

Amendment No. CA1

Conference Committee Amendment to (BDR 10-994)
Senate Bill No. 258 First Reprint

Proposed by: Conference Committee

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MNM/BAW



Date: 6/4/2017

S.B. No. 258—Revises provisions governing common-interest communities.
(BDR 10-994)



SENATE BILL NO. 258—SENATORS GUSTAVSON, HARDY; GANSERT, HAMMOND,
MANENDO, PARKS, SETTELMAYER AND WOODHOUSE

MARCH 13, 2017

JOINT SPONSORS: ASSEMBLYMEN KRAMER AND KRASNER

Referred to Committee on Judiciary

SUMMARY—Revises provisions ~~governing common interest communities.~~
relating to property. (BDR 10-994)

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;~~ property; establishing the requirements for a written notice to request the curing of a violation of the governing documents of ~~an~~ a unit-owners' association without imposition of a fine; establishing provisions relating to property owned by more than one person; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 If an owner or a tenant or an invitee of the owner or tenant violates a provision of the
2 governing documents of an association, existing law allows the executive board of the
3 common-interest community to prohibit the owner, tenant or invitee from voting on matters
4 related to the common-interest community or using the common elements. Existing law also
5 permits the executive board to impose a fine on the owner, tenant or invitee for each such
6 violation under certain circumstances. (NRS 116.31031) ~~This~~ Section 1 of this bill
7 authorizes an executive board to send a written notice to cure an alleged violation of a
8 provision of the governing documents to an owner and, if different, a person responsible for
9 curing the alleged violation, without the imposition of a fine. ~~This bill~~ Section 1 also
10 requires that any such written notice meet certain requirements.

11 Existing law establishes provisions relating to local improvements, including
12 improvement districts and neighborhood improvement projects. (Chapter 271 of NRS)
13 Section 2 of this bill authorizes certain property owners who own additional property
14 jointly with certain other property owners or who own a fractional interest in additional
15 property as a tenant in common along with certain other property owners to act on
16 behalf of all such property owners in certain circumstances.

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

Section 1. NRS 116.31031 is hereby amended to read as follows:

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

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

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

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

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

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

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

➤ If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. The limitations on the amount of the fine do not apply to any charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

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

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

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

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

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

1 2. The executive board may not impose a fine pursuant to subsection 1 against
2 a unit's owner for a violation of any provision of the governing documents of an
3 association committed by an invitee of the unit's owner or the tenant unless the
4 unit's owner:

- 5 (a) Participated in or authorized the violation;
- 6 (b) Had prior notice of the violation; or
- 7 (c) Had an opportunity to stop the violation and failed to do so.

8 3. If the association adopts a policy imposing fines for any violations of the
9 governing documents of the association, the secretary or other officer specified in
10 the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United
11 States mail to the mailing address of each unit or to any other mailing address
12 designated in writing by the unit's owner, a schedule of the fines that may be
13 imposed for those violations.

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

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

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

22 (1) Written notice:

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

26 (II) Providing a clear and detailed photograph of the alleged violation,
27 if the alleged violation relates to the physical condition of the unit or the grounds of
28 the unit or an act or a failure to act of which it is possible to obtain a photograph;
29 and

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

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

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

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

- 42 (a) Executes a written waiver of the right to the hearing; or
- 43 (b) Fails to appear at the hearing after being provided with proper notice of the
44 hearing.

45 7. If a fine is imposed pursuant to subsection 1 and the violation is not cured
46 within 14 days, or within any longer period that may be established by the
47 executive board, the violation shall be deemed a continuing violation. Thereafter,
48 the executive board may impose an additional fine for the violation for each 7-day
49 period or portion thereof that the violation is not cured. Any additional fine may be
50 imposed without providing the opportunity to cure the violation and without the
51 notice and an opportunity to be heard required by paragraph (b) of subsection 4.

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

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

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

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

14 10. The provisions of this section establish the minimum procedural
15 requirements that the executive board must follow before it may impose a fine. The
16 provisions of this section do not preempt any provisions of the governing
17 documents that provide greater procedural protections.

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

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

25 **Sec. 2. Chapter 271 of NRS is hereby amended by adding thereto a new**
26 **section to read as follows:**

27 **Except as otherwise provided by law or an agreement between the respective**
28 **parties, and regardless of the date on which an interest in property was acquired,**
29 **if a property owner:**

30 **1. Owns property that is:**

31 **(a) Subject to a covenant, condition or restriction recorded against the**
32 **property before July 1, 2017; and**

33 **(b) Not subject to the provisions of chapter 116 of NRS; and**

34 **2. Owns additional property jointly with one or more other such property**
35 **owners or owns a fractional interest in additional property as a tenant in common**
36 **along with one or more other such property owners,**

37 **any property owners representing at least a majority of the ownership of such**
38 **additional property may act on behalf of all the property owners who own such**
39 **additional property.**

40 **Sec. 3. 1. This section and section 2 of this act become effective on July**
41 **1, 2017.**

42 **2. Section 1 of this act becomes effective on October 1, 2017.**