

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; revising provisions governing liens of a unit-owners' association; authorizing the Commission for Common-Interest Communities and Condominium Hotels to adopt regulations to carry out the requirement for impound accounts; 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



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14 provides that if the holder of the first security interest has obtained the consent of
15 the unit's owner for the establishment of such account and there is an impound
16 account established for the payment of property taxes or insurance premiums, the
17 holder of the first security interest is required to establish such an impound account
18 for advance contributions for the payment of certain assessments. **Section 1**
19 requires payments to be made from the account for assessments for common
20 expenses in accordance with the same due dates as apply to the payment of
21 assessments by a unit's owner or in quarterly installments that are due on the first
22 day of each calendar quarter. Under **section 1**, if the assessments for common
23 expenses are paid in quarterly installments from the impound account, the due date
24 of the assessments is deemed to be the first day of the calendar quarter. **Section 1**
25 provides that: (1) if payments for assessments are timely made to an impound
26 account, the super-priority lien does not arise; and (2) if an impound account is
27 established, the association must provide notice of delinquency in the payment of
28 assessments to the holder of the first security interest.

29 **Section 1.3** of this bill authorizes the Commission for Common-Interest
30 Communities and Condominium Hotels to adopt regulations to carry out the
31 provisions of **section 1** relating to impound accounts, including, without limitation,
32 requirements for bonding, servicing costs and conflicts of interest for entities
33 servicing such accounts.

34 **Section 2** of this bill provides that the requirement to establish an impound
35 account and to make payments of assessments for common expenses from the
36 impound account becomes effective on January 1, 2016. **Section 1.7** of this bill
37 provides that the requirement to establish an impound account applies only to a
38 holder of a first security interest on a unit that is recorded on or before January 1,
39 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;



1 (b) A first security interest on the unit recorded before the date
2 on which the assessment sought to be enforced became delinquent
3 or, in a cooperative, the first security interest encumbering only the
4 unit's owner's interest and perfected before the date on which the
5 assessment sought to be enforced became delinquent; and

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

8 ~~↳ The~~ *Unless payments for assessments described in subsection*
9 *3 are made timely to an escrow account, loan trust account or*
10 *other impound account established pursuant to subsection 3, the*
11 lien is also prior to all security interests described in paragraph (b)
12 to the extent of any charges incurred by the association on a unit
13 pursuant to NRS 116.310312 and to the extent of the assessments
14 for common expenses based on the periodic budget adopted by the
15 association pursuant to NRS 116.3115 which would have become
16 due in the absence of acceleration during the 9 months immediately
17 preceding institution of an action to enforce the lien, unless federal
18 regulations adopted by the Federal Home Loan Mortgage
19 Corporation or the Federal National Mortgage Association require a
20 shorter period of priority for the lien. If federal regulations adopted
21 by the Federal Home Loan Mortgage Corporation or the Federal
22 National Mortgage Association require a shorter period of priority
23 for the lien, the period during which the lien is prior to all security
24 interests described in paragraph (b) must be determined in
25 accordance with those federal regulations, except that
26 notwithstanding the provisions of the federal regulations, the period
27 of priority for the lien must not be less than the 6 months
28 immediately preceding institution of an action to enforce the lien.
29 This subsection does not affect the priority of mechanics' or
30 materialmen's liens, or the priority of liens for other assessments
31 made by the association.

32 3. ~~The~~ *If the* holder of the security interest described in
33 paragraph (b) of subsection 2 or the holder's authorized agent ~~may~~
34 *has obtained the consent of a unit's owner and there is an escrow*
35 *account, loan trust account or other impound account established*
36 *for advance contributions for the payment of property taxes on the*
37 *unit or premiums for insurance on the unit, the holder or his or*
38 *her authorized agent shall* establish an escrow account, loan trust
39 account or other impound account for advance contributions for the
40 payment of ~~assessments~~ :

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



1 ***(b) Special assessments to establish adequate reserves for the***
2 ***association pursuant to paragraph (b) of subsection 2 of NRS***
3 ***116.3115; and***

4 ***(c) Assessments for capital expenditures based on the periodic***
5 ***budget adopted by the association pursuant to NRS 116.3115.***

6 ***4. Payments from ~~the~~ an escrow account, loan trust account***
7 ***or impound account for assessments ~~for common expenses~~***
8 ***described in subsection 3 must be made in ~~accordance~~ :***

9 ***(a) Accordance*** with the same due dates as apply to payments of
10 such assessments by a unit's owner ~~+~~
11 ~~—4.+~~ ; or

12 ***(b) Quarterly installments that are due the first day of each***
13 ***calendar quarter. Notwithstanding any other provision of law or***
14 ***the governing documents to the contrary, if assessments for***
15 ***common expenses are paid in quarterly installments pursuant to***
16 ***this paragraph, the due date of the assessments is deemed to be the***
17 ***first day of each calendar quarter.***

18 ***5. If an escrow account, loan trust account or other impound***
19 ***account is established pursuant to subsection 3, not later than 30***
20 ***days after a payment of an assessment described in subsection 3 is***
21 ***delinquent, the association must provide the holder of the security***
22 ***interest described in paragraph (b) of subsection 2 with a notice of***
23 ***delinquent assessment which states the amount of the assessments***
24 ***which are due, a description of the unit against which the***
25 ***assessment is imposed and the name of the record owner of the***
26 ***unit.***

27 ***6. Unless the declaration otherwise provides, if two or more***
28 ***associations have liens for assessments created at any time on the***
29 ***same property, those liens have equal priority.***

30 ~~15.+~~ ***7. Recording of the declaration constitutes record notice***
31 ***and perfection of the lien. No further recordation of any claim of***
32 ***lien for assessment under this section is required.***

33 ~~16.+~~ ***8. A lien for unpaid assessments is extinguished unless***
34 ***proceedings to enforce the lien are instituted within 3 years after the***
35 ***full amount of the assessments becomes due.***

36 ~~17.+~~ ***9. This section does not prohibit actions to recover sums***
37 ***for which subsection 1 creates a lien or prohibit an association from***
38 ***taking a deed in lieu of foreclosure.***

39 ~~18.+~~ ***10. A judgment or decree in any action brought under this***
40 ***section must include costs and reasonable attorney's fees for the***
41 ***prevailing party.***

42 ~~19.+~~ ***11. The association, upon written request, shall furnish to***
43 ***a unit's owner a statement setting forth the amount of unpaid***
44 ***assessments against the unit. If the interest of the unit's owner is real***
45 ***estate or if a lien for the unpaid assessments may be foreclosed***



1 under NRS 116.31162 to 116.31168, inclusive, the statement must
2 be in recordable form. The statement must be furnished within 10
3 business days after receipt of the request and is binding on the
4 association, the executive board and every unit's owner.

5 ~~10.1~~ **12.** In a cooperative, upon nonpayment of an assessment
6 on a unit, the unit's owner may be evicted in the same manner as
7 provided by law in the case of an unlawful holdover by a
8 commercial tenant, and:

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

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

14 (1) May be foreclosed as a security interest under NRS
15 104.9101 to 104.9709, inclusive; or

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

18 ~~11.1~~ **13.** In an action by an association to collect assessments
19 or to foreclose a lien created under this section, the court may
20 appoint a receiver to collect all rents or other income from the unit
21 alleged to be due and owing to a unit's owner before
22 commencement or during pendency of the action. The receivership
23 is governed by chapter 32 of NRS. The court may order the receiver
24 to pay any sums held by the receiver to the association during
25 pendency of the action to the extent of the association's common
26 expense assessments based on a periodic budget adopted by the
27 association pursuant to NRS 116.3115.

28 **Sec. 1.3.** NRS 116.615 is hereby amended to read as follows:

29 116.615 1. The provisions of this chapter must be
30 administered by the Division, subject to the administrative
31 supervision of the Director of the Department of Business and
32 Industry.

33 2. The Commission and the Division may do all things
34 necessary and convenient to carry out the provisions of this chapter,
35 including, without limitation, prescribing such forms and adopting
36 such procedures as are necessary to carry out the provisions of this
37 chapter.

38 3. The Commission, or the Administrator with the approval of
39 the Commission, may adopt such regulations as are necessary to
40 carry out ~~the~~ :

41 *(a) The provisions of subsections 3 and 4 of NRS 116.3116*
42 *relating to escrow accounts, loan trust accounts or other impound*
43 *accounts, including, without limitation, regulations relating to*
44 *bonding of entities servicing such accounts, the cost of servicing*



1 *such accounts and conflicts of interest for entities servicing such*
2 *accounts; and*

3 *(b) Any other* provisions of this chapter.

4 4. The Commission may by regulation delegate any authority
5 conferred upon it by the provisions of this chapter to the
6 Administrator to be exercised pursuant to the regulations adopted by
7 the Commission.

8 5. When regulations are proposed by the Administrator, in
9 addition to other notices required by law, the Administrator shall
10 provide copies of the proposed regulations to the Commission not
11 later than 30 days before the next meeting of the Commission. The
12 Commission shall approve, amend or disapprove any proposed
13 regulations at that meeting.

14 6. All regulations adopted by the Commission, or adopted by
15 the Administrator with the approval of the Commission, must be
16 published by the Division, posted on its website and offered for sale
17 at a reasonable fee.

18 **Sec. 1.7.** The amendatory provisions of section 1 of this act
19 apply to a security interest described in paragraph (b) of subsection
20 2 of NRS 116.3116, as amended by section 1 of this act, that is
21 recorded on or after January 1, 2016.

22 **Sec. 2.** This act becomes effective:

23 1. Upon passage and approval for the purposes of adopting
24 regulations and performing any other preparatory administrative
25 tasks that are necessary to carry out this act; and

26 2. On January 1, 2016, for all other purposes.



