matters affecting individual units.*

22 (e) Make contracts and incur liabilities. Any contract between
23 the association and a private entity for the furnishing of goods or
24 services must not include a provision granting the private entity the
25 right of first refusal with respect to extension or renewal of the
26 contract.

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

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

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

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

36 (2) Part of a cooperative may be conveyed, or all or part of a
37 cooperative may be subjected to a security interest, only pursuant to
38 NRS 116.3112.

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

41 (j) Impose and receive any payments, fees or charges for the use,
42 rental or operation of the common elements, other than limited



1 common elements described in subsections 2 and 4 of NRS
2 116.2102, and for services provided to the units' owners, including,
3 without limitation, any services provided pursuant to
4 NRS 116.310312.

5 (k) Impose charges for late payment of assessments pursuant to
6 NRS 116.3115.

7 (l) Impose construction penalties when authorized pursuant to
8 NRS 116.310305.

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

12 (n) Impose reasonable charges for the preparation and
13 recordation of any amendments to the declaration or any statements
14 of unpaid assessments, and impose reasonable fees, not to exceed
15 the amounts authorized by NRS 116.4109, for preparing and
16 furnishing the documents and certificate required by that section.

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

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

22 (q) Exercise any other powers conferred by the declaration or
23 bylaws.

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

26 (s) Direct the removal of vehicles improperly parked on property
27 owned or leased by the association, as authorized pursuant to NRS
28 487.038, or improperly parked on any road, street, alley or other
29 thoroughfare within the common-interest community in violation of
30 the governing documents. In addition to complying with the
31 requirements of NRS 487.038 and any requirements in the
32 governing documents, if a vehicle is improperly parked as described
33 in this paragraph, the association must post written notice in a
34 conspicuous place on the vehicle or provide oral or written notice to
35 the owner or operator of the vehicle at least 48 hours before the
36 association may direct the removal of the vehicle, unless the vehicle:

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

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

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

44 2. The declaration may not impose limitations on the power of
45 the association to deal with the declarant which are more restrictive



1 than the limitations imposed on the power of the association to deal
2 with other persons.

3 3. Notwithstanding any provision of this chapter or the
4 governing documents to the contrary, an association may not impose
5 any assessment pursuant to this chapter or the governing documents
6 on the owner of any property in the common-interest community
7 that is exempt from taxation pursuant to NRS 361.125. For the
8 purposes of this subsection, "assessment" does not include any
9 charge for any utility services, including, without limitation,
10 telecommunications, broadband communications, cable television,
11 electricity, natural gas, sewer services, garbage collection, water or
12 for any other service which is delivered to and used or consumed
13 directly by the property in the common-interest community that is
14 exempt from taxation pursuant to NRS 361.125.

15 **Sec. 2.** The amendatory provisions of this act apply to any
16 litigation or administrative proceeding that is pending or
17 commenced on or after the effective date of this act.

18 **Sec. 3.** This act becomes effective upon passage and approval.

