

ASSEMBLY BILL NO. 388—ASSEMBLYMAN OHRENSCHALL

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property. (BDR 10-568)

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 real property; requiring the disclosure form required to be provided by the seller of residential property to include only certain information related to the residential property; prohibiting the unit-owners' association of a common-interest community from charging a unit's owner any costs of collecting a past due obligation other than costs related to the recording of certain documents; revising provisions governing the foreclosure of an association's lien based on a fine or penalty for a violation of the governing documents of the common-interest community; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires the seller of residential property to serve on the purchaser
- 2 or the purchaser's agent a completed disclosure form regarding the residential
- 3 property. (NRS 113.130) **Section 1** of this bill requires the disclosure to include
- 4 only information related to the residential property and the homeowners'
- 5 association for the residential property, if any.
- 6 Existing law authorizes the unit-owners' association of a common-interest
- 7 community to charge reasonable fees to cover the costs of collecting a past due
- 8 financial obligation owed by a unit's owner and requires the Commission for
- 9 Common-Interest Communities and Condominium Hotels to adopt regulations
- 10 establishing the amount of those fees. (NRS 116.310313) **Section 2** of this bill
- 11 prohibits an association from charging any costs of collecting a past due financial
- 12 obligation to a unit's owner other than certain recording fees.
- 13 Existing law prohibits the unit-owners' association of a common-interest
- 14 community from foreclosing on a unit based on an unpaid fine or penalty for a
- 15 violation of the governing documents unless: (1) the violation poses an imminent
- 16 threat of causing a substantial adverse effect on the health, safety or welfare of the



17 units' owners or residents of the common-interest community; or (2) the penalty
18 was imposed for failure to adhere to a construction schedule. (NRS 116.31162)
19 **Section 3** of this bill removes the exceptions to the power to foreclose on a unit
20 based on an unpaid fine so that the association is prohibited from foreclosing on a
21 unit based on any unpaid fine or penalty for a violation of the governing
22 documents.

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

1 **Section 1.** NRS 113.130 is hereby amended to read as follows:
2 113.130 1. Except as otherwise provided in subsections 2
3 and 3:
4 (a) At least 10 days before residential property is conveyed to a
5 purchaser:
6 (1) The seller shall complete a disclosure form regarding the
7 residential property ~~and~~ *which must include only information*
8 *specifically and directly related to the residential property and, if*
9 *the residential property is in a common-interest community, the*
10 *unit-owners' association for that common-interest community;*
11 and
12 (2) The seller or the seller's agent shall serve the purchaser
13 or the purchaser's agent with the completed disclosure form.
14 (b) If, after service of the completed disclosure form but before
15 conveyance of the property to the purchaser, a seller or the seller's
16 agent discovers a new defect in the residential property that was not
17 identified on the completed disclosure form or discovers that a
18 defect identified on the completed disclosure form has become
19 worse than was indicated on the form, the seller or the seller's agent
20 shall inform the purchaser or the purchaser's agent of that fact, in
21 writing, as soon as practicable after the discovery of that fact but in
22 no event later than the conveyance of the property to the purchaser.
23 If the seller does not agree to repair or replace the defect, the
24 purchaser may:
25 (1) Rescind the agreement to purchase the property; or
26 (2) Close escrow and accept the property with the defect as
27 revealed by the seller or the seller's agent without further recourse.
28 2. Subsection 1 does not apply to a sale or intended sale of
29 residential property:
30 (a) By foreclosure pursuant to chapter 107 of NRS.
31 (b) Between any co-owners of the property, spouses or persons
32 related within the third degree of consanguinity.
33 (c) Which is the first sale of a residence that was constructed by
34 a licensed contractor.



1 (d) By a person who takes temporary possession or control of or
2 title to the property solely to facilitate the sale of the property on
3 behalf of a person who relocates to another county, state or country
4 before title to the property is transferred to a purchaser.

5 3. A purchaser of residential property may waive any of the
6 requirements of subsection 1. Any such waiver is effective only if it
7 is made in a written document that is signed by the purchaser and
8 notarized.

9 4. If a sale or intended sale of residential property is exempted
10 from the requirements of subsection 1 pursuant to paragraph (a) of
11 subsection 2, the trustee and the beneficiary of the deed of trust
12 shall, not later than at the time of the conveyance of the property to
13 the purchaser of the residential property, provide written notice to
14 the purchaser of any defects in the property of which the trustee or
15 beneficiary, respectively, is aware.

16 5. *As used in this section:*

17 (a) *“Common-interest community” has the meaning ascribed*
18 *to it in NRS 116.021.*

19 (b) *“Unit-owners’ association” has the meaning ascribed to it*
20 *in NRS 116.011.*

21 **Sec. 2.** NRS 116.310313 is hereby amended to read as
22 follows:

23 116.310313 1. An association may *not* charge a unit’s owner
24 ~~reasonable fees to cover~~ the costs of collecting any past due
25 obligation ~~[-]~~ *except that an association may charge a unit’s owner*
26 *the fee charged to the association by a county recorder for the*
27 *recording of any document related to the past due obligation and a*
28 *reasonable recording fee.* The Commission shall adopt regulations
29 establishing the amount of the ~~fees~~ *recording fee* that an
30 association may charge pursuant to this section.

31 2. The provisions of this section apply to any costs of
32 collecting a past due obligation charged to a unit’s owner, regardless
33 of whether the past due obligation is collected by the association
34 itself or by any person acting on behalf of the association, including,
35 without limitation, an officer or employee of the association, a
36 community manager or a collection agency.

37 3. *As used in this section:*

38 (a) *“Costs of collecting” includes any fee, charge or cost, by*
39 *whatever name, including, without limitation, any collection fee,*
40 *filing fee, recording fee, fee related to the preparation, recording or*
41 *delivery of a lien or lien rescission, title search lien fee, bankruptcy*
42 *search fee, referral fee, fee for postage or delivery and any other fee*
43 *or cost that an association charges a unit’s owner for the*
44 *investigation, enforcement or collection of a past due obligation.*
45 *The term does not include any costs incurred by an association if a*



1 lawsuit is filed to enforce any past due obligation or any costs
2 awarded by a court.

3 (b) "Obligation" means any assessment, fine, construction
4 penalty, fee, charge or interest levied or imposed against a unit's
5 owner pursuant to any provision of this chapter or the governing
6 documents.

7 **Sec. 3.** NRS 116.31162 is hereby amended to read as follows:

8 116.31162 1. Except as otherwise provided in subsection 4,
9 in a condominium, in a planned community, in a cooperative where
10 the owner's interest in a unit is real estate under NRS 116.1105, or
11 in a cooperative where the owner's interest in a unit is personal
12 property under NRS 116.1105 and the declaration provides that a
13 lien may be foreclosed under NRS 116.31162 to 116.31168,
14 inclusive, the association may foreclose its lien by sale after all of
15 the following occur:

16 (a) The association has mailed by certified or registered mail,
17 return receipt requested, to the unit's owner or his or her successor
18 in interest, at his or her address, if known, and at the address of the
19 unit, a notice of delinquent assessment which states the amount of
20 the assessments and other sums which are due in accordance with
21 subsection 1 of NRS 116.3116, a description of the unit against
22 which the lien is imposed and the name of the record owner of the
23 unit.

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

32 (1) Describe the deficiency in payment.

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

35 (3) Contain, in 14-point bold type, the following warning:
36

37 **WARNING! IF YOU FAIL TO PAY THE AMOUNT**
38 **SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR**
39 **HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**
40

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



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

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

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

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

11 ↪ whichever date occurs later.

12 4. The association may not foreclose a lien by sale based on a
13 fine or penalty for a violation of the governing documents of the
14 association. ~~unless:~~

15 ~~—(a) The violation poses an imminent threat of causing a~~
16 ~~substantial adverse effect on the health, safety or welfare of the~~
17 ~~units' owners or residents of the common interest community; or~~

18 ~~—(b) The penalty is imposed for failure to adhere to a schedule~~
19 ~~required pursuant to NRS 116.310305.]~~

20 **Sec. 4.** This act becomes effective on July 1, 2011.

