

ASSEMBLY BILL NO. 236—ASSEMBLYMEN NEAL; DALY, FRIERSON, HORNE, LIVERMORE, MUNFORD, OHRENSCHALL, PIERCE AND SEGERBLOM

MARCH 7, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing financial obligations in common-interest communities. (BDR 10-658)

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; enacting provisions governing the imposition and collection of assessments for common expenses when a unit is purchased, owned or transferred by a municipality or nonprofit entity engaged in certain activities with respect to the unit; prohibiting the executive board of an association from imposing a fine for a violation of the governing documents if the unit’s owner is a municipality or nonprofit entity engaged in certain activities with respect to the unit; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law provides for the payment of the common expenses of a  
2 homeowner’s association through assessments against the units. If the assessment,  
3 or any installment thereof, is 60 days or more past due, the assessment or  
4 installment bears interest at a rate specified in existing law. (NRS 116.3115) In  
5 addition, a homeowner’s association may impose charges for the late payment of  
6 assessments. (NRS 116.3102) A homeowners’ association has a lien on a unit for  
7 any assessment against that unit and may foreclose that lien by selling the unit  
8 under certain circumstances. (NRS 116.3116-116.31168)

9 **Sections 5, 7 and 8** of this bill enact provisions governing the imposition and  
10 collection of assessments for common expenses during the period in which a unit is  
11 owned by a municipality or nonprofit entity which is rehabilitating the unit  
12 pursuant to a governmental contract to mitigate the effects of foreclosures in the  
13 neighborhood. Under **section 5**, the municipality or nonprofit entity is not required  
14 to pay any assessments against that unit which become due during its rehabilitation



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15 of the unit. In addition, under **sections 5 and 7**, the association may not impose  
16 interest and charges for the late payment of any assessment which becomes due  
17 while the municipality or nonprofit entity is rehabilitating the unit and may not  
18 attempt to collect such an assessment. At the time of closing on a sale of the unit by  
19 the municipality or nonprofit entity, the purchaser or transferee must pay the  
20 assessments against the unit which became due while the unit was owned by the  
21 municipality or nonprofit entity. **Section 8** prohibits an association from foreclosing  
22 on the unit owned by a municipality or nonprofit entity because of the failure to pay  
23 assessments against the unit.

24 Existing law authorizes the executive board of an association to impose a fine  
25 against a unit's owner, tenant or invitee who violates a provision of the governing  
26 documents. (NRS 116.31031) **Section 6** of this bill prohibits the executive board of  
27 an association from imposing a fine against a municipality or nonprofit entity  
28 which is rehabilitating a unit pursuant to a government contract to mitigate the  
29 effects of foreclosures in the neighborhood.

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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 the provisions set forth as sections 2 and 3 of this act:

3 **Sec. 2.** *“Municipality” has the meaning ascribed to it in*  
4 *NRS 43.080.*

5 **Sec. 3.** *“Nonprofit entity” means a nonprofit corporation,*  
6 *association or organization that is exempt from the federal income*  
7 *tax pursuant to the provisions of section 501(c)(3) of the Internal*  
8 *Revenue Code of 1986, 26 U.S.C. § 501(c)(3).*

9 **Sec. 4.** NRS 116.003 is hereby amended to read as follows:

10 116.003 As used in this chapter and in the declaration and  
11 bylaws of an association, unless the context otherwise requires, the  
12 words and terms defined in NRS 116.005 to 116.095, inclusive, *and*  
13 *sections 2 and 3 of this act* have the meanings ascribed to them in  
14 those sections.

15 **Sec. 5.** NRS 116.3102 is hereby amended to read as follows:

16 116.3102 1. Except as otherwise provided in this section, and  
17 subject to the provisions of the declaration, the association may do  
18 any or all of the following:

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

20 (b) Adopt and amend budgets for revenues, expenditures and  
21 reserves and collect assessments for common expenses from the  
22 units' owners.

23 (c) Hire and discharge managing agents and other employees,  
24 agents and independent contractors.

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



- 1 (e) Make contracts and incur liabilities. Any contract between  
2 the association and a private entity for the furnishing of goods or  
3 services must not include a provision granting the private entity the  
4 right of first refusal with respect to extension or renewal of the  
5 contract.
- 6 (f) Regulate the use, maintenance, repair, replacement and  
7 modification of common elements.
- 8 (g) Cause additional improvements to be made as a part of the  
9 common elements.
- 10 (h) Acquire, hold, encumber and convey in its own name any  
11 right, title or interest to real estate or personal property, but:
- 12 (1) Common elements in a condominium or planned  
13 community may be conveyed or subjected to a security interest only  
14 pursuant to NRS 116.3112; and
- 15 (2) Part of a cooperative may be conveyed, or all or part of a  
16 cooperative may be subjected to a security interest, only pursuant to  
17 NRS 116.3112.
- 18 (i) Grant easements, leases, licenses and concessions through or  
19 over the common elements.
- 20 (j) Impose and receive any payments, fees or charges for the use,  
21 rental or operation of the common elements, other than limited  
22 common elements described in subsections 2 and 4 of NRS  
23 116.2102, and for services provided to the units' owners,  
24 including, without limitation, any services provided pursuant to  
25 NRS 116.310312.
- 26 (k) Impose charges for late payment of assessments pursuant to  
27 NRS 116.3115.
- 28 (l) Impose construction penalties when authorized pursuant to  
29 NRS 116.310305.
- 30 (m) Impose reasonable fines for violations of the governing  
31 documents of the association only if the association complies with  
32 the requirements set forth in NRS 116.31031.
- 33 (n) Impose reasonable charges for the preparation and  
34 recordation of any amendments to the declaration or any statements  
35 of unpaid assessments, and impose reasonable fees, not to exceed  
36 the amounts authorized by NRS 116.4109, for preparing and  
37 furnishing the documents and certificate required by that section.
- 38 (o) Provide for the indemnification of its officers and executive  
39 board and maintain directors' and officers' liability insurance.
- 40 (p) Assign its right to future income, including the right to  
41 receive assessments for common expenses, but only to the extent the  
42 declaration expressly so provides.
- 43 (q) Exercise any other powers conferred by the declaration or  
44 bylaws.



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

3 (s) Direct the removal of vehicles improperly parked on property  
4 owned or leased by the association, as authorized pursuant to NRS  
5 487.038, or improperly parked on any road, street, alley or other  
6 thoroughfare within the common-interest community in violation of  
7 the governing documents. In addition to complying with the  
8 requirements of NRS 487.038 and any requirements in the  
9 governing documents, if a vehicle is improperly parked as described  
10 in this paragraph, the association must post written notice in a  
11 conspicuous place on the vehicle or provide oral or written notice to  
12 the owner or operator of the vehicle at least 48 hours before the  
13 association may direct the removal of the vehicle, unless the vehicle:

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

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

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

21 2. The declaration may not impose limitations on the power of  
22 the association to deal with the declarant which are more restrictive  
23 than the limitations imposed on the power of the association to deal  
24 with other persons.

25 3. Notwithstanding any provision of this chapter or the  
26 governing documents to the contrary, an association may not impose  
27 any assessment pursuant to this chapter or the governing documents  
28 on the owner of any property in the common-interest community  
29 that is exempt from taxation pursuant to NRS 361.125. For the  
30 purposes of this subsection, "assessment" does not include any  
31 charge for any utility services, including, without limitation,  
32 telecommunications, broadband communications, cable television,  
33 electricity, natural gas, sewer services, garbage collection, water or  
34 for any other service which is delivered to and used or consumed  
35 directly by the property in the common-interest community that is  
36 exempt from taxation pursuant to NRS 361.125.

37 *4. Notwithstanding any provision of this chapter or the*  
38 *governing documents to the contrary, if the owner of a unit is a*  
39 *municipality or nonprofit entity which has entered into a contract*  
40 *with a governmental entity for the purpose of rehabilitating or*  
41 *stabilizing the neighborhood in which the unit is located to*  
42 *mitigate the effects of foreclosures in that neighborhood:*

43 *(a) The municipality or nonprofit entity is not required to pay*  
44 *any assessment against that unit pursuant to this section which*  
45 *becomes due during the period in which the municipality or*



1 *nonprofit entity owns the unit, except that, at the time of closing*  
2 *on a sale or transfer of the unit by the municipality or nonprofit*  
3 *entity, the purchaser or transferee shall pay the assessments*  
4 *against that unit pursuant to this section which became due*  
5 *during that period.*

6 *(b) Assessments against that unit pursuant to this section*  
7 *which become due during the period in which the municipality or*  
8 *nonprofit entity owns the unit must not bear interest.*

9 *(c) The association may not impose charges for the late*  
10 *payment of an assessment against that unit pursuant to this*  
11 *section which become due during the period in which the*  
12 *municipality or nonprofit entity owns the unit.*

13 *(d) The association may not attempt to collect from the*  
14 *municipality or nonprofit entity any assessment against that unit*  
15 *pursuant to this section which becomes due during the period in*  
16 *which the municipality or nonprofit entity owns the unit.*

17 **Sec. 6.** NRS 116.31031 is hereby amended to read as follows:

18 116.31031 1. Except as otherwise provided in this section, if  
19 a unit's owner or a tenant or an invitee of a unit's owner or a tenant  
20 violates any provision of the governing documents of an association,  
21 the executive board may, if the governing documents so provide:

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

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

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

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

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

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

42 ➤ If the violation poses an imminent threat of causing a substantial  
43 adverse effect on the health, safety or welfare of the units' owners or  
44 residents of the common-interest community, the amount of the fine  
45 must be commensurate with the severity of the violation and must



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

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

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

19 3. *If the owner of a unit is a municipality or nonprofit entity*  
20 *which has entered into a contract with a governmental entity for*  
21 *the purpose of rehabilitating or stabilizing the neighborhood in*  
22 *which the unit is located to mitigate the effects of foreclosures in*  
23 *that neighborhood, the executive board may not impose a fine*  
24 *against the unit's owner for a violation of the governing*  
25 *documents of the association.*

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

- 28 (a) Not less than 30 days before the violation, the unit's owner  
29 and, if different, the person against whom the fine will be imposed  
30 had been provided with written notice of the applicable provisions  
31 of the governing documents that form the basis of the violation; and
- 32 (b) Within a reasonable time after the discovery of the violation,  
33 the unit's owner and, if different, the person against whom the fine  
34 will be imposed has been provided with:

35 (1) Written notice specifying the details of the violation, the  
36 amount of the fine, and the date, time and location for a hearing on  
37 the violation; and

38 (2) A reasonable opportunity to contest the violation at the  
39 hearing.

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

44 ~~[4]~~ 5. The executive board must schedule the date, time and  
45 location for the hearing on the violation so that the unit's owner and,



1 if different, the person against whom the fine will be imposed is  
2 provided with a reasonable opportunity to prepare for the hearing  
3 and to be present at the hearing.

4 ~~[5-]~~ 6. The executive board must hold a hearing before it may  
5 impose the fine, unless the fine is paid before the hearing or unless  
6 the unit's owner and, if different, the person against whom the fine  
7 will be imposed:

8 (a) Executes a written waiver of the right to the hearing; or

9 (b) Fails to appear at the hearing after being provided with  
10 proper notice of the hearing.

11 ~~[6-]~~ 7. If a fine is imposed pursuant to subsection 1 and the  
12 violation is not cured within 14 days, or within any longer period  
13 that may be established by the executive board, the violation shall  
14 be deemed a continuing violation. Thereafter, the executive board  
15 may impose an additional fine for the violation for each 7-day  
16 period or portion thereof that the violation is not cured. Any  
17 additional fine may be imposed without notice and an opportunity to  
18 be heard.

19 ~~[7-]~~ 8. If the governing documents so provide, the executive  
20 board may appoint a committee, with not less than three members,  
21 to conduct hearings on violations and to impose fines pursuant to  
22 this section. While acting on behalf of the executive board for those  
23 limited purposes, the committee and its members are entitled to all  
24 privileges and immunities and are subject to all duties and  
25 requirements of the executive board and its members.

26 ~~[8-]~~ 9. A member of the executive board shall not participate  
27 in any hearing or cast any vote relating to a fine imposed pursuant to  
28 subsection 1 if the member has not paid all assessments which are  
29 due to the association by the member. If a member of the executive  
30 board:

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

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

34 ~~[9-]~~ 10. The provisions of this section establish the minimum  
35 procedural requirements that the executive board must follow before  
36 it may impose a fine. The provisions of this section do not preempt  
37 any provisions of the governing documents that provide greater  
38 procedural protections.

39 ~~[10-]~~ 11. Any past due fine must not bear interest, but may  
40 include any costs incurred by the association during a civil action to  
41 enforce the payment of the past due fine.

42 ~~[11-]~~ 12. If requested by a person upon whom a fine was  
43 imposed, not later than 60 days after receiving any payment of a  
44 fine, an association shall provide to the person upon whom the fine  
45 was imposed a statement of the remaining balance owed.



1       **Sec. 7.** NRS 116.3115 is hereby amended to read as follows:

2       116.3115 1. Until the association makes an assessment for  
3 common expenses, the declarant shall pay all common expenses.  
4 After an assessment has been made by the association, assessments  
5 must be made at least annually, based on a budget adopted at least  
6 annually by the association in accordance with the requirements set  
7 forth in NRS 116.31151. Unless the declaration imposes more  
8 stringent standards, the budget must include a budget for the daily  
9 operation of the association and a budget for the reserves required  
10 by paragraph (b) of subsection 2.

11       2. Except for assessments under subsections 4 to 7, inclusive:

12       (a) All common expenses, including the reserves, must be  
13 assessed against all the units in accordance with the allocations set  
14 forth in the declaration pursuant to subsections 1 and 2 of  
15 NRS 116.2107.

16       (b) The association shall establish adequate reserves, funded on  
17 a reasonable basis, for the repair, replacement and restoration of the  
18 major components of the common elements and any other portion of  
19 the common-interest community that the association is obligated to  
20 maintain, repair, replace or restore. The reserves may be used only  
21 for those purposes, including, without limitation, repairing,  
22 replacing and restoring roofs, roads and sidewalks, and must not be  
23 used for daily maintenance. The association may comply with the  
24 provisions of this paragraph through a funding plan that is designed  
25 to allocate the costs for the repair, replacement and restoration of the  
26 major components of the common elements and any other portion of  
27 the common-interest community that the association is obligated to  
28 maintain, repair, replace or restore over a period of years if the  
29 funding plan is designed in an actuarially sound manner which will  
30 ensure that sufficient money is available when the repair,  
31 replacement and restoration of the major components of the  
32 common elements or any other portion of the common-interest  
33 community that the association is obligated to maintain, repair,  
34 replace or restore are necessary. Notwithstanding any provision of  
35 the governing documents to the contrary, to establish adequate  
36 reserves pursuant to this paragraph, including, without limitation,  
37 to establish or carry out a funding plan, the executive board may,  
38 without seeking or obtaining the approval of the units' owners,  
39 impose any necessary and reasonable assessments against the units  
40 in the common-interest community. Any such assessments imposed  
41 by the executive board must be based on the study of the reserves of  
42 the association conducted pursuant to NRS 116.31152.

43       3. ~~[Any]~~ *Except as otherwise provided in subsection 4 of NRS*  
44 *116.3102, any* assessment for common expenses or installment  
45 thereof that is 60 days or more past due bears interest at a rate equal





1 to the prime rate at the largest bank in Nevada as ascertained by the  
2 Commissioner of Financial Institutions on January 1 or July 1, as  
3 the case may be, immediately preceding the date the assessment  
4 becomes past due, plus 2 percent. The rate must be adjusted  
5 accordingly on each January 1 and July 1 thereafter until the balance  
6 is satisfied.

7 4. Except as otherwise provided in the governing documents:

8 (a) Any common expense associated with the maintenance,  
9 repair, restoration or replacement of a limited common element  
10 must be assessed against the units to which that limited common  
11 element is assigned, equally, or in any other proportion the  
12 declaration provides;

13 (b) Any common expense or portion thereof benefiting fewer  
14 than all of the units must be assessed exclusively against the units  
15 benefited; and

16 (c) The costs of insurance must be assessed in proportion to risk  
17 and the costs of utilities must be assessed in proportion to usage.

18 5. Assessments to pay a judgment against the association may  
19 be made only against the units in the common-interest community at  
20 the time the judgment was entered, in proportion to their liabilities  
21 for common expenses.

22 6. If any common expense is caused by the misconduct of any  
23 unit's owner, the association may assess that expense exclusively  
24 against his or her unit.

25 7. The association of a common-interest community created  
26 before January 1, 1992, is not required to make an assessment  
27 against a vacant lot located within the community that is owned by  
28 the declarant.

29 8. If liabilities for common expenses are reallocated,  
30 assessments for common expenses and any installment thereof not  
31 yet due must be recalculated in accordance with the reallocated  
32 liabilities.

33 9. The association shall provide written notice to each unit's  
34 owner of a meeting at which an assessment for a capital  
35 improvement is to be considered or action is to be taken on such an  
36 assessment at least 21 calendar days before the date of the meeting.

37 **Sec. 8.** NRS 116.31162 is hereby amended to read as follows:

38 116.31162 1. Except as otherwise provided in ~~subsection~~  
39 *subsections 4 and 5*, in a condominium, in a planned community,  
40 in a cooperative where the owner's interest in a unit is real estate  
41 under NRS 116.1105, or in a cooperative where the owner's interest  
42 in a unit is personal property under NRS 116.1105 and the  
43 declaration provides that a lien may be foreclosed under NRS  
44 116.31162 to 116.31168, inclusive, the association may foreclose its  
45 lien by sale after all of the following occur:



1 (a) The association has mailed by certified or registered mail,  
2 return receipt requested, to the unit's owner or his or her successor  
3 in interest, at his or her address, if known, and at the address of the  
4 unit, a notice of delinquent assessment which states the amount of  
5 the assessments and other sums which are due in accordance with  
6 subsection 1 of NRS 116.3116, a description of the unit against  
7 which the lien is imposed and the name of the record owner of the  
8 unit.

9 (b) Not less than 30 days after mailing the notice of delinquent  
10 assessment pursuant to paragraph (a), the association or other person  
11 conducting the sale has executed and caused to be recorded, with the  
12 county recorder of the county in which the common-interest  
13 community or any part of it is situated, a notice of default and  
14 election to sell the unit to satisfy the lien which must contain the  
15 same information as the notice of delinquent assessment and which  
16 must also comply with the following:

17 (1) Describe the deficiency in payment.

18 (2) State the name and address of the person authorized by  
19 the association to enforce the lien by sale.

20 (3) Contain, in 14-point bold type, the following warning:

21 **WARNING! IF YOU FAIL TO PAY THE AMOUNT**  
22 **SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR**  
23 **HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**  
24  
25

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

30 2. The notice of default and election to sell must be signed by  
31 the person designated in the declaration or by the association for that  
32 purpose or, if no one is designated, by the president of the  
33 association.

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

35 (a) The date on which the notice of default is recorded; or

36 (b) The date on which a copy of the notice of default is mailed  
37 by certified or registered mail, return receipt requested, to the unit's  
38 owner or his or her successor in interest at his or her address, if  
39 known, and at the address of the unit,

40 ➤ whichever date occurs later.

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



1 (a) The violation poses an imminent threat of causing a  
2 substantial adverse effect on the health, safety or welfare of the  
3 units' owners or residents of the common-interest community; or

4 (b) The penalty is imposed for failure to adhere to a schedule  
5 required pursuant to NRS 116.310305.

6 ***5. The association may not foreclose a lien by sale based on***  
7 ***an assessment against a unit pursuant to NRS 116.3115 if the***  
8 ***owner of the unit is a municipality or nonprofit entity which has***  
9 ***entered into a contract with a governmental entity for the purpose***  
10 ***of rehabilitating or stabilizing the neighborhood in which the unit***  
11 ***is located to mitigate the effects of foreclosures in that***  
12 ***neighborhood.***

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