

SENATE BILL NO. 260—SENATORS HARRIS, HAMMOND,
FARLEY, HARDY; AND KIHUEN

MARCH 12, 2015

JOINT SPONSOR: ASSEMBLYWOMAN SEAMAN

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing common-interest communities. (BDR 10-726)

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 the establishment of an impound account for the payment of certain assessments under certain circumstances; providing for the payment of assessments for common expenses from the impound account; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, a unit-owners' association has a lien on a unit for certain
2 amounts due to the association and may foreclose its lien through a nonjudicial
3 foreclosure sale. (NRS 116.3116-116.31168) Generally, the association's lien is not
4 prior to a first security interest on the unit recorded before the date on which the
5 amount sought to be enforced became delinquent. However, the association's lien is
6 prior to the first security interest on the unit to the extent of certain maintenance
7 and abatement charges and a certain amount of assessments for common expenses.
8 The portion of the association's lien that is prior to the first security interest on the
9 unit is commonly referred to as the "super-priority lien."
10 Under existing law, the holder of the first security interest on the unit may
11 establish an impound account for advance contributions for the payment of
12 assessments, if the unit's owner and the holder of the first security interest consent
13 to the establishment of such an account. (NRS 116.3116) **Section 1** of this bill
14 requires the holder of the first security interest to establish such an impound
15 account for advance contributions for the payment of certain assessments, and
16 requires payments to be made from the account for assessments for common
17 expenses in accordance with the same due dates as apply to the payment of
18 assessments by a unit's owner or in quarterly installments that are due on the first



19 day of each calendar quarter. Under **section 1**, if the assessments for common
20 expenses are paid in quarterly installments from the impound account, the due date
21 of the assessments is deemed to be the first day of the calendar quarter.

22 **Section 2** of this bill provides that the requirement to establish an impound
23 account and to make payments of assessments for common expenses from the
24 impound account becomes effective on January 1, 2016.

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

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

3 116.3116 1. The association has a lien on a unit for any
4 construction penalty that is imposed against the unit's owner
5 pursuant to NRS 116.310305, any assessment levied against that
6 unit or any fines imposed against the unit's owner from the time the
7 construction penalty, assessment or fine becomes due. Unless the
8 declaration otherwise provides, any penalties, fees, charges, late
9 charges, fines and interest charged pursuant to paragraphs (j) to (n),
10 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
11 assessments under this section. If an assessment is payable in
12 installments, the full amount of the assessment is a lien from the
13 time the first installment thereof becomes due.

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

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

19 (b) A first security interest on the unit recorded before the date
20 on which the assessment sought to be enforced became delinquent
21 or, in a cooperative, the first security interest encumbering only the
22 unit's owner's interest and perfected before the date on which the
23 assessment sought to be enforced became delinquent; and

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

26 ➔ The lien is also prior to all security interests described in
27 paragraph (b) to the extent of any charges incurred by the
28 association on a unit pursuant to NRS 116.310312 and to the extent
29 of the assessments for common expenses based on the periodic
30 budget adopted by the association pursuant to NRS 116.3115 which
31 would have become due in the absence of acceleration during the 9
32 months immediately preceding institution of an action to enforce the
33 lien, unless federal regulations adopted by the Federal Home Loan
34 Mortgage Corporation or the Federal National Mortgage
35 Association require a shorter period of priority for the lien. If federal



1 regulations adopted by the Federal Home Loan Mortgage
2 Corporation or the Federal National Mortgage Association require a
3 shorter period of priority for the lien, the period during which the
4 lien is prior to all security interests described in paragraph (b) must
5 be determined in accordance with those federal regulations, except
6 that notwithstanding the provisions of the federal regulations, the
7 period of priority for the lien must not be less than the 6 months
8 immediately preceding institution of an action to enforce the lien.
9 This subsection does not affect the priority of mechanics' or
10 materialmen's liens, or the priority of liens for other assessments
11 made by the association.

12 3. The holder of the security interest described in paragraph (b)
13 of subsection 2 or the holder's authorized agent ~~may~~ shall
14 establish an escrow account, loan trust account or other impound
15 account for advance contributions for the payment of ~~assessments~~
16 :

17 (a) *Assessments* for common expenses based on the periodic
18 budget adopted by the association pursuant to NRS 116.3115 ~~if the~~
19 ~~unit's owner and the holder of that security interest consent to the~~
20 ~~establishment of such an account. If such an account is established,~~
21 ~~payments~~ ;

22 (b) *Special assessments to establish adequate reserves for the*
23 *association pursuant to paragraph (b) of subsection 2; and*

24 (c) *Contributions for capital expenditures based on the*
25 *periodic budget adopted by the association pursuant to*
26 *NRS 116.3115.*

27 4. *Payments* from the account for assessments for common
28 expenses must be made in ~~accordance~~ :

29 (a) *Accordance* with the same due dates as apply to payments of
30 such assessments by a unit's owner ~~;~~

31 ~~—4;~~ ; or

32 (b) *Quarterly installments that are due the first day of each*
33 *calendar quarter. Notwithstanding any other provision of law or*
34 *the governing documents to the contrary, if assessments for*
35 *common expenses are paid in quarterly installments pursuant to*
36 *this paragraph, the due date of the assessments is deemed to be the*
37 *first day of each calendar quarter.*

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

41 ~~5;~~ 6. Recording of the declaration constitutes record notice
42 and perfection of the lien. No further recordation of any claim of
43 lien for assessment under this section is required.



1 ~~16.1~~ 7. A lien for unpaid assessments is extinguished unless
2 proceedings to enforce the lien are instituted within 3 years after the
3 full amount of the assessments becomes due.

4 ~~17.1~~ 8. This section does not prohibit actions to recover sums
5 for which subsection 1 creates a lien or prohibit an association from
6 taking a deed in lieu of foreclosure.

7 ~~18.1~~ 9. A judgment or decree in any action brought under this
8 section must include costs and reasonable attorney's fees for the
9 prevailing party.

10 ~~19.1~~ 10. The association, upon written request, shall furnish to
11 a unit's owner a statement setting forth the amount of unpaid
12 assessments against the unit. If the interest of the unit's owner is real
13 estate or if a lien for the unpaid assessments may be foreclosed
14 under NRS 116.31162 to 116.31168, inclusive, the statement must
15 be in recordable form. The statement must be furnished within 10
16 business days after receipt of the request and is binding on the
17 association, the executive board and every unit's owner.

18 ~~10.1~~ 11. In a cooperative, upon nonpayment of an assessment
19 on a unit, the unit's owner may be evicted in the same manner as
20 provided by law in the case of an unlawful holdover by a
21 commercial tenant, and:

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

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

27 (1) May be foreclosed as a security interest under NRS
28 104.9101 to 104.9709, inclusive; or

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

31 ~~11.1~~ 12. In an action by an association to collect assessments
32 or to foreclose a lien created under this section, the court may
33 appoint a receiver to collect all rents or other income from the unit
34 alleged to be due and owing to a unit's owner before
35 commencement or during pendency of the action. The receivership
36 is governed by chapter 32 of NRS. The court may order the receiver
37 to pay any sums held by the receiver to the association during
38 pendency of the action to the extent of the association's common
39 expense assessments based on a periodic budget adopted by the
40 association pursuant to NRS 116.3115.

41 **Sec. 2.** This act becomes effective on January 1, 2016.

