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ASSEMBLY BILL NO. 317—ASSEMBLYMEN WOODBURY,  
HAMBRICK; AND STEWART

MARCH 18, 2013

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JOINT SPONSOR: SENATOR HARDY

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Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to common-interest communities. (BDR 10-1012)

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.

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AN ACT relating to common-interest communities; revising certain provisions concerning a period of declarant’s control of a unit-owners’ association; requiring members of the executive board of an association to make certain disclosures; revising certain provisions relating to elections of the members of an executive board; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law governs common-interest communities. (Chapter 116 of NRS)  
2 **Section 1** of this bill requires an incumbent member of the executive board of a  
3 unit-owners’ association to make certain disclosures concerning potential conflict  
4 of interests.

5 Existing law provides for a period of declarant’s control, during which a  
6 declarant may appoint and remove the officers and members of the executive board  
7 of an association. (NRS 116.31032) **Section 2** of this bill revises provisions  
8 governing the period of time in which a period of declarant’s control must  
9 terminate. **Section 2** also provides that if a declarant has voluntarily surrendered the  
10 right to appoint and remove officers and members of the executive board before  
11 termination of the period of declarant’s control, the declarant, the declarant’s agent  
12 or the declarant’s successor in interest must attend any meeting of the executive  
13 board upon written request of the executive board. **Section 2** further revises certain  
14 provisions concerning the election of unit owners to the executive board during the  
15 period of declarant’s control.

16 Existing law requires candidates nominated for membership on the executive  
17 board to make certain disclosures. (NRS 116.31034) **Section 3** of this bill clarifies



18 that an incumbent member who is a candidate for reelection must also make the  
19 same disclosures. **Section 3** also requires a candidate to disclose whether he or she  
20 is a member of an executive board of another association.

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

1 **Section 1.** NRS 116.3103 is hereby amended to read as  
2 follows:

3 116.3103 1. Except as otherwise provided in the declaration,  
4 the bylaws, this section or other provisions of this chapter, the  
5 executive board acts on behalf of the association. In the performance  
6 of their duties, the officers and members of the executive board are  
7 fiduciaries and shall act on an informed basis, in good faith and in  
8 the honest belief that their actions are in the best interest of the  
9 association. Officers and members of the executive board:

10 (a) Are required to exercise the ordinary and reasonable care of  
11 officers and directors of a nonprofit corporation, subject to the  
12 business-judgment rule; ~~and~~

13 (b) Are subject to conflict of interest rules governing the officers  
14 and directors of a nonprofit corporation organized under the law of  
15 this State ~~H~~; and

16 (c) *Are required to make a good faith effort to disclose any*  
17 *change in financial, business, professional or personal*  
18 *relationships or interests, including, without limitation,*  
19 *membership on the executive board of another association, that*  
20 *would result or would appear to a reasonable person to result in a*  
21 *potential conflict of interest.*

22 2. The executive board may not act to:

23 (a) Amend the declaration.

24 (b) Terminate the common-interest community.

25 (c) Elect members of the executive board, but unless the  
26 governing documents provide that a vacancy on the executive board  
27 must be filled by a vote of the membership of the association, the  
28 executive board may fill vacancies in its membership for the  
29 unexpired portion of any term or until the next regularly scheduled  
30 election of executive board members, whichever is earlier. Any  
31 executive board member elected to a previously vacant position  
32 which was temporarily filled by board appointment may only be  
33 elected to fulfill the remainder of the unexpired portion of the term.

34 (d) Determine the qualifications, powers, duties or terms of  
35 office of members of the executive board.

36 3. The executive board shall adopt budgets as provided in  
37 NRS 116.31151.



1       **Sec. 2.** NRS 116.31032 is hereby amended to read as follows:

2       116.31032 1. Except as otherwise provided in this section,  
3 the declaration may provide for a period of declarant's control of the  
4 association, during which a declarant, or persons designated by a  
5 declarant, may appoint and remove the officers of the association  
6 and members of the executive board. A declarant may voluntarily  
7 surrender the right to appoint and remove officers and members of  
8 the executive board before termination of that period and, in that  
9 event, the declarant may require, for the duration of the period of  
10 declarant's control, that specified actions of the association or  
11 executive board, as described in a recorded instrument executed by  
12 the declarant, be approved by the declarant before they become  
13 effective. Regardless of the period provided in the declaration, a  
14 period of declarant's control terminates no later than the earliest of:

15       (a) ~~Sixty~~ *For a common-interest community with less than*  
16 *1,000 units, 60* days after conveyance of 75 percent of the units that  
17 may be created to units' owners other than a declarant ~~or, if~~ ;

18       (b) *For a common-interest community with 1,000 units or*  
19 *more, 60 days after conveyance of 90 percent of the units that may*  
20 *be created to units' owners other than a declarant;*

21       (c) *If* the association exercises powers over a common-interest  
22 community pursuant to this chapter and a time-share plan pursuant  
23 to chapter 119A of NRS, 120 days after conveyance of 80 percent of  
24 the units that may be created to units' owners other than a declarant;

25       ~~(b)~~ (d) Five years after all declarants have ceased to offer units  
26 for sale in the ordinary course of business;

27       ~~(e)~~ (e) Five years after any right to add new units was last  
28 exercised; or

29       ~~(d)~~ (f) The day the declarant, after giving notice to units'  
30 owners, records an instrument voluntarily surrendering all rights to  
31 control activities of the association.

32       2. *If a declarant voluntarily surrenders the right to appoint*  
33 *and remove officers and members of the executive board before*  
34 *termination of the period of declarant's control of the association,*  
35 *the declarant, the declarant's agent or the declarant's successor in*  
36 *interest must attend, upon written request from the executive*  
37 *board, any meeting of the executive board until such time as the*  
38 *period of declarant's control terminates pursuant to subsection 1.*

39       3. Not later than 60 days after conveyance of ~~25~~ 15 percent of  
40 the units that may be created to units' owners other than a declarant,  
41 at least one member and not less than 25 percent of the members of  
42 the executive board must be elected by units' owners other than the  
43 declarant. Not later than 60 days after conveyance of 50 percent of  
44 the units that may be created to units' owners other than a declarant,



1 not less than one-third of the members of the executive board must  
2 be elected by units' owners other than the declarant.

3 **Sec. 3.** NRS 116.31034 is hereby amended to read as follows:

4 116.31034 1. Except as otherwise provided in subsection 5 of  
5 NRS 116.212, not later than the termination of any period of  
6 declarant's control, the units' owners shall elect an executive board  
7 of at least three members, all of whom must be units' owners. The  
8 executive board shall elect the officers of the association. Unless  
9 the governing documents provide otherwise, the officers of the  
10 association are not required to be units' owners. The members of the  
11 executive board and the officers of the association shall take office  
12 upon election.

13 2. The term of office of a member of the executive board may  
14 not exceed 3 years, except for members who are appointed by the  
15 declarant. Unless the governing documents provide otherwise, there  
16 is no limitation on the number of terms that a person may serve as a  
17 member of the executive board.

18 3. The governing documents of the association must provide  
19 for terms of office that are staggered in such a manner that, to the  
20 extent possible, an equal number of members of the executive board  
21 are elected at each election. The provisions of this subsection do not  
22 apply to:

23 (a) Members of the executive board who are appointed by the  
24 declarant; and

25 (b) Members of the executive board who serve a term of 1 year  
26 or less.

27 4. Not less than 30 days before the preparation of a ballot for  
28 the election of members of the executive board, the secretary or  
29 other officer specified in the bylaws of the association shall cause  
30 notice to be given to each unit's owner of the unit's owner's  
31 eligibility to serve as a member of the executive board. Each unit's  
32 owner who is qualified to serve as a member of the executive board  
33 may have his or her name placed on the ballot along with the names  
34 of the nominees selected by the members of the executive board or a  
35 nominating committee established by the association.

36 5. Before the secretary or other officer specified in the bylaws  
37 of the association causes notice to be given to each unit's owner of  
38 his or her eligibility to serve as a member of the executive board  
39 pursuant to subsection 4, the executive board may determine that if,  
40 at the closing of the prescribed period for nominations for  
41 membership on the executive board, the number of candidates  
42 nominated for membership on the executive board is equal to or less  
43 than the number of members to be elected to the executive board at  
44 the election, then the secretary or other officer specified in the



1 bylaws of the association will cause notice to be given to each unit's  
2 owner informing each unit's owner that:

3 (a) The association will not prepare or mail any ballots to units'  
4 owners pursuant to this section and the nominated candidates shall  
5 be deemed to be duly elected to the executive board unless:

6 (1) A unit's owner who is qualified to serve on the executive  
7 board nominates himself or herself for membership on the executive  
8 board by submitting a nomination to the executive board within 30  
9 days after the notice provided by this subsection; and

10 (2) The number of units' owners who submit such a  
11 nomination causes the number of candidates nominated for  
12 membership on the executive board to be greater than the number of  
13 members to be elected to the executive board.

14 (b) Each unit's owner who is qualified to serve as a member of  
15 the executive board may nominate himself or herself for  
16 membership on the executive board by submitting a nomination to  
17 the executive board within 30 days after the notice provided by this  
18 subsection.

19 6. If the notice described in subsection 5 is given and if, at the  
20 closing of the prescribed period for nominations for membership on  
21 the executive board described in subsection 5, the number of  
22 candidates nominated for membership on the executive board is  
23 equal to or less than the number of members to be elected to the  
24 executive board, then:

25 (a) The association will not prepare or mail any ballots to units'  
26 owners pursuant to this section;

27 (b) The nominated candidates shall be deemed to be duly elected  
28 to the executive board not later than 30 days after the date of the  
29 closing of the period for nominations described in subsection 5; and

30 (c) The association shall send to each unit's owner notification  
31 that the candidates nominated have been elected to the executive  
32 board.

33 7. If the notice described in subsection 5 is given and if, at the  
34 closing of the prescribed period for nominations for membership on  
35 the executive board described in subsection 5, the number of  
36 candidates nominated for membership on the executive board is  
37 greater than the number of members to be elected to the executive  
38 board, then the association shall:

39 (a) Prepare and mail ballots to the units' owners pursuant to this  
40 section; and

41 (b) Conduct an election for membership on the executive board  
42 pursuant to this section.

43 8. Each person who is nominated as a candidate for  
44 membership on the executive board pursuant to subsection 4 or 5 ,



1 *including, without limitation, an incumbent member of the*  
2 *executive board who is seeking another term,* must:

3 (a) Make a good faith effort to disclose any financial, business,  
4 professional or personal relationship or interest , *including, without*  
5 *limitation, whether the person nominated as a candidate is a*  
6 *member of the executive board of another association,* that would  
7 result or would appear to a reasonable person to result in a potential  
8 conflict of interest for the candidate if the candidate were to be  
9 elected to serve as a member of the executive board; and

10 (b) Disclose whether the candidate is a member in good  
11 standing. For the purposes of this paragraph, a candidate shall not be  
12 deemed to be in "good standing" if the candidate has any unpaid and  
13 past due assessments or construction penalties that are required to be  
14 paid to the association.

15 ➔ The candidate must make all disclosures required pursuant to this  
16 subsection in writing to the association with his or her candidacy  
17 information. Except as otherwise provided in this subsection, the  
18 association shall distribute the disclosures, on behalf of the  
19 candidate, to each member of the association with the ballot or, in  
20 the event ballots are not prepared and mailed pursuant to subsection  
21 6, in the next regular mailing of the association. The association is  
22 not obligated to distribute any disclosure pursuant to this subsection  
23 if the disclosure contains information that is believed to be  
24 defamatory, libelous or profane.

25 9. Unless a person is appointed by the declarant:

26 (a) A person may not be a member of the executive board or an  
27 officer of the association if the person, the person's spouse or the  
28 person's parent or child, by blood, marriage or adoption, performs  
29 the duties of a community manager for that association.

30 (b) A person may not be a member of the executive board of a  
31 master association or an officer of that master association if the  
32 person, the person's spouse or the person's parent or child, by  
33 blood, marriage or adoption, performs the duties of a community  
34 manager for:

35 (1) That master association; or

36 (2) Any association that is subject to the governing  
37 documents of that master association.

38 10. An officer, employee, agent or director of a corporate  
39 owner of a unit, a trustee or designated beneficiary of a trust that  
40 owns a unit, a partner of a partnership that owns a unit, a member or  
41 manager of a limited-liability company that owns a unit, and a  
42 fiduciary of an estate that owns a unit may be an officer of the  
43 association or a member of the executive board. In all events where  
44 the person serving or offering to serve as an officer of the  
45 association or a member of the executive board is not the record



1 owner, the person shall file proof in the records of the association  
2 that:

3 (a) The person is associated with the corporate owner, trust,  
4 partnership, limited-liability company or estate as required by this  
5 subsection; and

6 (b) Identifies the unit or units owned by the corporate owner,  
7 trust, partnership, limited-liability company or estate.

8 11. Except as otherwise provided in subsection 6 or NRS  
9 116.31105, the election of any member of the executive board must  
10 be conducted by secret written ballot in the following manner:

11 (a) The secretary or other officer specified in the bylaws of the  
12 association shall cause a secret ballot and a return envelope to be  
13 sent, prepaid by United States mail, to the mailing address of each  
14 unit within the common-interest community or to any other mailing  
15 address designated in writing by the unit's owner.

16 (b) Each unit's owner must be provided with at least 15 days  
17 after the date the secret written ballot is mailed to the unit's owner  
18 to return the secret written ballot to the association.

19 (c) A quorum is not required for the election of any member of  
20 the executive board.

21 (d) Only the secret written ballots that are returned to the  
22 association may be counted to determine the outcome of the  
23 election.

24 (e) The secret written ballots must be opened and counted at a  
25 meeting of the association. A quorum is not required to be present  
26 when the secret written ballots are opened and counted at the  
27 meeting.

28 (f) The incumbent members of the executive board and each  
29 person whose name is placed on the ballot as a candidate for  
30 membership on the executive board may not possess, be given  
31 access to or participate in the opening or counting of the secret  
32 written ballots that are returned to the association before those secret  
33 written ballots have been opened and counted at a meeting of the  
34 association.

35 12. An association shall not adopt any rule or regulation that  
36 has the effect of prohibiting or unreasonably interfering with a  
37 candidate in the candidate's campaign for election as a member of  
38 the executive board, except that the candidate's campaign may be  
39 limited to 90 days before the date that ballots are required to be  
40 returned to the association.

41 13. A candidate who has submitted a nomination form for  
42 election as a member of the executive board may request that the  
43 association or its agent either:

44 (a) Send before the date of the election and at the association's  
45 expense, to the mailing address of each unit within the



1 common-interest community or to any other mailing address  
2 designated in writing by the unit's owner a candidate informational  
3 statement. The candidate informational statement:

4 (1) Must be no longer than a single, typed page;

5 (2) Must not contain any defamatory, libelous or profane  
6 information; and

7 (3) May be sent with the secret ballot mailed pursuant to  
8 subsection 11 or in a separate mailing; or

9 (b) To allow the candidate to communicate campaign material  
10 directly to the units' owners, provide to the candidate, in paper  
11 format at a cost not to exceed 25 cents per page for the first 10 pages  
12 and 10 cents per page thereafter, in the format of a compact disc at a  
13 cost of not more than \$5 or by electronic mail at no cost:

14 (1) A list of the mailing address of each unit, which must not  
15 include the names of the units' owners or the name of any tenant of  
16 a unit's owner; or

17 (2) If the members of the association are owners of time  
18 shares within a time share plan created pursuant to chapter 119A of  
19 NRS and:

20 (I) The voting rights of those owners are exercised by  
21 delegates or representatives pursuant to NRS 116.31105, the mailing  
22 address of the delegates or representatives.

23 (II) The voting rights of those owners are not exercised by  
24 delegates or representatives, the mailing address of the association  
25 established pursuant to NRS 119A.520. If the mailing address of the  
26 association is provided to the candidate pursuant to this sub-  
27 subparagraph, the association must send to each owner of a time  
28 share within the time share plan the campaign material provided by  
29 the candidate. If the campaign material will be sent by mail, the  
30 candidate who provides the campaign material must provide to the  
31 association a separate copy of the campaign material for each owner  
32 and must pay the actual costs of mailing before the campaign  
33 material is mailed. If the campaign material will be sent by  
34 electronic transmission, the candidate must provide to the  
35 association one copy of the campaign material in an electronic  
36 format.

37 ➤ The information provided pursuant to this paragraph must not  
38 include the name of any unit's owner or any tenant of a unit's  
39 owner. If a candidate who makes a request for the information  
40 described in this paragraph fails or refuses to provide a written  
41 statement signed by the candidate which states that the candidate is  
42 making the request to allow the candidate to communicate campaign  
43 material directly to units' owners and that the candidate will not use  
44 the information for any other purpose, the association or its agent  
45 may refuse the request.





1       14. An association and its directors, officers, employees and  
2 agents are immune from criminal or civil liability for any act or  
3 omission which arises out of the publication or disclosure of any  
4 information related to any person and which occurs in the course of  
5 carrying out any duties required pursuant to subsection 13.  
6       15. Each member of the executive board shall, within 90 days  
7 after his or her appointment or election, certify in writing to the  
8 association, on a form prescribed by the Administrator, that the  
9 member has read and understands the governing documents of  
10 the association and the provisions of this chapter to the best of his or  
11 her ability. The Administrator may require the association to submit  
12 a copy of the certification of each member of the executive board of  
13 that association at the time the association registers with the  
14 Ombudsman pursuant to NRS 116.31158.







